

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), 55.14 (1) (b) 2., 55.14 (2), 55.14 (3) (e) (intro.)  
3           and (4), 55.15 (1) and 55.18 (1) (b); and *to create* 51.01 (4v), 51.12, 51.15 (1m),  
4           51.20 (1) (a) 1m., 55.01 (1x), 55.01 (3), 55.13 (6), 55.14 (3) (em) and (4m),  
5           subchapter II (title) of chapter 55 [precedes 55.48], 55.48, 55.50, 55.53, 55.55,  
6           55.57, 55.59, 55.61, 55.63, 55.65 and 55.67 of the statutes; **relating to:** psychiatric  
7           and behavioral care and 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**

#### ***Creation of New Subchapter***

The draft creates a new subchapter in ch. 55 titled "Psychiatric and Behavioral Care for Individuals With Dementia". This subchapter contains new provisions related to emergency and temporary protective placement of an individual with dementia in an inpatient facility, temporary transfer of an individual with dementia to an inpatient facility, and involuntary administration of psychotropic medications to an individual with dementia.

The draft states that the subchapter applies to the provision of behavioral and psychiatric evaluation, diagnosis, services and treatment to individuals with dementia, which may be provided to address or alleviate symptoms or conditions associated with dementia or to address a mental illness or condition that is not associated with dementia.

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, as described below.

“Dementia” is defined under the draft for purposes of chs. 51 and 55 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. The draft specifies that for the purposes of chs. 51 and 55, a person who is competent is not considered to have dementia. This distinction is made because there may be cases in which an individual is diagnosed with dementia but they are still legally competent. This could be the case if a person is diagnosed at a very early stage of the disease. Because the person is still competent, they would not be eligible for protective services or treatment under ch. 55. However, the draft provides that a person with dementia is not subject to ch. 51. Thus, the draft states that an individual who is competent is not considered to have dementia so that there is a legal avenue to have a competent person with dementia involuntarily admitted for psychiatric care or treatment.

“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 and that has a unit or a part of a unit that provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on the premises.

***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 specifies that a person who has dementia or who, based on observation and currently available information, appears to have dementia, may not be detained or involuntarily committed under ch. 51.

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 if an individual is in a ch. 51 treatment facility at the time of conversion, and the individual has dementia, the individual may continue to be held in that facility only if the facility is identified by a county as an inpatient facility, as described below, and the facility provides an environment that is appropriate for the individual.

***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.

**County Designation of Inpatient Facility for Emergency and 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. 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 and it has a unit or a part of a unit that provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on the premises.

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.

### **County and Department of Health Services Reports**

The draft requires each county department to prepare and submit a report to the Department of Health Services (DHS) that identifies each facility that it has designated as an inpatient facility for the purpose of emergency and temporary protective placements. The report must specify the capacity of each designated facility and a description of the process utilized to solicit information and advice from the public and a summary of the information and advice received. The report must be updated whenever the county newly designates a facility or revokes a facility's designation.

The draft also requires each county department to annually prepare and submit a report to DHS that states the total number of petitions for emergency protective placement or temporary transfer of an individual with dementia to an inpatient facility filed in the county and the total number of those petitions that resulted in a placement in an inpatient facility.

The draft requires DHS, by June 30 of each even-numbered year, to submit to the legislature a report that includes all of the following:

- (a) Identification of the inpatient facilities designated by counties and the capacity of those facilities, as provided in reports submitted to DHS by county departments.
- (b) A summary of the procedures used by counties to solicit information and advice from the public when making facility designations, as provided in reports submitted to DHS by county departments.

(c) A summary of the information provided to DHS by counties regarding the number of petitions filed for emergency protective placement or temporary transfer of an individual with dementia to an inpatient facility.

### **IAPM as an Emergency Protective Service for Individuals With Dementia**

#### ***Current Law***

Under current law, involuntary administration of psychotropic medication (IAPM) may be ordered as a protective service under s. 55.14, stats. “Involuntary administration of psychotropic medication” means any of the following:

1. Placing psychotropic medication in an individual’s food or drink with knowledge that the individual protests receipt of the psychotropic medication.
2. Forcibly restraining an individual to enable administration of psychotropic medication.
3. Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

Under that statute, all of the requirements applicable to a petition for protective services must be met, including the filing of a petition for guardianship if the individual does not already have a guardian. In addition, a petition continuing extensive allegations specific to the issue of IAPM must be filed, a guardian ad litem must make a report to the court, the individual’s physician must provide a written statement, and the individual has a right to an independent medical or psychological examination. The court must hold a hearing on the petition within 30 days. If the individual does not already have a guardian, a petition for guardianship must be heard, and a guardian appointed, before the hearing on the petition for IAPM. IAPM may not begin until the court has issued the order.

Under current law, emergency protective services may be provided to an individual for up to 72 hours, without a court order, if there is reason to believe that if those services are not provided, the individual, or others, will incur a substantial risk of serious physical harm. The services may not be provided for longer than 72 hours unless a petition for protective services is filed, a hearing is held, and the court finds probable cause to believe the criteria for the provision of protective services exist. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective services.

There is some disagreement as to whether, under current law, IAPM may be provided as an emergency protective service under s. 55.135, stats.

***The Draft***

The draft creates a procedure under which IAPM may be provided as an emergency protective service to an individual with dementia, or a person who, based on observation and currently available information, appears to have dementia. The draft specifies that IAPM may be provided as a protective service to these individuals only by following the procedures created in the draft.

The draft does not specify whether, or by what procedures, IAPM may be provided as an emergency protective service to individuals who do not have, or do not appear to have, dementia.

Under the draft, IAPM may be provided as an emergency protective service for an individual with dementia only if all of the following are true:

- (a) A physician has prescribed the psychotropic medication for the individual.
- (b) The individual is not competent to refuse psychotropic medication.
- (c) The individual's condition for which psychotropic medication has been prescribed is likely to be improved by administration of psychotropic medication and the individual is likely to respond positively to psychotropic medication.
- (d) 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.
- (e) If the individual is not currently placed in an inpatient facility, unless psychotropic medication is administered involuntarily, there is a substantial likelihood that the individual may be subject to involuntary admission to an inpatient facility for psychiatric treatment.
- (f) If the individual resides in a nursing home, community-based residential facility, adult family home, or residential care apartment complex ("a facility"), all of the following are true:
  - 1. The individual has been diagnosed with dementia.
  - 2. A physical examination of the individual has been conducted and, a physician has determined with reasonable probability and documented in writing that the behavior is not caused by a physical condition or illness

that could be treated successfully by means other than psychotropic medication.

3. The facility has made reasonable efforts to address or accommodate the behavior or condition for which involuntary administration of psychotropic medications is requested and these efforts are documented in the individual's plan of care.

4. The facility has prepared detailed documentation of the behaviors or condition of the individual leading to the request for involuntary administration of psychotropic medications.

(g) The individual meets the standards for protective services under s. 55.08 (2).

