

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

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

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

Overview

The draft amends current law to allow emergency protective placement of an individual who appears to suffer from dementia in an inpatient facility, for up to 45 days. A probable cause hearing must be held within 72 hours of the emergency placement. This procedure would be used for an individual who is not already under a protective placement order.

The draft also provides that an individual with dementia who is already subject to a protective placement order may be temporarily transferred from their current placement to an inpatient facility for up to 45 days if ordered by a court after a hearing, or without court order in the case of an emergency. In the case of an emergency transfer, a probable cause hearing must be held within 72 hours. Consent of the guardian and the county department are required, except in case of an emergency.

An individual may only be placed in a facility that has been identified by the county department 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.

It is the intent of the subcommittee to allow for extension of either type of order only after additional court procedures and an examination of the individual. These provisions are yet to be fully developed by the subcommittee.

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

Definitions

“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.

“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.

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

Wisconsin statutes do not prohibit emergency detention or involuntary commitment, under ch. 51, of an individual with dementia. The draft prohibits the emergency detention or involuntary commitment, under ch. 51, of an individual with 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. 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 that were initiated under ch. 51 and subsequently converted to ch. 55 proceedings and in which the subject individual has dementia.

Designation of Inpatient Facility for Emergency Temporary Protective Placements

The draft requires each county department to identify at least one inpatient facility for the purpose of emergency and temporary protective placement for 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.

Emergency Protective Placement in an Inpatient Facility

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

The draft allows a sheriff, police officer, fire fighter, guardian, or authorized representative of a county department or an agency with which it contracts to take an individual into custody and transport them to an inpatient facility for emergency protective placement if the existing requirements for emergency protective placement are met and, in addition, all of the following are true:

- (a) It appears probable that the individual has dementia.
- (b) The individual has engaged in behavior that creates a substantial risk of serious physical harm to himself or herself or others as manifested by recent acts or omissions.
- (c) A physical examination of the individual has been conducted by a physician and, based on that examination, it has been determined with reasonable certainty that the behavior is not caused by a physical condition or illness that could be treated in a setting other than an

inpatient facility and the physician recommends that the individual be placed in an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

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

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

Transport of Individual; Statement

Under the draft, a sheriff, police officer, fire fighter, guardian, or representative of a county department may take an individual into custody and transport them to an inpatient facility for emergency protective placement. These are the same individuals who are authorized to transport an individual for emergency protective placement under current law. The person making the emergency protective placement must prepare a statement at the time of detention providing specific factual information concerning the person's observations, or reports made to the person and the basis for emergency placement. The statement must be filed with the director of the facility and with the petition for protective placement.

Probable Cause Hearing

A probable cause hearing must be held within 72 hours of an emergency protective placement in an inpatient facility. The person making the emergency protective placement must file a petition for protective placement that alleges that all of the items listed in items (a) through (e), above, are true. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective placement. The guardianship petition must be submitted at the time of the probable cause hearing. The draft allows the court to grant an extension of time (to be determined by the committee) for submission of the guardianship petition "if requested by the person making the emergency protective placement". This provision of the draft applies to all emergency protective placements.

Order for Temporary Protective Placement in an Inpatient Facility

The court may, at the probable cause hearing, order temporary protective placement of the individual in an inpatient facility for up to 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.

Under the draft, permanent protective placement may not be made to an inpatient facility.

Medication Order

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

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

- (a) The individual has been diagnosed with dementia.
- (b) The individual has engaged in behavior that creates a substantial risk of serious physical harm to himself or herself or others as manifested by recent acts or omissions.
- (c) A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and, based on that examination, the following are true:
 1. The physician has determined with reasonable certainty that the behavior is not caused by a physical condition or illness that could be treated in a setting other than an inpatient facility.
 2. The physician has recommended determined with reasonable certainty that the individual's behavior or condition may be improved by transfer to an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment.
- (d) One of the following is true:
 1. Unless the individual is admitted to an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability shall be manifested by evidence of recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.
 2. Unless the individual is admitted to an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability of being subject to a change in permanent placement in a more restrictive setting due to the inability of personnel at the current placement facility to provide for the safety of the individual or others due to the behavior of the individual. The substantial probability shall be manifested by evidence of recent

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

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

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

(g) The protective placement facility has prepared detailed documentation of the behaviors or condition of the individual that necessitate inpatient behavioral or psychiatric evaluation, diagnosis, services, or treatment, including detailed information regarding the physical examination conducted under par. (b) efforts taken by the facility under par. (e), and provides this documentation to the inpatient facility.

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

Consent of Guardian and County Department Required

Under the draft, the written consent of the individual's guardian and the county department are required in order to carry out a transfer to an inpatient facility, except in the case of an emergency transfer, as described below.

