

State of Wisconsin



2013 Assembly Bill 360

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2013 WISCONSIN ACT 158

AN ACT *to repeal* 51.15 (2) (a), (b) and (c), 51.20 (13) (g) 2. and 51.20 (13) (g) 2m.; *to renumber and amend* 51.15 (1) (a); *to consolidate, renumber and amend* 51.15 (2) (intro.) and (d); *to amend* 51.15 (1) (title), 51.15 (3), 51.15 (4) (a), 51.15 (4) (b), 51.15 (5) and (9), 51.20 (1) (a) 2. c., 51.20 (2) (b), 51.20 (2) (d), 51.20 (7) and (8) (b) and (bm), 51.20 (13) (g) 1., 51.20 (13) (g) 2r. and 905.04 (4) (a); and *to create* 51.15 (1) (ag) and 51.15 (4) (c) of the statutes; **relating to:** emergency detention, involuntary commitment, and privileged communications and information.

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

SECTION 1. 51.15 (1) (title) of the statutes is amended to read:

51.15 (1) (title) BASIS FOR DETENTION; ~~PURPOSE.~~

SECTION 2. 51.15 (1) (a) of the statutes is renumbered 51.15 (1) (ar), and 51.15 (1) (ar) (intro.), 3. and 4., as renumbered, are amended to read:

51.15 (1) (ar) (intro.) A law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an individual into custody if the officer or person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled, that taking the person into custody is the least restrictive alternative appropriate to the person's needs, and that the individual evidences any of the following:

3. A substantial probability of physical impairment or injury to himself or herself or other individuals due to impaired judgment, as manifested by evidence of a recent act or omission. The probability of physical impairment or injury is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community and there is a reasonable probab-

ity that the individual will avail himself or herself of these services or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community under this subdivision.

4. Behavior manifested by a recent act or omission that, due to mental illness ~~or drug dependency~~, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness ~~or drug dependency~~. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision. Food, shelter or other care provided to an individual who is substantially incapable of providing the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subdivision.

SECTION 3. 51.15 (1) (ag) of the statutes is created to read:

51.15 (1) (ag) The purpose of this section is to provide, on an emergency basis, treatment by the least restrictive means appropriate to the individual's needs, to individuals who meet all of the following criteria:

1. Are mentally ill, drug dependent, or developmentally disabled.
2. Evidence one of the standards set forth in par. (ar) 1. to 4.
3. Are reasonably believed to be unable or unwilling to cooperate with voluntary treatment.

SECTION 4. 51.15 (2) (intro.) and (d) of the statutes are consolidated, renumbered 51.15 (2) and amended to read:

51.15 (2) FACILITIES FOR DETENTION. The law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall transport the individual, or cause him or her to be transported, for detention, if the county department of community programs in the county in which the individual was taken into custody approves the need for detention, and for evaluation, diagnosis, and treatment if permitted under sub. (8) ~~to any of the following facilities: (d) An approved private.~~ The county department may approve the detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove the substantial probability of physical harm, impairment, or injury to himself, herself, or others. Detention may only be in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or a state treatment facility.

SECTION 5. 51.15 (2) (a), (b) and (c) of the statutes are repealed.

SECTION 6. 51.15 (3) of the statutes is amended to read:

51.15 (3) CUSTODY. An individual is in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938, for the purposes of emergency detention. Upon arrival at the facility, under sub. (2), cus-

ody of the individual is deemed to be in the custody of transferred to the facility.

SECTION 7. 51.15 (4) (a) of the statutes is amended to read:

51.15 (4) (a) In counties having a population of 500,000 ~~750,000~~ or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of the persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

SECTION 8. 51.15 (4) (b) of the statutes is amended to read:

51.15 (4) (b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours, except as provided in par. (c), whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and treatment are permitted under sub. (8), and shall either release the individual or detain him or her for a period not to exceed 72 hours after ~~delivery of the individual is taken into custody for the purposes of emergency detention,~~ exclusive of Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee, determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer or other person, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer or other person. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

SECTION 9. 51.15 (4) (c) of the statutes is created to read:

51.15 (4) (c) When calculating the 24 hours under par. (b) in which a treatment director determines whether an individual should be detained, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual is excluded from the calculation.