If the individual is under guardianship, a good faith effort to obtain the consent of the guardian must be made before involuntary administration of psychiatric medication is provided as an emergency protective service.

A county department or agency with which the county department contracts that provides IAPM as an emergency protective service to an individual must immediately file a petition for IAPM to the individual as a protective service under s. 55.14, stats. The petition must meet all of the requirements of s. 55.14, stats. (The draft makes changes to the required contents of a petition for IAPM as a protective service for an individual with dementia. Those changes are described below.)

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.

A preliminary hearing must be held within 72 hours of administration of the first dose of psychotropic medication, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria under s. 55.14, stats., are present.

The county department or agency that provides IAPM as an emergency protective service must provide the individual with written notice and orally inform the individual of the time and place of the preliminary hearing.

If the court finds probable cause to believe that the criteria under s. 55.14, stats., are present and that the medication will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings, it may order IAPM to continue to be provided as an emergency protective service for up to 30 days pending the hearing under s. 55.14, stats.



If the individual is not under guardianship, a petition for guardianship must be filed at the same time that the petition for IAPM as a protective service is filed. If IAPM is ordered for an individual who does not have a guardian, the court must appoint a temporary guardian for the individual.

### **IAPM as a Non–Emergency Protective Service for Individuals With Dementia**

#### ***Evidence of Harm, Impairment, Injury or Debilitation***

**Current Law.** Under current law, IAPM may not be ordered as a protective service unless, in addition to other requirements, it is shown that 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 must 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), stats., a settlement agreement approved by a court under s. 51.20 (8) (bg), stats., or commitment ordered under s. 51.20 (13), stats.
2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e., stats.

**The Draft.** The evidence of the substantial probability of physical harm, impairment, injury, or debilitation that is required under current law is linked to standards and findings under ch. 51, stats. The draft specifies that individuals with dementia are not subject to ch. 51 detention and involuntary commitment procedures. Accordingly, the draft changes the evidence required to prove a substantial probability of physical harm, impairment, injury, or debilitation in cases in which the individual who is the subject of the petition has dementia. The draft removes specific references to provisions in ch. 51 and replaces them with new provisions which are modeled on the standards of ch. 51 but modified to be more appropriate for cases involving individuals with dementia. Specifically, under the draft, for individuals with dementia, the substantial probability of physical harm, impairment, injury, or debilitation must be shown by evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions of the individual, or by evidence that the



individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

***Physician Statement***

***Current Law.*** Under current law, a petition for IAPM as a protective service must include a written statement signed by a physician who has personal knowledge of the individual that provides general clinical information 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.

***The Draft.*** Under the draft, if the individual has dementia, the physician statement must also state that a physical examination of the individual has been conducted and, based on that examination, a physician has determined with reasonable probability that the behavior for which treatment with psychotropic medication is sought is not caused by a physical condition or illness that could be treated successfully by means other than psychotropic medication.

***Requirement Applicable to Certain Long-Term Care Facilities***

***Current Law.*** Current law authorizing IAPM as a protective service does not contain any requirements regarding efforts made by a long-term care facility to address behaviors by means other than psychotropic medication.

***The Draft.*** Under the draft, if the individual who is the subject of a petition for IAPM has dementia and resides in a nursing home, a community-based residential facility, an adult family home, or a residential care apartment complex, the petition must allege that reasonable efforts have been made to address or accommodate the behavior or condition for which treatment with psychotropic medication is sought. Evidence of the facility's response to the individual's behavior or condition, as documented in records maintained by the facility, must be attached to the petition.

**Emergency Protective Placement of an Individual With Dementia in an Inpatient Facility**

***Current Law***

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***

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) The individual has dementia, or 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 and a physician has determined with reasonable probability 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 of the individual, a pattern of recent acts or omissions by the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

(e) The placement is in an environment that is appropriate for the individual.

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. At the time of emergency protective placement, the director of the facility, or the director's designee, must inform the individual, orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense. The director or designee must provide the individual with a copy of the statement by the person making emergency protective placement.

***False Statements; Liability.*** The draft provides that whoever signs a statement, described above, knowing the information in the statement is false is guilty of a Class H felony. The draft also provides that a person who acts in accordance with any of the provisions pertaining to emergency protective placement is not liable for any actions performed in good faith.

***Petition.*** 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.

***Probable Cause Hearing.*** A probable cause hearing must be held within 72 hours of detention, excluding Saturdays, Sundays, and legal holidays. An individual is considered to be detained when he or she arrives at the 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.

***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. The court may order protective services as may be required.

***Transportation Upon Discharge.*** The order, and any subsequent extension of the order, must state that the county in which the original order for protective placement of the individual was issued is responsible for transportation of the individual to any facility to which placement of the individual is ordered upon discharge of the individual from the inpatient facility.

***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 the permanent protective placement petition, the court may order 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 of Temporary Protective Placement in an Inpatient Facility***

Temporary placement in the inpatient facility may be extended in subsequent increments of no more than 90 days each. 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.

### **Temporary Transfer of a Protectively Placed Individual With Dementia to an Inpatient Facility**

#### ***Current Law***

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***

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 probability 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 probability 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) Unless the individual is temporarily transferred 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 the current placement facility to provide for the safety of the individual or others due to the behavior of the individual. The substantial probability of a change in placement to a more restrictive setting must be shown by the following:

1. Evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions by the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

2. Evidence of the facility's response to the individual's acts, attempts, omissions, or threats described above, as documented in records maintained by the facility.

(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 proposed placement is in an environment that is appropriate for the individual.

(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 and efforts taken by the facility to address or accommodate the individual's behavior, and provides this documentation to the inpatient facility.

(h) One of the following is true:

1. The protective placement facility has a plan in place for the orderly return of the individual upon discharge from the inpatient facility, which specifies the conditions under which the individual will be readmitted to the facility, and a copy of the plan is included with the petition.

2. The protective placement facility has determined that readmission of the individual to the facility upon discharge from the inpatient facility is not in the best interests of the individual, and includes, with the petition, specific factual information supporting this conclusion.

***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 hold a hearing within 72 hours after the filing of a petition for transfer. At the request of the individual or his or her counsel or a guardian ad litem, the hearing may be postponed for up to 7 days from the date of emergency 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.

***Emergency Transfer of Placement of an Individual With Dementia 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 of the transfer. At the request of the subject individual, his or her counsel or guardian ad litem, the probable cause hearing may be postponed for up to 7 days from the date of the emergency transfer.

After the hearing, the court must issue an order based upon its findings, 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.

***Transportation Upon Discharge.*** The order for transfer to an inpatient facility, and any subsequent extension of the order, must state that the county in which the original order for protective placement of the individual was issued is responsible for transportation of the individual to any facility to which placement of the individual is ordered upon discharge of the individual from the inpatient facility.

***Extension of Temporary Transfer to an Inpatient Facility***

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 of Temporary Transfer to an Inpatient Facility***

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. The examiners reports must be made available 72 hours in advance of the hearing. 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.