Hearing; Order to Transfer

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

At the hearing, the court must consider whether the standards for transfer described above have been met and whether the proposed transfer to an inpatient facility is in the best interests of the person under protective placement.

Following the hearing, the court must do one of the following:

(a) If the court finds that the individual continues to meet the standards for protective placement and the proposed transfer to an inpatient facility does not meet the standards for transfer, the court must issue an order

prohibiting the transfer. The court must include the information relied upon as a basis for the order and make findings based on those standards in support of the denial of the transfer.

(b) If the court finds that the individual continues to meet the standards for protective placement and the proposed transfer to an inpatient facility meets the standards for transfer, the court must order the transfer of the individual to an inpatient facility for a period not to exceed 30 days.

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

Medication Order

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

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

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

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

If an emergency makes it impossible to file a petition prior to transfer to an inpatient facility or to obtain the prior written consent of the guardian, the individual may be transferred without the prior written consent of the guardian and without a prior court order. A petition containing all of the allegations required for temporary transfer to an inpatient facility and identification of the specific facts and circumstances which made it impossible to carry out the transfer under the nonemergency procedures, must be filed immediately upon transfer.

The court must hold a hearing within 72 hours and issue an order as described above in the description of nonemergency temporary transfer procedures. In addition to the factors that must be considered for nonemergency transfers, the court must also consider whether there is probable cause to believe the allegations that an emergency made it impossible to file a petition and carry out the transfer as a nonemergency transfer.

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

The draft contains the following provisions that apply when an individual is placed in an inpatient facility 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 Irreversible Dementia who are Receiving Services

Current law, in s. 51.61, sets forth a substantial set of rights that are granted to any person who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including, among others, any individual who is admitted to a treatment facility in accordance with ch. 55 or who is detained, committed, or placed under ch. 55. The draft specifies that these rights must also be granted to any person with dementia who is receiving behavioral or psychiatric evaluation, diagnosis, services, or treatment.

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

2 **51.12 Involuntary admissions under protective placement procedures.** An
3 individual may be admitted to an inpatient treatment facility as provided under s. 55.135 or
4 55.155.

NOTE: Amends a portion of ch. 51, stats., to authorize treatment facilities to admit individuals who are subject to involuntary admission to a treatment facility under the provisions created in the draft for emergency protective placement and temporary transfers of protective placement.

5 **SECTION 2.** 51.15 (1) (a) (intro.) of the statutes is amended to read:

6 **51.15 (1) (a) (intro.)** A law enforcement officer or other person authorized to take a child
7 into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an
8 individual into custody if the officer or person has cause to believe that the individual is
9 mentally ill, is drug dependent, or is developmentally disabled, that the individual does not
10 have dementia, and that the individual evidences any of the following:

COMMENT: Should the draft provide a cross-reference or other indication that the emergency protective placement procedures created in

the draft should be used in lieu of s. 51.15 emergency detentions, in situations involving an individual who appears to have dementia?

1 **SECTION 3.** 51.20 (1) (a) 1m. of the statutes is created to read:

2 51.20 (1) (a) 1m. The individual does not have dementia.

3 **SECTION 4.** 51.61 (1) (intro.) of the statutes is amended to read:

4 51.61 (1) (intro.) In this section, “patient” means any individual who is receiving
5 services for mental illness, developmental disabilities, alcoholism or drug dependency, or any
6 individual with dementia who is receiving behavioral or psychiatric evaluation diagnosis,
7 services, or treatment in an inpatient facility under s. 55.01 (3), including any individual who
8 is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is
9 detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is
10 transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or
11 treatment for those conditions through the department or a county department under s. 51.42
12 or 51.437 or in a private treatment facility. “Patient” does not include persons committed
13 under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In
14 private hospitals and in public general hospitals, “patient” includes any individual who is
15 admitted for the primary purpose of treatment of mental illness, developmental disability,
16 alcoholism or drug abuse but does not include an individual who receives treatment in a
17 hospital emergency room nor an individual who receives treatment on an outpatient basis at
18 those hospitals, unless the individual is otherwise covered under this subsection. Except as
19 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.

20 **SECTION 5.** 51.67 of the statutes is amended to read:

