

1987 Assembly Bill 680

Date of enactment: **April 23, 1988**  
Date of publication: **May 2, 1988**

## 1987 Wisconsin Act 394

(Vetoed in Part)

AN ACT to repeal 51.20 (1) (ar) 2; to renumber and amend 51.20 (1) (ar) 1; to amend 51.15 (5), 51.20 (1) (a) (intro.), 51.20 (7) (b) and (c), (11) (a) and (13) (a) 3, 51.20 (13) (cm), (d), (f) and (g) 2g, 2m and 3, 51.35 (1) (e), 51.37 (8), 53.30, 165.85 (4) (an) and (ap), 165.85 (4) (b) 2 and (5) (b) and 971.17 (3); to repeal and recreate 51.15 (1) (b); and to create 46.03 (5) (c) 4, 51.20 (1) (av), 51.20 (13) (a) 4m, 51.20 (19) (b) 1m, 53.365, 53.381, 53.383 and 165.85 (4) (ar) of the statutes, relating to creating a subunit on jails in a subunit of the department of

**Vetoed  
in Part**

~~health and social services~~ program standards for jails and houses of correction, jail officer training, emergency detention of individuals alleged to be mentally ill, drug dependent or developmentally disabled based on information reported by probation and parole agents, mental health commitment standards and procedures for inmates of prisons, jails and houses of correction, supervision of persons under a criminal mental health commitment who are conditionally released, granting rule-making authority ~~and making an appropriation.~~

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

PREFATORY NOTE: This bill was developed by the legislative council's advisory committee on mentally ill inmates and approved for recommendation to the legislative council, as amended, by the legislative council's special committee on mental health issues. The major provisions of the bill are:

**PROGRAM STANDARDS FOR JAILS**

The bill requires the department of health and social services (DHSS) to establish by rule program standards for jails (including municipal lockups) and houses of correction. In developing the standards, DHSS shall consult with the department of justice.

The standards shall include requirements that each jail or house of correction: (1) develop a written policy and procedure manual which reflects the jail's or house of correction's unique characteristics; and (2) have crisis intervention services available, 24 hours per day, for medical illnesses or disabilities, mental illnesses, developmental disabilities or alcohol or other drug abuse problems.

The policy and procedure manual shall include: (1) policies and procedures for screening inmates for medical illnesses or disabilities, mental illnesses, developmental disabilities and alcohol or other drug abuse; and (2) identification of the facilities and programs, including outside facilities and programs, that will be provided for long-term inmates.

The policy and procedure manual shall be submitted to DHSS no later than January 1, 1989, for approval. Subsequent substantive changes in the manual shall also be submitted to DHSS for approval.

**OFFICE OF JAILS**

The bill directs DHSS to establish a subunit on jails (e.g., an office of jails) in its subunit responsible for the administration of corrections (currently, the division of corrections).

Under the bill, DHSS shall transfer to the new office of jails the division of corrections' responsibilities related to jails and houses of correction. This includes: (1) the responsibilities, under current law, for supervising and inspecting jails and houses of correction and approving their construction plans; and (2) the responsibilities, created by the bill for establishing program standards for jails and houses of correction and approving their policy and procedure manuals.

The bill increases an appropriation to DHSS by \$51,800 general purpose revenue in each of the fiscal years 1987-88 and 1988-89 to fund 1.0 full-time equivalent administrative officer position and 0.5 full-time equivalent program assistant (clerical) position in the new office of jails.

**JAIL OFFICER TRAINING**

Under current law, no person may be appointed to a permanent position as a jail officer, on or after July 2, 1983, unless the person has completed a preparatory program of at least 80 hours of jail officer training. Current law does not specify the number of hours of the preparatory training program which must be allocated to specific topics [section 165.85 (4) of the statutes].