### **Medication and Treatment of an Individual With Dementia in an Inpatient Facility**

When an individual with dementia is placed or remains in an inpatient facility under the procedure for emergency and temporary protective placement or transfer or emergency transfer of protective placement created in the draft, the director and staff of the inpatient facility may evaluate, diagnose and treat the individual if the individual consents. The individual has a right to refuse medication and treatment, except as provided in an order for involuntary administration of psychotropic medication as a protective service or an emergency protective service, or in a situation in which medication or treatment is necessary to prevent serious physical harm to the individual or others. The individual must be advised of these rights by the director of the inpatient facility or his or her designee.

### **Provisions Applicable to Inpatient Facilities Used for Emergency or Temporary Protective Placements; Liability**

#### ***Discharge***

The draft provides that 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 notify the county department in order to arrange for transfer to a protective placement facility.

#### ***72-Hour Limit on Detention***

The draft provides that unless a hearing is held as provided in the draft, 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.

#### ***Liability***

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.

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. For the purpose of this chapter, an individual who is competent is not considered to  
7 have dementia.

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

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

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

14           **51.12 Involuntary admissions under protective placement procedures.** Admission  
15 to an inpatient facility under s. 55.01 (3) may be made under protective placement procedures  
16 as provided under ss. 55.59 and 55.65.

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

18           51.15 (1) (a) (intro.) A law enforcement officer or other person authorized to take a child  
19 into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an  
20 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, that the individual does not have or appear to have dementia,  
3 and that the 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 or  
6 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 only as provided under s. 55.59 for purposes of emergency protective placement or as  
10 provided under 55.65 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 have or 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,  
17 including any individual who is admitted to a treatment facility in accordance with this chapter  
18 or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971,  
19 975 or 980, or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is  
20 receiving care or treatment for those conditions through the department or a county  
21 department under s. 51.42 or 51.437 or in a private treatment facility. In this section, “patient”  
22 also means any individual who is receiving psychiatric or behavioral care or services in an  
23 inpatient facility under s. 55.01 (3), pursuant to subch. II of ch. 55, to the extent that provisions  
24 of this section do not conflict with provisions of ch. 55 applicable to that individual. “Patient”

1 does not include persons committed under ch. 975 who are transferred to or residing in any  
2 state prison listed under s. 302.01. In private hospitals and in public general hospitals,  
3 “patient” includes any individual who is admitted for the primary purpose of treatment of  
4 mental illness, developmental disability, alcoholism or drug abuse but does not include an  
5 individual who receives treatment in a hospital emergency room nor an individual who  
6 receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise  
7 covered under this subsection. Except as provided in sub. (2), each patient shall:

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

9 **51.67 Alternate procedure; protective services.** If, after a hearing under s. 51.13 (4)  
10 or 51.20, the court finds that commitment under this chapter is not warranted and that the  
11 subject individual is a fit subject for guardianship and protective placement or services, the  
12 court may, without further notice, appoint a temporary guardian for the subject individual and  
13 order temporary protective placement or services under ch. 55 for a period not to exceed 30  
14 days. Temporary protective placement for an individual in a center for the developmentally  
15 disabled is subject to s. 51.06 (3). Any interested party may then file a petition for permanent  
16 guardianship or protective placement or services, including medication, under ch. 55. If the  
17 individual is in a treatment facility, and the individual does not have or, based on observation  
18 and currently available information, appear to have, dementia, the individual may remain in  
19 the facility during the period of temporary protective placement if no other appropriate facility  
20 is available. If the individual is in a treatment facility, and the individual has, or based on  
21 currently available information appears to have, dementia, the individual may remain in the  
22 facility during the period of temporary protective placement only if the facility is identified  
23 by a county as an inpatient facility under s. 55.55, and the facility provides an environment  
24 that is appropriate for the individual. The court may order psychotropic medication as a

1 temporary protective service under this section for an individual who has or, based on  
2 currently available information, appears to have dementia only as provided in s. 55.57. The  
3 court may order psychotropic medication as a temporary protective service under this section  
4 for an individual who does not have or appear to have dementia if it finds that there is probable  
5 cause to believe the individual is not competent to refuse psychotropic medication and that  
6 the medication ordered will have therapeutic value and will not unreasonably impair the  
7 ability of the individual to prepare for and participate in subsequent legal proceedings. An  
8 individual is not competent to refuse psychotropic medication if, because of serious and  
9 persistent mental illness, and after the advantages and disadvantages of and alternatives to  
10 accepting the particular psychotropic medication have been explained to the individual, one  
11 of the following is true:

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

13 55.01 (1x) "Dementia" means deterioration or loss of intellectual faculties, reasoning  
14 power, memory, and will due to organic brain disease characterized by confusion,  
15 disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and  
16 from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer's  
17 disease. For the purposes of this chapter, an individual who is competent is not considered  
18 to have dementia.

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

20 55.01 (3) "Inpatient facility" means a public or private facility that has been designated  
21 by a county department as qualified and equipped to provide, and competent in providing,  
22 diagnosis, evaluation, and treatment of dementia and medical, psychiatric and behavioral care  
23 to individuals with dementia under s. 55.55, and that has a unit or part of a unit that provides

1 a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals  
2 with dementia. Medical facilities need not be located on the premises.

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

3 **SECTION 11.** 55.02 (3) of the statutes is amended to read:

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

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

9 (b) The subject individual has or appears to have dementia.

10 **SECTION 12.** 55.10 (1) of the statutes is amended to read:

11 55.10 (1) TIME LIMITS. A petition for protective placement or protective services shall  
12 be heard within 60 days after it is filed unless an extension of this time is requested by the  
13 petitioner, the individual sought to be protected or the individual’s guardian ad litem, or the  
14 county department, in which case the court may extend the date for hearing by up to 45 days.  
15 A petition for protective placement that is filed under s. 55.59 (4) in conjunction with an  
16 emergency protective placement in an inpatient facility shall be heard within 45 days after it  
17 is filed. The court may not extend the time for hearing a petition for protective placement that  
18 is filed under s. 55.59 (4) in conjunction with an emergency protective placement in an  
19 inpatient facility. If an individual under s. 50.06 (3) alleges that another individual is making  
20 a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated  
21 individual or if the incapacitated individual verbally objects to or otherwise actively protests  
22 the admission, the petition shall be heard as soon as possible within the 60-day period.



