

1987 Senate Bill 352

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1987 Wisconsin Act **367**

AN ACT *to amend* 51.30 (4) (b) 5 and 51.61 (6); and *to create* 51.14 and 51.30 (4) (b) 19 of the statutes, *relating to* outpatient mental health treatment of minors 14 years of age or older.

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

PREFATORY NOTE [Does not reflect Assembly Amendment I]:
This bill was developed by the special committee on mental health issues.

Current law provides that prior to providing voluntary mental health treatment to a minor 14 years of age or older the county department under section 51.42 or 51.437 of the statutes, or any agency providing services under an agreement with the county department, shall obtain the written, informed consent of the minor and the minor's parent or guardian.

To obtain *inpatient* treatment for a minor 14 years of age or older who refuses treatment, the parent or guardian must

commence involuntary commitment proceedings. If a parent or guardian refuses to consent to the admission of a minor age 14 or over to an inpatient facility, the minor may petition the court assigned to exercise jurisdiction under chapter 48 of the statutes (the children's code) for approval of the admission.

No single procedure is explicitly set forth in the statutes for the provision of *outpatient* mental health treatment of minors age 14 or older where either the minor or minor's parent or guardian refuses to provide the required informed consent. If the minor refuses to consent to outpatient treatment, a parent or guardian could commence involuntary commitment proceedings. If either the minor or his or her parent or guardian refuse to consent, the other could file a petition under chapter 48 of the statutes alleging that the minor is in need of protection or services.

This bill creates a new procedure for the review of a refusal of a minor age 14 years or older or the minor's parent or guardian to provide informed consent for outpatient mental health treatment of the minor.

Right to a Review of Refusal to Provide Informed Consent

The bill provides that a refusal of either a minor age 14 years or older or the minor's parent or guardian to provide informed consent for outpatient mental health treatment, except psychotropic medications, is reviewable by the mental health review officer appointed by the juvenile court in the county where the parent or guardian resides. Following the officer's review, the refusal is also reviewable by the juvenile court.

Review by Mental Health Review Officer

The bill:

1. Sets out the required contents of the petition for the review hearing;
2. Allows for filing of a petition with juvenile court without a hearing or finding by the mental health review officer, if that is determined by the officer to be in the best interest of the minor;
3. Provides time limits within which notice of the hearing shall be provided and the hearing shall be held; and
4. Sets forth the standards for reviewing a refusal to provide informed consent. The standards are based on current standards for reviewing the admission of a minor under the age of 14 years to an inpatient facility. The standards are as follows:
 - a. The informed consent of the minor or his or her parent or guardian is unreasonably withheld;
 - b. The minor is in need of treatment;
 - c. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available; and
 - d. The proposed treatment is in the best interests of the minor.

This review of a refusal of a minor age 14 years or older or the minor's parent or guardian to provide informed consent for outpatient mental health treatment is intended to be nonadversarial. Therefore, no provision is made for the appointment of counsel at this stage of the proceeding.

Review by a Court

The bill also creates a procedure for court review of the refusal of the minor age 14 years or older or his or her parent to provide informed, written consent. The court review provides an adversarial hearing for the person aggrieved by the decision of the mental health review officer. The bill:

1. Sets out the required contents of the petition;
2. Provides time limits within which notice of the hearing must be provided and the hearing must be held;
3. Requires that counsel be appointed to represent a minor who is unwilling to voluntarily consent to outpatient mental health treatment and provides for the appointment of a guardian ad litem, if necessary;
4. Provides that the rules of evidence in civil actions are applicable to these proceedings; and
5. Sets forth the standards for court review of a refusal to provide informed consent. These standards are the same as those to be used by the mental health review officer.

Finding or Order Not a Finding of Mental Illness

The bill provides that a finding or order under the new procedures for reviewing a refusal to give informed consent does not constitute a finding of mental illness. This provision is based on section 51.13 (4) (i) of the statutes, which currently provides that approval of the inpatient admission of a minor does not constitute a finding of mental illness, developmental disability, alcoholism or drug dependency. This provision is included to address concerns that a finding or order related to

mental health treatment for a minor attaches a stigma of mental illness to the minor.

Appeal

The bill provides that the decision of a court regarding the refusal of a minor 14 years of age or older or the minor's parent or guardian to provide informed consent for outpatient mental health treatment is reviewable by the court of appeals.

SECTION 1. 51.14 of the statutes is created to read:

51.14 Outpatient treatment of minors. (1) DEFINITIONS. In this section, "outpatient mental health treatment" means treatment and social services for mental illness, except psychotropic medications and 24-hour care and custody, provided by a treatment facility.

(2) MENTAL HEALTH REVIEW OFFICER. Each court assigned to exercise jurisdiction under ch. 48 shall designate a mental health review officer to review petitions filed under sub. (3).