This bill increases the required number of hours of preparatory jail officer training from 80 hours to 120 hours, effective July 1, 1988. The bill also specifically requires that, effective July 1, 1988, at least 16 of the 120 hours of preparatory training shall be devoted to methods of supervision of "special needs" inmates, including those who may be emotionally distressed,

mentally ill, suicidal, developmentally disabled or alcohol or drug abusers.

Under current law, jail officers appointed before July 2, 1983, are exempt from the preparatory training program requirement. This bill requires jail officers appointed before July 2, 1983, to complete the 120-hour preparatory training program by June 30, 1993.

Under the bill, jail officers who (whether appointed prior to or on or after July 2, 1983) satisfactorily completed the 80-hour preparatory training program are also required to complete the 120-hour program. However, as an alternative to taking the entire 120-hour program, the bill allows these jail officers to complete at least a 40-hour program approved by the board, bringing their total number of hours to at least 120. At least 16 hours of this additional program shall be devoted to methods of supervision of special needs inmates.

**EMERGENCY DETENTION**

Under current law, any law enforcement officer or other person authorized to take a child into custody under ch. 48 may initiate an emergency detention if he or she has cause to believe that: (1) the person being detained is mentally ill, drug dependent or developmentally disabled; and (2) the person meets one of the 4 standards of dangerousness applicable to involuntary commitment.

The officer's or person's belief that the person meets these standards for detention shall be based on a specific recent act, attempt or threat to act or an omission of the person and either observed personally by the law enforcement officer or observed by another and reliably reported to the officer [section 51.15 (1) (b) of the statutes].

This bill emphasizes that the officer's or person's belief that the individual meets the criteria for an emergency detention may be based upon behavior observed and reliably reported to the officer or person by a probation and parole agent.

**COMMITMENT OF INMATES**

*Commitment Standard for State Prison Inmates*

Generally, under current law, a person may be committed if he or she is mentally ill, drug dependent or developmentally disabled; a proper subject for treatment; and dangerous to self or others under at least one of 4 standards of dangerousness. However, under an alternative standard for state prison inmates, a showing of dangerousness is not required. A state prison inmate may be committed if he or she is mentally ill; a proper subject for treatment; and is in need of treatment. Before an inmate may be committed under this alternative standard, appropriate less restrictive forms of treatment must be tried and be unsuccessful [section 51.20 (1) (ar) of the statutes].

This bill repeals a "sunset" provision which currently provides that the alternative commitment standard for state prison inmates applies only to commitment petitions filed before July 1, 1989, or the effective date of the 1989-91 biennial budget act, whichever is later.

*Commitment Standard for Jail Inmates*

Under current law, inmates of jails and houses of correction are committed under the same commitment standards applicable to mentally ill persons generally.

The bill creates an alternative standard for the commitment of inmates of county jails and houses of correction who are there under criminal sentence. This new commitment standard is identical to the alternative standard currently applicable to the commitment of state prison inmates.

Under the new standard, a petition for the commitment of a county jail or house of corrections inmate shall allege that the inmate is mentally ill; a proper subject for treatment; and in need of treatment. In addition, as under the current alternative standard for state prison inmates, the petition shall allege that appropriate less restrictive forms of treatment have been unsuccessful.

The bill requires sheriffs or other keepers of county jails and houses of correction to ensure that an attempt is made to use less restrictive forms of treatment and to inform fully the inmate of his or her treatment rights and alternatives prior to filing a petition for commitment under the alternative standard. The sheriff or keeper shall also ensure that the inmate has been fully informed of his or her treatment needs, treatment options and rights as a mental health patient. These requirements are based on similar requirements, under current law, for commitments under the alternative standard for state prison inmates.

Under the bill, the time periods for hearings currently applicable to commitment proceedings involving state prison inmates would also apply to proceedings involving county jail or house of correction inmates.

Under the bill, if the allegations under the alternative standard are proven, an inmate of a county jail or house of correction is committed for treatment on an inpatient or outpatient basis to the county department of community programs or the county department of developmental disabilities, under section 51.42 or 51.437 of the statutes, serving the inmate's county of residence or, if the inmate is a nonresident, to DHSS.