1           **SECTION 13.** 55.12 (2) of the statutes is amended to read:

2           55.12 (2) Subject to s. 46.279, protective placement may be made to nursing homes,  
3 public medical institutions, centers for the developmentally disabled under the requirements  
4 of s. 51.06 (3), foster care services or other home placements, or to other appropriate facilities,  
5 but may not be made to units for the acutely mentally ill. A placement that is otherwise  
6 permissible under this section is not prohibited solely because the placement facility has one  
7 or more units or locations designated under s. 55.55 or is associated with a facility that is  
8 designated under s. 55.55. An individual other than an individual who has dementia or who,  
9 based on observation and currently available information appears to have dementia, who is  
10 subject to an order for protective placement or protective services may be detained on an  
11 emergency basis under s. 51.15 or involuntarily committed under s. 51.20 ~~or~~. An individual  
12 who is subject to an order for protective placement or protective services may be voluntarily  
13 admitted to a treatment facility for inpatient care under s. 51.10 (8). No individual who is  
14 subject to an order for protective placement or services may be involuntarily transferred to,  
15 detained in, or committed to a treatment facility for care except under s. 51.15 or 51.20. This  
16 subsection does not prohibit the placement in or the transfer of an individual who has dementia  
17 or who, based on currently available information, appears to have dementia, to an inpatient  
18 facility as provided in s. 55.59 or 55.65. Protective placement in a locked unit shall require  
19 a specific finding of the court as to the need for the action.

20           **SECTION 14.** 55.13 (6) of the statutes is created to read:

21           55.13 (6) For an individual with dementia, or who, based on observation and  
22 currently-available information, appears to have dementia, involuntary administration of  
23 psychotropic medications may be provided as an emergency protective service only as  
24 provided under s. 55.57.

1           **SECTION 15.** 55.135 (1) of the statutes is amended to read:

2           55.135 (1) If, from personal observation of, or a reliable report made by a person who  
3 identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or  
4 authorized representative of a county department or an agency with which it contracts under  
5 s. 55.02 (2), it appears probable that an individual is so totally incapable of providing for his  
6 or her own care or custody as to create a substantial risk of serious physical harm to himself  
7 or herself or others as a result of developmental disability, degenerative brain disorder, serious  
8 and persistent mental illness, or other like incapacities if not immediately placed, the  
9 individual who personally made the observation or to whom the report is made may take into  
10 custody and transport the individual to an appropriate medical or protective placement facility.  
11 An individual may be transported to an inpatient facility for emergency protective placement  
12 only if the individual has dementia or, based on observation and currently available  
13 information, appears to have dementia and only as provided under s. 55.59. The person  
14 making emergency protective placement shall prepare a statement at the time of detention  
15 providing specific factual information concerning the person's observations or reports made  
16 to the person and the basis for emergency placement. The statement shall be filed with the  
17 director of the facility and with any petition under s. 55.075. At the time of emergency  
18 protective placement the individual shall be informed by the director of the facility or the  
19 director's designee, orally and in writing, of his or her right to contact an attorney and a  
20 member of his or her immediate family and the right to have an attorney provided at public  
21 expense, as provided under s. 55.105. The director or designee shall also provide the  
22 individual with a copy of the statement by the person making emergency protective  
23 placement.

24           **SECTION 16.** 55.14 (1) (b) 2. of the statutes is amended to read:

1           55.14 (1) (b) 2. The individual is substantially incapable of applying an understanding  
2 of the advantages, and disadvantages of accepting treatment and the alternatives to accepting  
3 treatment to his or her condition in order to make an informed choice as to whether to accept  
4 or refuse psychotropic medication.

5           **SECTION 17.** 55.14 (2) of the statutes is amended to read:

6           55.14 (2) Involuntary administration of psychotropic medication, with consent of a  
7 guardian, may be ordered as a protective service only under the requirements of this section.  
8 If an individual has dementia, or, based on currently available information, appears to have  
9 dementia, the requirements of s. 55.63 shall also be met.

10          **SECTION 18.** 55.14 (3) (e) (intro.) and (4) of the statutes are amended to read:

11          55.14 (3) (e) (intro.) Unless psychotropic medication is administered involuntarily, the  
12 individual will incur a substantial probability of physical harm, impairment, injury, or  
13 debilitation or will present a substantial probability of physical harm to others. The Except  
14 as provided in par. (em), the substantial probability of physical harm, impairment, injury, or  
15 debilitation shall be evidenced by one of the following:

16          (4) A petition under this section ~~must~~ shall include a written statement signed by a  
17 physician who has personal knowledge of the individual that provides general clinical  
18 information regarding the appropriate use of psychotropic medication for the individual's  
19 condition and specific data that indicates that the individual's current condition necessitates  
20 the use of psychotropic medication. If the individual has, or appears to have, dementia, the  
21 statement shall, in addition, meet the requirements of s. 55.63 (2).

22          **SECTION 19.** 55.14 (3) (em) and (4m) of the statutes are created to read:

1           55.14 (3) (em) In the case of an individual who has, or appears to have, dementia, the  
2           substantial probability of physical harm, impairment, injury, or debilitation under par. (e) shall  
3           be shown as provided in s. 55.63 (1).

4           (4m) In the case of an individual individual who has, or appears to have, dementia, and  
5           who resides in a nursing home, as defined in s. 50.01 (3), a community-based residential  
6           facility, as defined in s. 50.01 (1g), an adult family home, as defined in s. 50.01 (1), or a  
7           residential care apartment complex, as defined in s. 50.01 (6d), the petition shall also include  
8           the allegations specified in s. 55.63 (3).

9           **SECTION 20.** 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 temporary transfer of  
15          an individual who has dementia or who, based on currently available information, appears to  
16          have dementia, to an inpatient facility as provided in s. 55.65.

17          **SECTION 21.** 55.18 (1) (b) of the statutes is amended to read:

18          55.18 (1) (b) If, following an annual review of an individual's status under par. (a), the  
19          individual or the individual's guardian or guardian ad litem requests modification or  
20          termination of the individual's protective placement and a hearing under the requirements of  
21          s. 55.10 (2) to (4) is provided, or if a hearing under the requirements of s. 55.10 (2) to (4) is  
22          provided pursuant to a petition for modification or termination of the protective placement,  
23          the county is not required to initiate a subsequent review of the individual's status under par.  
24          (a) until the first day of the 11th month after the date that the court issues a final order after

1 the hearing. A petition under s. 55.61, 55.65, or 55.67 is not a request for modification or  
2 termination of an individual's protective placement for purposes of this paragraph, and the fact  
3 that a hearing has been held at any time under any of those provisions with respect to an  
4 individual does not affect the duty of the county to perform an annual review of the  
5 individual's protective placement as required under par. (a).

6 **SECTION 22.** Subchapter II (title) of chapter 55 [precedes 55.48] of the statutes is created  
7 to read:

8 **CHAPTER 55**

9 **SUBCHAPTER II**

10 **PSYCHIATRIC AND BEHAVIORAL CARE AND TREATMENT FOR INDIVIDUALS**  
11 **WITH DEMENTIA**

12 **SECTION 23.** 55.48 of the statutes is created to read:

13 **55.48 Applicability.** This subchapter applies to the provision of behavioral and  
14 psychiatric evaluation, diagnosis, services, and treatment to individuals with dementia, which  
15 may be provided to address or alleviate symptoms or conditions associated with dementia or  
16 to address a mental illness or condition of an individual with dementia that is not related to  
17 dementia.