(3) REVIEW BY MENTAL HEALTH REVIEW OFFICER. (a) Either a minor 14 years of age or older or his or her parent or guardian may petition the mental health review officer in the county in which the parent or guardian has residence for a review of a refusal of either the minor or his or her parent or guardian to provide the informed consent for outpatient mental health treatment required under s. 51.61 (6).

(b) A petition filed under this subsection shall contain all of the following:

1. The name, address and birth date of the minor.
2. The name and address of the parent or guardian of the minor.
3. The facts substantiating the petitioner's belief that the minor needs outpatient mental health treatment.

4. Any available information which substantiates the appropriateness of the particular treatment sought for the minor and that the particular treatment sought is the least restrictive treatment consistent with the needs of the minor.

(c) Any professional evaluations relevant under par. (b) 3 or 4 shall be attached to the petition filed under this subsection.

(d) The court which appointed the mental health review officer shall ensure that necessary assistance is provided to the petitioner in the preparation of the petition under this subsection.

(e) The mental health review officer shall notify the county department under s. 51.42 or 51.437 of the contents of any petition received by the mental health review officer under this subsection. The county department under s. 51.42 or 51.437 may, following review of the petition contents, make recommendations to the mental health review officer as to the need for and appropriateness and availability of treatment.

(f) If prior to a hearing under par. (g) either the minor or his or her parent or guardian requests and the mental health review officer determines that the best interests of the minor would be served, a petition

may be filed for court review under sub. (4) without further review under this subsection.

(g) Within 21 days after the filing of a petition under this subsection, the mental health review officer shall hold a hearing on the refusal of the minor or the minor's parent or guardian to provide informed consent for outpatient treatment. The mental health review officer shall provide notice of the date, time and place of the hearing to the minor and the minor's parent or guardian at least 96 hours prior to the hearing.

(h) If following the hearing under par. (g) and after taking into consideration the recommendations, if any, of the county department under s. 51.42 or 51.437 made under par. (e), the mental health review officer finds all of the following, he or she shall issue a written order that, notwithstanding the written, informed consent requirement of s. 51.61 (6), the written, informed consent of the minor, if the minor is refusing to provide consent, or the written, informed consent of the minor's parent or guardian, if the parent or guardian is refusing to provide consent, is not required for outpatient mental health treatment for the minor:

1. The informed consent is unreasonably withheld.
2. The minor is in need of treatment.
3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.
4. The proposed treatment is in the best interests of the minor.

(i) The findings under par. (h) and the reasons supporting each finding shall be in writing.

(j) The mental health review officer shall notify the minor and the minor's parent or guardian of the right to judicial review under sub. (4).

(k) No person may be a mental health review officer in a proceeding under this section if he or she has provided treatment or services to the minor who is the subject of the proceeding.

(4) JUDICIAL REVIEW. (a) Within 21 days after the issuance of the order by the mental health review officer under sub. (3) or if the requirements of sub. (3) (f) are satisfied, the minor or his or her parent or guardian may petition a court assigned to exercise jurisdiction under ch. 48 in the county of residence of the minor's parent or guardian for a review of the refusal of either the minor or his or her parent or guardian to provide the informed consent for outpatient mental health treatment required under s. 51.61 (6).

(b) The petition in par. (a) shall conform to the requirements set forth in sub. (3) (b). If the minor has refused to provide informed consent, a notation of this fact shall be made on the face of the petition.

(c) If a notation of a minor's refusal to provide informed consent to outpatient mental health treatment appears on the petition, the court shall, at least 7 days prior to the time scheduled for the hearing,

appoint counsel to represent the minor if the minor is unrepresented. If the minor's parent or guardian has refused to provide informed consent and the minor is unrepresented, the court shall appoint counsel to represent the minor, if requested by the minor or determined by the court to be in the best interests of the minor.

(d) The court shall hold a hearing on the petition within 21 days after filing of the petition.

(e) Notice of the hearing under this subsection shall be provided by the court by certified mail, at least 96 hours prior to the hearing, to the minor, the minor's parent or guardian, the minor's counsel and guardian ad litem, if any, and any other interested party known to the court.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. A record, including written findings of fact and conclusions of law, shall be maintained of the entire proceedings. Findings shall be based on evidence that is clear, satisfactory and convincing.

(g) After the hearing under this subsection, the court shall issue a written order stating that, notwithstanding the written, informed consent requirement of s. 51.61 (6), the written, informed consent of the minor, if the minor refuses to provide consent, or the written, informed consent of the parent or guardian, if the parent or guardian refuses to provide consent, is not required for outpatient mental health treatment for the minor if the court finds all of the following:

1. The informed consent is unreasonably withheld.
2. The minor is in need of treatment.
3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.
4. The treatment is in the best interests of the minor.