1 **51.67 Alternate procedure; protective services.** If, after a hearing under s. 51.13 (4)
2 or 51.20, the court finds that commitment under this chapter is not warranted and that the
3 subject individual is a fit subject for guardianship and protective placement or services, the
4 court may, without further notice, appoint a temporary guardian for the subject individual and
5 order temporary protective placement or services under ch. 55 for a period not to exceed 30
6 days. Temporary protective placement for an individual in a center for the developmentally
7 disabled is subject to s. 51.06 (3). Any interested party may then file a petition for permanent
8 guardianship or protective placement or services, including medication, under ch. 55. If the
9 individual is in a treatment facility, and the individual does not have dementia, the individual
10 may remain in the facility during the period of temporary protective placement if no other
11 appropriate facility is available. If the individual is in a treatment facility, and the individual
12 does have dementia, the individual may remain in the facility during the period of temporary
13 protective placement only if the facility is identified by a county as an inpatient facility under
14 s. 55.02 (2) (b) 5. The court may order psychotropic medication as a temporary protective
15 service under this section if it finds that there is probable cause to believe the individual is not
16 competent to refuse psychotropic medication and that the medication ordered will have
17 therapeutic value and will not unreasonably impair the ability of the individual to prepare for
18 and participate in subsequent legal proceedings. An individual is not competent to refuse
19 psychotropic medication if, because of serious and persistent mental illness, and after the
20 advantages and disadvantages of and alternatives to accepting the particular psychotropic
21 medication have been explained to the individual, one of the following is true:

22 **SECTION 6.** 55.01 (3) of the statutes is created to read:

23 55.01 (3) “Inpatient facility” means a public or private facility that has been identified
24 by a county department as qualified and equipped to provide, and competent in providing,

1 diagnosis, evaluation, and treatment of dementia and medical, psychiatric and behavioral care
2 to individuals with dementia under s. 55.02 (2) (b) 5.

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

3 **SECTION 7.** 55.01 (4k) of the statutes is created to read:

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

9 **SECTION 8.** 55.02 (2) (b) 5. of the statutes is created to read:

10 55.02 (2) (b) 5. Identify at least one inpatient facility for the purpose of emergency and
11 temporary protective placement for psychiatric evaluation, diagnosis, services, or treatment.
12 The county may not identify an inpatient facility under this subdivision unless it finds that the
13 facility is qualified and equipped to provide, and competent in providing, the diagnosis,
14 evaluation, and treatment of dementia and medical, psychiatric, and behavioral care to
15 individuals with dementia.

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.

16 **SECTION 9.** 55.02 (3) of the statutes is amended to read:

17 55.02 (3) CORPORATION COUNSEL. The corporation counsel of the county in which the
18 petition is brought may or, if requested by the court, shall assist in conducting proceedings

1 under this chapter. The corporation counsel shall assist in conducting any proceedings under
2 this chapter in which both of the following are true:

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

4 (b) The subject individual has dementia.

5 **SECTION 10.** 55.12 (2) of the statutes is amended to read:

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

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

Specifies that a person with irreversible dementia who is subject to an order for protective placement or protective services is not subject to emergency detention under s. 51.15 or involuntary commitment under s. 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.

18 **SECTION 11.** 55.135 (1), (4) and (5) of the statutes are amended to read:

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

1 emergency protective placement is made in an inpatient facility, probable cause to believe the
2 grounds under sub. (1m). For the purposes of emergency protective placement in an inpatient
3 facility under sub. (1m), an individual is considered to be detained when he or she arrives at
4 the inpatient facility. The sheriff or other person making emergency protective placement
5 under sub. (1) or (1m) shall provide the individual with written notice and orally inform ~~him~~
6 ~~or her~~ the individual of the time and place of the preliminary hearing. If the detainee is not
7 under guardianship, a petition for guardianship shall accompany the protective placement
8 petition, except in the case of a minor who is alleged to have a developmental disability. The
9 court may extend the time period for submission of a petition for guardianship [for up to _____
10 days/hours] if requested by the person making the emergency protective placement. In the
11 event that protective placement is not appropriate, the court may elect to treat a petition for
12 protective placement as a petition for commitment under s. 51.20 or 51.45 (13).

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

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

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

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

COMMENT: The draft will be revised to require additional evidence and findings at the protective placement hearing before a court may authorize any extension of the emergency placement in an inpatient facility. See the COMMENT following s. 55.155 (9).

6 **SECTION 12.** 55.135 (1m) of the statutes is created to read:

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

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

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

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

17 (d) Unless the individual is admitted to an inpatient facility for behavioral or psychiatric
18 evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability
19 of physical harm, impairment, injury, or debilitation or will present a substantial probability
20 of physical harm to others. The substantial probability shall be manifested by evidence of
21 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 individual is placed in a unit or setting that is physically separate from any unit
4 or location in which acutely mentally ill individuals are located.