18 **SECTION 24.** 55.50 of the statutes is created to read:

19 **55.50 Department reports to the legislature.** (1) By June 30 of each even-numbered  
20 year, the department shall submit to the legislature under s. 13.172 (2) a report that includes  
21 all of the following:

22 1. Identification of the inpatient facilities designated by counties under s. 55.55 and the  
23 capacity of those facilities, as provided in reports submitted by counties under s. 55.53 (1).

1           2. A summary of the procedures used by counties to solicit information and advice from  
2 the public when making facility designations under s. 55.55, as provided in reports submitted  
3 under s. 55.53 (1).

4           3. A summary of the information provided to the department by counties under s. 55.53  
5 (2).

6           **SECTION 25.** 55.53 of the statutes is created to read:

7           **55.53 County reports.** The county department shall prepare and submit a report to the  
8 department that identifies the inpatient facility or facilities that it has designated under s. 55.55  
9 and the capacity of each designated facility. The report shall include a description of the  
10 process utilized to solicit information and advice from the public and a summary of the  
11 information and advice received. The report shall be updated whenever the county makes a  
12 new designation or revokes a designation from a facility.

13           (2) The county department shall annually prepare and submit a report to the department  
14 that states the total number of petitions filed in the county under 55.59 and 55.65 and the total  
15 number of those petitions that resulted in a placement in an inpatient facility.

16           **SECTION 26.** 55.55 of the statutes is created to read:

17           **55.55 County designation of inpatient facility.** The county department shall  
18 designate at least one facility as an inpatient facility for the purpose of emergency and  
19 temporary protective placement of individuals with dementia for psychiatric evaluation,  
20 diagnosis, services, or treatment. The county may not designate an inpatient facility under this  
21 subdivision unless it finds that the facility is qualified and equipped to provide, and competent  
22 in providing, the diagnosis, evaluation, and treatment of dementia and medical, psychiatric,  
23 and behavioral care to individuals with dementia and has a unit or part of a unit that provides  
24 a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals

1 with dementia. The county department shall solicit information and advice from the public,  
2 including family caregivers of individuals with dementia, organizations concerned with  
3 Alzheimer's disease and dementia, the treatment of mental illness or the provision of  
4 long-term care, and any other appropriate individuals or organizations, to aid it in carrying  
5 out its responsibility to designate one or more facilities under this subdivision. The county  
6 department shall implement a procedure to periodically review and update the designation of  
7 one or more facilities under this subdivision as necessary and appropriate.

**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.

8 **SECTION 27.** 55.57 of the statutes is created to read:

9 **55.57 Involuntary administration of psychotropic medications as an emergency**  
10 **protective service. (1)** Involuntary administration of psychotropic medication may be  
11 provided as an emergency protective service to an individual with dementia, or to an  
12 individual who, based on observation and currently available information, appears to have  
13 dementia, if all of the following are true:

- 14 (a) A physician has prescribed the psychotropic medication for the individual.
- 15 (b) The individual is not competent to refuse psychotropic medication.
- 16 (c) The individual's condition or the symptoms for which psychotropic medication has  
17 been prescribed are likely to be improved or alleviated by administration of psychotropic  
18 medication and the individual is likely to respond positively to psychotropic medication.



1 (d) Unless psychotropic medication is administered involuntarily, the individual will  
2 incur a substantial probability of physical harm, impairment, injury, or debilitation or will  
3 present a substantial probability of physical harm to others.

4 (e) For an individual who is not currently placed in an inpatient facility, there is a  
5 substantial likelihood that unless psychotropic medication is administered involuntarily, the  
6 individual will be subject to involuntary placement in an inpatient facility under s. 55.59.

7 (f) If the individual resides in a nursing home, as defined in s. 50.01 (3), a  
8 community-based residential facility, as defined in s. 50.01 (1g), an adult family home, as  
9 defined in s. 50.01 (1), or a residential care apartment complex, as defined in s. 50.01 (6d),  
10 all of the following are true:

11 1. A physical examination of the individual has been conducted and a physician has  
12 determined with reasonable probability and documented in writing that the behavior is not  
13 caused by a physical condition or illness that could be treated successfully by means other than  
14 psychotropic medication.

15 2. The facility has made reasonable efforts to address or accommodate the behavior or  
16 condition for which involuntary administration of psychotropic medications is requested and  
17 these efforts are documented in the individual's plan of care.

18 3. The facility has prepared detailed documentation of the behaviors or condition of the  
19 individual for which involuntary administration of psychotropic medications is sought.

20 (g) The individual meets the standards for protective services under s. 55.08 (2).

21 (2) Any county department or agency with which the county department contracts  
22 under s. 55.02 (2) that provides involuntary administration of psychotropic medication as an  
23 emergency protective service to an individual under sub. (1) shall immediately file a petition  
24 for involuntary administration of psychotropic medication to the individual under s. 55.14.

1 The petition shall be served on the individual, the individual's guardian, the individual's legal  
2 counsel, and guardian ad litem, if any, and the county department. A preliminary hearing shall  
3 be held within 72 hours after the first dose of medication is administered under sub. (1),  
4 excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria  
5 under s. 55.14 are present. The county department or agency shall provide the individual with  
6 written notice of, and orally inform the individual of, the time and place of the preliminary  
7 hearing.

8 (3) If the individual is not under guardianship, a petition for guardianship shall  
9 accompany the petition for involuntary administration of psychotropic medication under sub.  
10 (2).

11 (4) Upon finding probable cause under sub. (2) and finding that the medication will not  
12 unreasonably impair the ability of the individual to prepare for and participate in subsequent  
13 legal proceedings, the court may order involuntary administration of psychotropic medication  
14 to continue to be provided as an emergency protective service to the individual for up to 30  
15 days from the date of the order, pending the hearing under s. 55.14. If the individual is not  
16 under guardianship, the court shall appoint a temporary guardian.

17 (5) If the individual is under guardianship, a good faith effort shall be made to obtain  
18 the consent of the guardian before involuntary administration of psychotropic medication is  
19 provided as an emergency protective service.

20 **SECTION 28.** 55.59 of the statutes is created to read:

21 **55.59 Emergency protective placement in an inpatient facility. (1) PLACEMENT**  
22 **AUTHORIZED; GROUNDS.** If, from personal observation of, or a reliable report made by a person  
23 who identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if any, or  
24 authorized representative of a county department or an agency with which it contracts under

1 s. 55.02 (2), it appears probable that an individual is so totally incapable of providing for his  
2 or her own care or custody as to create a substantial risk of serious physical harm to himself  
3 or herself or others as a result of dementia if not immediately placed, the individual who  
4 personally made the observation or to whom the report is made may take into custody and  
5 transport the individual to an inpatient facility if all of the following are true:

6 (a) The individual has dementia or, based on observation and currently available  
7 information, the individual 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 physical examination of the individual has been conducted and a physician has  
11 determined with reasonable probability, and documented in writing, that the behavior is not  
12 caused by a physical condition or illness that could be treated safely and appropriately in a  
13 setting other than an inpatient facility and that the physician recommends that the individual  
14 be placed in an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services,  
15 or treatment for the purpose of addressing the behavior.