(5) APPEAL. Any person who is aggrieved by a determination or order under sub. (4) and who is directly affected by the determination or order may appeal to the court of appeals under s. 809.40.

(6) FINDING OR ORDER NOT A FINDING OF MENTAL ILLNESS. A finding or order under this section does not constitute a finding of mental illness.

NOTE: Section 51.14, as created by this bill, creates a new procedure for the review of a refusal by a minor age 14 years or older or the minor's parent or guardian to provide informed consent for outpatient mental health treatment of the minor, other than the administration of psychotropic medications.

1. Subsection (1) defines "outpatient mental health treatment" to mean mental health treatment and social services, except psychotropic medications and 24-hour care and custody, provided by a treatment facility. Thus, the definition specifically excludes refusals to give informed consent for psychotropic medications from the new procedures.

The definition recognizes that a facility that provides inpatient treatment, such as a hospital, mental health unit or a community-based residential facility, may also provide outpatient treatment. The focus of the definition is on the treatment program, rather than on the facility.

See s. 51.01 (17) and (19) for definitions of “treatment” and “treatment facility”.

2. Subsection (2) provides that courts assigned to exercise jurisdiction under ch. 48 (the children’s code) shall appoint a mental health review officer to review the refusal of a minor 14 years of age or older or his or her parent or guardian to consent to outpatient mental health treatment for the minor.

3. Subsection (3) sets forth the procedure for the review, by a mental health review officer, of a refusal by either the minor 14 years of age or older or his or her parent or guardian to provide informed consent for outpatient mental health treatment for the minor. Subsection (3) includes [does not reflect Assembly Amendment 1]:

- a. The required contents of the review petition;
- b. A provision allowing a petition for court review to be filed without review by the mental health review officer, if requested by the minor or his or her parent or guardian and the best interests of the child would be served;
- c. Time limits within which notice of the hearing shall be provided and a hearing shall be held;
- d. Standards for review of the refusal to provide informed consent. The standards are based on the standards, under current law, for reviewing the admission of a minor to an inpatient facility;
- e. The requirement that the mental health review officer notify the parties of the right to court review; and
- f. The limitation that the designated mental health review officer may not have provided prior treatment or services to the minor.

4. Subsection (4) sets forth the procedure for court review of the refusal of a minor age 14 years or older or the minor’s parent to provide informed consent for outpatient mental health treatment for the minor. The court review provisions are patterned after provisions for court review of an inpatient admission of a minor under s. 51.13 (4). Subsection (4) includes:

- a. The requirements for contents of the petition for review;
- b. The requirement of, and time limits for holding, a hearing on the petition;
- c. The requirement that counsel be appointed to represent a minor who is unwilling to provide informed consent to undergo outpatient mental health treatment;
- d. The requirement that notice of the hearing be provided to the minor and his or her parent or guardian, the minor’s counsel and guardian ad litem, if any, and any other interested party, at least 96 hours prior to the time of hearing;
- e. The requirement that the rules of evidence in civil actions are applicable to these proceedings; and
- f. The standards for a court review of the refusal to provide informed consent.

6. The statement in sub. (6) that a finding or order under this section does not constitute a finding of mental illness is based on s. 51.13 (4) (i), which provides that approval of an inpatient admission of a minor does not constitute a finding of mental illness, developmental disability, alcoholism or drug dependency.

SECTION 1g. 51.30 (4) (b) 5 of the statutes is amended to read:

51.30 (4) (b) 5. To qualified staff members of the department, to the director of the county department under s. 51.42 or 51.437 which is responsible for serving a subject individual or to qualified staff members designated by the director as is necessary to determine progress and adequacy of treatment ~~and~~, to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility or for the purposes of s. 51.14. Such information shall remain confidential. The department and county departments under s. 51.42 or 51.437 shall develop procedures to assure the confidentiality of such information.

SECTION 1r. 51.30 (4) (b) 19 of the statutes is created to read:

51.30 (4) (b) 19. To a mental health review officer for the purposes of s. 51.14.

SECTION 2. 51.61 (6) of the statutes is amended to read:

51.61 (6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437 and any agency providing services under an agreement with the department or ~~such~~ those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient who was voluntarily admitted shall first be obtained. In the case of a minor, the written, informed consent of the parent or guardian is required, ~~and~~. Except as provided under an order issued under s. 51.14 (3) (h) or (4) (g), if the minor is aged 14 years of age or over older, the written, informed consent of the minor and the minor’s parent or guardian is required. A refusal of either a minor 14 years of age or older or the minor’s parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.

NOTE: The amendment to s. 51.61 (6) specifies that either a minor age 14 or older or his or her parent or guardian who has refused to consent to outpatient mental health treatment for the minor has a right to a review of the refusal under the new procedure set forth in s. 51.14.