5 **SECTION 13.** 55.135 (3m) of the statutes is created to read:

6 55.135 (3m) When, upon the advice of the treatment staff, the director of an inpatient
7 facility in which an individual has been placed under this section determines that the grounds
8 for emergency placement no longer exist, he or she shall discharge the individual detained
9 under this section. Unless a hearing is held under sub. (4), an individual may not be detained
10 in an inpatient facility for more than a total of 72 hours, exclusive of Saturdays, Sundays, and
11 legal holidays. If the individual is released, the treatment director or his or her designee, upon
12 the individual's request, shall arrange for the individual's transportation to the locality where
13 he or she was taken into custody. When an individual is placed in an inpatient facility under
14 this section, the director and staff of the treatment facility may evaluate, diagnose and treat
15 the individual during detention, if the individual consents. The individual has a right to refuse
16 medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be
17 advised of that right by the director of the facility or his or her designee, and a report of any
18 evaluation and diagnosis and of all treatment provided shall be filed by that person with the
19 court. Any individual who acts in accordance with this section, including making a
20 determination that an individual has or does not have irreversible dementia or evidences or
21 does not evidence a substantial probability of harm is not liable for any actions taken in good
22 faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that
23 the individual who acts in accordance with this section has not acted in good faith has the
24 burden of proving that assertion by evidence that is clear, satisfactory and convincing.

1 **SECTION 14.** 55.135 (5m) of the statutes is created to read:

2 55.135 (5m) MEDICATION ORDER. If the court, after hearing, orders the temporary
3 placement of the individual in an inpatient facility, the court may, without further notice, order
4 the involuntary administration of psychotropic medication as a temporary protective service
5 if it finds that there is probable cause to believe that the allegations under s. 55.14 (3) (e) apply,
6 that the individual is not competent to refuse psychotropic medication and that the medication
7 ordered will have therapeutic value and will not unreasonably impair the ability of the
8 individual to prepare for and participate in any subsequent legal proceedings. An individual
9 is not competent to refuse psychotropic medication if, as a result of irreversible dementia, and
10 after the advantages and disadvantages of and alternatives to accepting the particular
11 psychotropic medication have been explained to the individual, one of the following is true:

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

14 b. The individual is substantially incapable of applying an understanding of the
15 advantages, disadvantages and alternatives to his or her serious and persistent mental illness
16 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).

1 **SECTION 15.** 55.15 (1) of the statutes is amended to read:

2 55.15 (1) TRANSFERS AUTHORIZED. An individual under a protective placement order
3 may be transferred between protective placement units, between protective placement
4 facilities, or from a protective placement unit to a medical facility. ~~The Except as provided~~
5 under s. 55.155, an individual may not be transferred, under the a protective placement order,
6 to any facility for which commitment procedures are otherwise required under ch. 51.

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

8 **55.155 Temporary transfer to inpatient facility.** (1) TRANSFER AUTHORIZED. An
9 individual under a protective placement order may be transferred to an inpatient facility for
10 behavioral or psychiatric evaluation, diagnosis, services, or treatment for a period not to
11 exceed 30 days if the requirements of this section are met.

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

1 transfer of the individual to an inpatient facility for behavioral or psychiatric evaluation,
2 diagnosis, services, or treatment. The petition shall be served on the individual, the
3 individual's guardian, the individual's legal counsel and guardian ad litem, if any, and the
4 county department.

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

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

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

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

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

18 (d) One of the following is true:

19 1. Unless the individual is admitted to an inpatient facility for behavioral or psychiatric
20 evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability
21 of physical harm, impairment, injury, or debilitation or will present a substantial probability
22 of physical harm to others. The substantial probability shall be manifested by evidence of
23 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.,
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 in 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 steps are
15 documented in the individual's plan of care.

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

18 (g) The protective placement facility has prepared detailed documentation of the
19 behaviors or condition of the individual that necessitate inpatient behavioral or psychiatric
20 evaluation, diagnosis, services, or treatment, including detailed information regarding the
21 physical examination conducted under par. (b) efforts taken by the facility under par. (d), and
22 provides this documentation to the inpatient facility.

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

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

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

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

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

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

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

23 (cm) The court shall refer the individual under protective placement for appointment
24 of legal counsel as provided under s. 55.105 if the individual, the individual's guardian ad

1 litem, or anyone on the individual's behalf requests that counsel be appointed for the
2 individual.

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

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

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

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

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

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

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

20 (b) If the court finds that the individual continues to meet the standards under s. 55.08
21 (1) and the proposed transfer to an inpatient facility meets the standards under sub. (3) and,
22 if applicable sub. (6), the court shall order transfer to an inpatient facility for a period not to
23 exceed 45 days.

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

COMMENT: The draft authorizes a court to order the transfer of an individual to an inpatient facility for up to 45 days. For temporary placements of more than 45 days, the draft will be revised, after receiving additional input from members of the subcommittee, to require examination by two specialists, and the right to a jury trial, as is required, for an involuntary commitment under ch. 51.

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 irreversible
11 dementia, and after the advantages and disadvantages of and alternatives to accepting the
12 particular psychotropic medication have been explained to the individual, one of the following
13 is true:

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

16 b. The individual is substantially incapable of applying an understanding of the
17 advantages, disadvantages and alternatives to his or her serious and persistent mental illness
18 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.

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(END)