16 (d) Unless the individual is admitted to an inpatient facility for behavioral or psychiatric  
17 evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability  
18 of physical harm, impairment, injury, or debilitation or will present a substantial probability  
19 of physical harm to others. The substantial probability shall be manifested by evidence of  
20 recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions by the  
21 individual, or by evidence that the individual or others are placed at substantial risk of serious  
22 physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious  
23 physical harm by the individual.

24 (e) The placement is in an environment that is appropriate for the individual.

1           **(2) STATEMENT; RIGHT TO AN ATTORNEY.** The person making emergency protective  
2 placement shall prepare a statement at the time of detention providing specific factual  
3 information concerning the person's observations or reports made to the person and the basis  
4 for emergency placement. The statement shall be filed with the director of the inpatient  
5 facility and with any petition under s. 55.075. At the time of emergency protective placement  
6 the director of the facility or the director's designee shall inform the individual, orally and in  
7 writing, of his or her right to contact an attorney and a member of his or her immediate family  
8 and the right to have an attorney provided at public expense, as provided under s. 55.105. The  
9 director or designee shall provide the individual with a copy of the statement by the person  
10 making emergency protective placement.

11           **(3) FALSE STATEMENTS.** Whoever signs a statement under sub. (1m) knowing the  
12 information contained in the statement to be false is guilty of a Class H felony.

13           **(4) PETITION; CONTENTS.** When an individual is detained under this section, a petition  
14 shall be filed immediately under s. 55.075 by the person making the emergency protective  
15 placement. In addition to the allegations required under s. 55.08 (1), the petition shall allege  
16 that the grounds under sub. (1) are true.

17           **(5) HEARING.** A preliminary hearing shall be held within 72 hours of detention,  
18 excluding Saturdays, Sundays, and legal holidays, to establish probable cause to believe the  
19 grounds for protective placement under s. 55.08 (1) and the grounds under sub. (1). An  
20 individual is considered to be detained when he or she arrives at the inpatient facility. At the  
21 request of the subject individual or his or her counsel or guardian ad litem, the hearing may  
22 be postponed, but in no case may the postponement exceed 7 days from the date of emergency  
23 protective placement.

1           **(6) ORDER.** Upon finding probable cause under sub. (5), the court may order temporary  
2       protective placement for up to 45 days in an inpatient facility, pending the hearing for  
3       permanent protective placement. If the court does not find probable cause for placement in  
4       an inpatient facility, but does find probable cause for placement in a protective placement  
5       facility other than an inpatient facility, it shall so order. The court may order such protective  
6       services as may be required. The order, and any subsequent extension of the order under s.  
7       55.61, shall state that the county in which the original order for protective placement of the  
8       individual was issued shall be responsible for transportation of the individual to any facility  
9       to which placement of the individual is ordered upon discharge of the individual from the  
10      inpatient facility.

11           **(7) MEDICATION AND TREATMENT** When an individual is placed in an inpatient facility  
12      under this section, or remains in an inpatient facility pursuant to an extension of an order issued  
13      under this section, the director and staff of the inpatient facility may evaluate, diagnose and  
14      treat the individual if the individual consents. The individual has a right to refuse medication  
15      and treatment except as provided in an order under s. 55.57 or 55.63 or in a situation in which  
16      medication or treatment is necessary to prevent serious physical harm to the individual or  
17      others. The director of the inpatient facility or his or her designee shall advise the individual  
18      of these rights. The court may order the involuntary administration of psychotropic  
19      medication as a temporary protective service to the individual only as provided in s. 55.57.

20           **(8) RIGHTS; LIABILITY.** When, upon the advice of the treatment staff, the director of an  
21      inpatient facility in which an individual has been placed for emergency or temporary  
22      protective placement under this section determines that the grounds for emergency or  
23      temporary placement no longer exist, he or she shall notify the county department in order to  
24      arrange for transfer of the individual to a protective placement facility under s. 55.12. Unless

1 a hearing is held under sub. (5), an individual may not be detained in an inpatient facility for  
2 more than a total of 72 hours, exclusive of Saturdays, Sundays, and legal holidays. Any  
3 individual who acts in accordance with this section, including making a determination that an  
4 individual has or does not have dementia or evidences or does not evidence a substantial  
5 probability of harm is not liable for any actions taken in good faith. The good faith of the actor  
6 shall be presumed in any civil action. Whoever asserts that the individual who acts in  
7 accordance with this section has not acted in good faith has the burden of proving that assertion  
8 by evidence that is clear, satisfactory and convincing.

9 **SECTION 29.** 55.61 of the statutes is created to read:

10 **55.61 Extension of temporary protective placement in an inpatient facility. (1)**

11 EXTENSION AUTHORIZED. An order for temporary protective placement in an inpatient facility  
12 under s. 55.59 (6) may be extended by the court for up to 90 days if the requirements of this  
13 section are met.

14 **(2) PETITION.** (a) *Time limit.* A petition for extension of temporary protective placement  
15 in an inpatient facility shall be filed no fewer than 10 days prior to expiration of the period of  
16 temporary protective placement ordered under s. 55.59 (6). If an emergency makes it  
17 impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration  
18 of the period of temporary protective placement ordered under s. 55.59 (6).

19 (b) *Filing; service.* An individual under an order for temporary protective placement in  
20 an inpatient facility, the individual's guardian, the individual's legal counsel or guardian ad  
21 litem, if any, the department, the county department that placed the individual or provided the  
22 protective services under an order of the court, an agency with which the county department  
23 contracts under s. 55.02 (2), or any interested person may file a petition for extension of an  
24 order for temporary protective placement in an inpatient facility. The petition shall be served

1 on the individual, the individual's guardian, the individual's legal counsel and guardian ad  
2 litem, if any, and the county department

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

5 1. The individual continues to meet the standards for protective placement under s.  
6 55.08 (1).

7 2. The individual has dementia.

8 3. 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 4. A physical examination of the individual has been conducted and a physician has  
11 determined with reasonable probability and documented in writing that the behavior is not  
12 caused by a physical condition or illness that could be treated safely and appropriately in a  
13 setting other than an inpatient facility and the physician recommends that the individual  
14 continue placement in the inpatient facility for behavioral or psychiatric evaluation, diagnosis,  
15 services, or treatment.

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



1           6. Reasonable efforts have been made to locate an appropriate placement for the  
2 individual in a less restrictive setting.

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

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

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

20           (d) Prior to the examination, the individual shall be informed that his or her statements  
21 can be used as a basis for an extension of the current temporary placement in the inpatient  
22 facility, that he or she has the right to remain silent and that the examiner is required to make  
23 a report to the court even if the subject individual remains silent. The issuance of such a

1 warning to the individual prior to each examination establishes a presumption that the  
2 individual understands that he or she need not speak to the examiner.