SECTION 10. 51.15 (5) and (9) of the statutes are amended to read:

51.15 (5) **DETENTION PROCEDURE; OTHER COUNTIES.** In counties having a population of less than 500,000 750,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention that shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The statement of emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.135, the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours after the individual is taken into custody for the purposes of emergency detention, exclusive of Saturdays, Sundays, and legal holidays.

(9) **NOTICE OF RIGHTS.** At the time of detention arrival at the facility, under sub. (2), the individual shall be informed by the director of the facility or such person's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, as provided under s. 51.60, and the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual shall also be provided with a copy of the statement of emergency detention.

SECTION 11. 51.20 (1) (a) 2. c. of the statutes is amended to read:

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

SECTION 12. 51.20 (2) (b) of the statutes is amended to read:

51.20 (2) (b) If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual arrives at the facility is taken into custody under s. 51.15, excluding Saturdays, Sundays and legal holidays. The officer shall orally inform the individual that he or she is being ~~taken into custody~~ detained as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. Any such notice may be given by telephone. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.

SECTION 13. 51.20 (2) (d) of the statutes is amended to read:

51.20 (2) (d) Placement shall only be made in a hospital that is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in an approved private treatment facility approved by the department or the county department, if the facility agrees to detain the subject individual, or in a state treatment facility. Upon arrival at the facility, the individual is considered to be in the custody of the facility.

SECTION 14. 51.20 (7) and (8) (b) and (bm) of the statutes are amended to read:

51.20 (7) PROBABLE-CAUSE HEARING. (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility is taken into custody under s. 51.15 or this section, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

(8) (b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (7) (c). Detention may only be in a hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in an approved private treatment facility approved by the department or the county department if the facility agrees to detain the subject individual, or in a state treatment facility.

(bm) If, within 90 days from the date of the waiver under par. (bg), the subject individual fails to comply with the settlement agreement approved by the court under par. (bg), the counsel designated under sub. (4) may file with the court a statement of the facts which constitute the basis for the belief that the subject individual is not in compliance. The statement shall be sworn to be true and may be based on the information and belief of the person filing the statement. Upon receipt of the statement of noncompliance, the court may issue an order to detain the subject individual pending the final disposition. If the subject individual is detained under this paragraph, the court shall hold a probable cause hearing within 72 hours from the time of detention that the person is taken into custody under s. 51.15 for this paragraph,

excluding Saturdays, Sundays and legal holidays or, if the probable cause hearing was held prior to the approval of the settlement agreement under par. (bg), the court shall hold a final hearing within 14 days from the time of detention. If a jury trial is requested later than 5 days after the time of detention under this paragraph, but not less than 48 hours before the time of the final hearing, the final hearing shall be held within 21 days from the time of detention. The facts alleged as the basis for commitment prior to the waiver of the time periods for hearings under par. (bg) may be the basis for a finding of probable cause or a final disposition at a hearing under this paragraph.

SECTION 15. 51.20 (13) (g) 1. of the statutes is amended to read:

51.20 (13) (g) 1. ~~Except as provided in subd. 2.,~~ The first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of the individual may be for a period not to exceed one year.

SECTION 16. 51.20 (13) (g) 2. of the statutes is repealed.

SECTION 17. 51.20 (13) (g) 2m. of the statutes is repealed.

SECTION 18. 51.20 (13) (g) 2r. of the statutes is amended to read:

51.20 (13) (g) 2r. Twenty-one days prior to expiration of the period of commitment under subd. 1., ~~2., or 2m.,~~ the department, if the individual is committed to the department, or the county department to which an individual is committed shall file an evaluation of the individual and the recommendation of the department or county department regarding the individual's recommitment with the committing court and provide a copy of the evaluation and recommendation to the individual's counsel and the counsel designated under sub. (4). If the date for filing an evaluation and recommendation under this subdivision falls on a Saturday, Sunday or legal holiday, the date which is not a Saturday, Sunday or legal holiday and which most closely precedes the evaluation and recommendation filing date shall be the filing date. A failure of the department or the county department to which an individual is committed to file an evaluation and recommendation under this subdivision does not affect the jurisdiction of the court over a petition for recommitment.

SECTION 19. 905.04 (4) (a) of the statutes is amended to read:

905.04 (4) (a) *Proceedings for hospitalization, commitment, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in probable cause or final proceedings to hospitalize commit the patient for mental illness under s. 51.20, to appoint a guardian in this state, for court-ordered protec-

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tive services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor

in the course of diagnosis or treatment has determined that the patient is in need of ~~hospitalization~~ commitment, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.