3 (e) The examiners shall personally observe and examine the individual at any suitable  
4 place and satisfy themselves, if reasonably possible, as to the individual's mental condition,  
5 and shall make independent reports to the court. The individual's treatment records shall be  
6 available to the examiners. A written report shall be made of all such examinations and filed  
7 with the court. The report and testimony, if any, by the examiners shall be based on beliefs  
8 to a reasonable degree of medical certainty, or professional certainty if an examiner is a  
9 psychologist, in regard to the existence of the facts alleged in the petition and the  
10 appropriateness of various treatment modalities or facilities. If the examiners are unable to  
11 make conclusions to a reasonable degree of medical or professional certainty, the examiners  
12 shall so state in their report and testimony, if any. The individual, the individual's attorney,  
13 and guardian ad litem shall have access to all psychiatric and other reports at least 72 hours  
14 in advance of the hearing under sub. (4).

15 (f) On motion of either party, all parties shall produce at a reasonable time and place  
16 designated by the court all physical evidence which each party intends to introduce in  
17 evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical  
18 evidence in the presence of a person designated by the court. The order shall specify the time,  
19 place and manner of making the inspection, copies, photographs, or transcriptions, and may  
20 prescribe such terms and conditions as are just. The court may, if the motion is made by the  
21 individual, delay the hearing for such period as may be necessary for completion of 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. 55.59 (6). A trial by a  
24 jury shall be held if demanded by the individual sought to be protected or his or her attorney

1 or guardian ad litem. The hearing shall be held as part of the same proceedings in which the  
2 petition for permanent protective placement of the individual is heard. The petition shall be  
3 heard immediately after the order for permanent protective placement of the individual is  
4 made. If the court does not order permanent protective placement of the individual, the petition  
5 under this section shall be dismissed.

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

10 (a) If the court finds that the individual meets the standards for protective placement  
11 under s. 55.08 and the allegations under sub. (2) (c) are true, it shall order continued temporary  
12 placement in the inpatient facility for a period not to exceed 90 days from the date of expiration  
13 of the original order under s. 55.59 (6).

14 (b) If the court finds that the individual meets the standards for protective placement  
15 under s. 55.08 (1) and the allegations under sub. (2) (c) are true, but that the individual would  
16 be better served in a different inpatient facility, it shall order transfer of the individual to that  
17 inpatient facility and temporary placement in that inpatient facility for a period not to exceed  
18 90 days from the date of expiration of the original order under s. 55.59 (6).

19 (c) If the court finds that the individual meets the standards for protective placement  
20 under s. 55.08 (1) but the allegations under sub. (2) (c) are not true, the court shall order transfer  
21 of the individual to a protective placement facility.

22 (d) If the court finds the individual no longer meets the standards for protective  
23 placement under s. 55.08 (1), it shall terminate the protective placement, as provided in s.  
24 55.17.

1           **(6) SUBSEQUENT EXTENSIONS.** An order under sub. (5) (a) or (b) may be extended in  
2 increments of no more than 90 days. For each such extension, a petition alleging that the  
3 individual meets the standards for protective placement under s. 55.08 (1) and that the  
4 allegations under sub. (2) (c) are true shall be filed no later than 10 days prior to the expiration  
5 of the most-recently issued order for temporary placement. If an emergency makes it  
6 impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration  
7 of the most recently-issued order for temporary placement ordered under sub. (5). The  
8 petition shall be served on the individual, the individual's guardian, the individual's legal  
9 counsel and guardian ad litem, if any, and the county department. Examination shall be  
10 conducted as provided in sub. (3). A hearing shall be held prior to the expiration of the  
11 most-recently issued order for temporary placement. A trial by a jury shall be held if  
12 demanded by the individual or his or her attorney or guardian ad litem. After hearing, the court  
13 shall issue an order issued as provided in sub. (5).

14           **SECTION 30.** 55.63 of the statutes is created to read:

15           **55.63 Involuntary administration of psychotropic medications as a protective**  
16 **service.** The following provisions apply to involuntary administration of psychotropic  
17 medications as a protective service under s. 55.14, stats., for an individual who has dementia  
18 or an individual who, based on observation and currently available information, appears to  
19 have dementia:

20           **(1) EVIDENCE REQUIRED.** The substantial probability of physical harm, impairment,  
21 injury, or debilitation required under s. 55.14 (3) (e) shall be shown by evidence of recent acts,  
22 attempts, or behavior of the individual, a pattern of recent acts or omissions by the individual,  
23 or by evidence that the individual or others are placed at substantial risk of serious physical

1 harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm  
2 by the individual.

3 (2) PHYSICIAN STATEMENT. The physician statement required under s. 55.14 (4) shall state  
4 that the physician has determined with reasonable probability and documented in writing that  
5 the behavior for which treatment with psychotropic medication is sought is not caused by a  
6 physical condition or illness that could be treated successfully by means other than  
7 psychotropic medication.

8 (3) If the individual resides in a nursing home, as defined in s. 50.01 (3), a  
9 community-based residential facility, as defined in s. 50.01 (1g), an adult family home, as  
10 defined in s. 50.01 (1), or a residential care apartment complex, as defined in s. 50.01 (6d),  
11 the petition shall allege that reasonable efforts have been made to address or accommodate the  
12 behavior or condition for which treatment with psychotropic medication is sought. Evidence  
13 of the facility's response to the individual's behavior or condition, as documented in records  
14 maintained by the facility, shall be attached to the petition.

15 **SECTION 31.** 55.65 of the statutes is created to read:

16 **55.65 Temporary transfer to inpatient facility. (1) TRANSFER AUTHORIZED.** An  
17 individual who is under a protective placement order and has dementia, or based on currently  
18 available information and observation appears to have dementia, may be transferred to an  
19 inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment for  
20 a period not to 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) ALLEGATIONS. The petition shall allege all of the following:

7 (a) The individual has been diagnosed with dementia or, based upon currently available  
8 information appears to have dementia.

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

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

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

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

20 (d) Unless the individual is temporarily transferred to an inpatient facility for behavioral  
21 or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a  
22 substantial probability of being subject to a change in permanent placement to a more  
23 restrictive setting due to the inability of the current placement facility to provide for the safety

1 of the individual or others due to the behavior of the individual. The substantial probability  
2 of a change in placement to a more restrictive setting shall be shown by the following:

3 1. Evidence of recent acts, attempts, or behavior of the individual, a pattern of recent  
4 acts or omissions by the individual, or by evidence that the individual or others are placed at  
5 substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt,  
6 or threat to do serious physical harm by the individual.

7 2. Evidence of the facility's response to acts, attempts, omissions or threats identified  
8 in subd. 1., as documented in records maintained by the facility.

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

13 (f) The placement is in an environment that is appropriate for the individual.

14 (g) One of the following is true:

15 1. The protective placement facility has a plan in place for the orderly return of the  
16 individual upon discharge from the inpatient facility, which specifies the conditions under  
17 which the individual will be readmitted to the facility, and a copy of the plan is included with  
18 the petition.

19 2. The protective placement facility has determined that readmission of the individual  
20 to the facility upon discharge from the inpatient facility is not in the best interests of the  
21 individual, and includes, with the petition, specific factual information supporting this  
22 conclusion.

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

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

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

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

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

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

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



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

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

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

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

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

14 (b) Whether the proposed transfer to an inpatient facility is in the best interests of the  
15 individual.

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

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

20 (a) If the court finds that the individual continues to meet the standards for protective  
21 placement under s. 55.08 (1) and the allegations under sub. (3) and, if applicable, sub. (6), are  
22 not true, the court shall issue an order prohibiting the transfer. The court shall include the  
23 information relied upon as a basis for the order and shall make findings based on the  
24 allegations under sub. (3) and, if applicable, sub. (6), in support of the denial of the transfer.

1 (b) If the court finds that the individual continues to meet the standards for protective  
2 placement under s. 55.08 (1) and the allegations under sub. (3) and, if applicable sub. (6) are  
3 true, the court shall order transfer to an inpatient facility for a period not to exceed 45 days.  
4 The order, and any subsequent extension of the order under s. 55.67, shall state that the county  
5 in which the original order for protective placement of the individual was issued shall be  
6 responsible for transportation of the individual to any facility to which placement of the  
7 individual is ordered upon discharge of the individual from the inpatient facility.

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

11 **(10) MEDICATION AND TREATMENT.** When an individual is placed in an inpatient facility  
12 under this section, or remains in an inpatient facility pursuant to an extension of an order issued  
13 under this section, the director and staff of the facility may evaluate, diagnose, and treat the  
14 individual if the individual consents. The individual has a right to refuse medication except  
15 as provided in an order under s. 55.57 or 55.63, or in a situation in which medication or  
16 treatment is necessary to prevent serious physical harm to the individual or others. The  
17 director of the inpatient facility or his or her designee shall advise the individual of these rights.  
18 The court may order the involuntary administration of psychotropic medication as a  
19 temporary protective service to the individual only as provided under s. 55.57.

20 **(11) RIGHTS.** When, upon the advice of the treatment staff, the director of an inpatient  
21 facility in which an individual has been placed for emergency or temporary transfer under this  
22 section determines that the grounds for emergency or temporary transfer no longer exist, he  
23 or she shall notify the county department in order to arrange for transfer to a protective  
24 placement facility under s. 55.12. Unless a hearing is held under sub. (7), an individual may

1 not be detained in an inpatient facility for more than a total of 72 hours, exclusive of Saturdays,  
2 Sundays, and legal holidays.

3 (12) LIABILITY. Any individual who acts in accordance with this section, including  
4 making a determination that an individual has or does not have dementia or evidences or does  
5 not evidence a substantial probability of harm is not liable for any actions taken in good faith.  
6 The good faith of the actor shall be presumed in any civil action. Whoever asserts that the  
7 individual who acts in accordance with this section has not acted in good faith has the burden  
8 of proving that assertion by evidence that is clear, satisfactory and convincing.

9 SECTION 32. 55.67 of the statutes is created to read:

10 **55.67 Extension of temporary transfer to an inpatient facility. (1) EXTENSION**  
11 **AUTHORIZED.** (1) An order for temporary transfer to an inpatient facility under s. 55.65 (9) may  
12 be extended by the court for up to 90 days if the requirements of this section are met.

13 (2) PETITION. (a) *Time limit.* A petition for extension of temporary transfer to an  
14 inpatient facility shall be filed no less than 10 days prior to expiration of the period of  
15 temporary transfer ordered under s. 55.65 (9). If an emergency makes it impossible to file a  
16 petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of  
17 temporary transfer ordered under s. 55.65 (9).

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

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

3 1. The individual continues to meet the standards for protective placement under s.  
4 55.08 (1).

5 2. The individual has dementia.

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

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

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

22 6. Reasonable efforts have been made to locate an appropriate placement for the  
23 individual in a less restrictive setting.

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 individual. The examiners  
5           shall have the specialized knowledge determined by the court to be appropriate to the needs  
6           of the individual. The examiners may not be related to the individual by blood, marriage, or  
7           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 individual if  
9           the individual makes his or her selection known to the court within 24 hours after receipt of  
10          the petition for extension of the temporary protective placement in the inpatient facility. The  
11          court may deny the individual's selection if the examiner does not meet the requirements of  
12          par. (a) or the individual's selection is not available.

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

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

1 (e) The examiners shall personally observe and examine the individual at any suitable  
2 place and satisfy themselves, if reasonably possible, as to the individual's mental condition,  
3 and shall make independent reports to the court. The individual's treatment records shall be  
4 available to the examiners. A written report shall be made of all such examinations and filed  
5 with the court. The report and testimony, if any, by the examiners shall be based on beliefs  
6 to a reasonable degree of medical certainty, or professional certainty if an examiner is a  
7 psychologist, in regard to the existence of the facts alleged in the petition and the  
8 appropriateness of various treatment modalities or facilities. If the examiners are unable to  
9 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 individual, the individual's attorney and  
11 guardian ad litem shall have access to all psychiatric and other reports at least 72 hours in  
12 advance of the hearing under sub. (4).

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

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

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

4           (a) If the court finds that the allegations under sub. (2) (c) are true, it shall order  
5 continued temporary transfer to the inpatient facility for a period not to exceed 90 days from  
6 the date of expiration of the original order under s. 55.65 (9).

7           (b) If the court finds that the allegations under sub. (2) (c) are true, but that the individual  
8 would be better served in a different inpatient facility, it shall order transfer of the individual  
9 to that inpatient facility and temporary placement in that inpatient facility.

10           (c) If the court finds that the allegations under sub. (2) (c) 2. to 6. are not true, but the  
11 individual continues to meet the standards for protective placement under s. 55.08 (1), the  
12 court shall order transfer of the individual to a facility for permanent protective placement.

13           (d) If the court finds the individual no longer meets the standards for protective  
14 placement under s. 55.08 (1), it shall terminate the protective placement, as provided in s.  
15 55.17.

16           **(6) SUBSEQUENT EXTENSIONS.** An order under (5) (a) or (b) may be extended in  
17 increments of no more than 90 days. For each such extension, a petition alleging that the  
18 individual meets the standards under sub. (2) (c) shall be filed no later than 10 days prior to  
19 the expiration of the most–recently issued order for temporary transfer to an inpatient facility.  
20 If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72  
21 hours prior to expiration of the period of temporary transfer ordered under s. 55.67 (5). The  
22 petition shall be served on the individual, the individual’s guardian, the individual’s legal  
23 counsel and guardian ad litem, if any, and the county department. Examination shall be  
24 conducted as provided in sub. (3). A hearing shall be held prior to the expiration of the

1       most-recently issued order for temporary placement. A trial by a jury shall be held if  
2       demanded by the individual or his or her attorney or guardian ad litem. After the hearing, the  
3       court shall issue an order as provided in sub. (5).

4 (END)