As with commitments under the alternative standard for state prison inmates, commitments of inmates of county jails or houses of correction under the standard created by this bill may be for a total period not to exceed 180 days in any 365-day period, except that in no case may a commitment continue beyond the inmate's date of release under the criminal sentence.

Under a "sunset" provision included in the bill, the new alternative standard would apply only to petitions for the commitment of inmates of county jails and houses of correction filed before July 1, 1991, or the effective date of the 1991-93 biennial budget act, whichever is later.

*Jail Reporting Requirements*

The bill requires sheriffs or other keepers of county jails or houses of correction to file with DHSS an annual report on the numbers of inmates transferred to a state or county treatment facility on a voluntary basis, under a commitment based on a finding of dangerousness and under a commitment based on the new need for treatment standard. The report shall also include the number of inmates under an order for outpatient treatment under the new standard who are treated in the jail or house of correction with psychotropic drugs; the inmates' diagnoses and the types of drugs used; and a description of the mental health services available to inmates on either a voluntary or an involuntary basis. DHSS shall include a summary of this information in its annual report on mental hygiene for inmates which is submitted to the legislature.

*Standards for Treatment of Jail Inmates with Drugs*

The bill directs DHSS to promulgate rules establishing standards for the use of psychotropic drugs in jails and houses of correction on inmates who have been committed to treatment.

**SUPERVISION OF CONDITIONALLY RELEASED DEFENDANTS**

Under current law, if a defendant in a criminal action pleads, and is found by a court to be, not guilty of a crime by reason of mental disease or defect, the defendant is not convicted of the crime or sentenced. Instead, the defendant is automatically committed to DHSS for custody, care and treatment under a criminal commitment.

Under current law, DHSS may not hold a person under a criminal commitment beyond the maximum period for which the person could have been imprisoned if convicted of the

offense charged, minus the credit earned for good time under sections 53.11 and 973.155 of the statutes. If a person is held under a criminal commitment for the maximum period, DHSS has no authority to supervise the person for an additional period upon discharge, although DHSS or other interested persons may petition for the civil commitment of the person.

Under current law, during the criminal commitment period, the court ordering the commitment may discharge the person or conditionally release the person if it finds that the person can be released from the treatment facility without posing a danger to himself or herself or to others. Also, DHSS, upon the recommendation of the director of the treatment facility, may authorize the conditional release of the person, subject to supervision, without an order from the court if the court does not object within 60 days after being notified of the pending conditional release [sections 51.37 (9) and 971.17 (2) of the statutes].

The authority of a court to revoke a conditional release and order that the person be recommitted to DHSS for transfer to a mental health treatment facility, and the authority of DHSS to supervise a person under a conditional release, currently extends only for 5 years after the date of the conditional release or for the maximum period for which the person could have been imprisoned if convicted, minus any credit for good time under section 53.11 or 973.155, whichever period is shorter [section 971.17 (4) of the statutes; *see, also*, 73 OAG 76 (1984)].

This bill extends the time period during which a court may revoke the conditional release and recommit the person from 5 years or until the latest date on which the person could have been imprisoned, whichever period is shorter, to the maximum period for which the defendant could have been imprisoned, if convicted, minus any credit for good time under section 53.11 or credit under section 973.155. The extension of this authority also has the incidental effect of extending the authority of DHSS to supervise persons who have been conditionally released during this same period.

Thus, under the bill, a conditional release may be revoked or supervision of a conditionally released person continued over the same period of time that the person could have been held under the criminal commitment if not conditionally released.

~~SECTION 1. 46.03 (5) (c) 4 of the statutes is created to read:  
46.03 (5) (c) 4. By summary, the contents of the reports filed with the department under s. 53.383 (2) for the most recent calendar year.~~

**Vetoed  
in Part**

NOTE: Currently, DHSS is required to submit an annual mental hygiene report to the joint committee on finance and to the presiding officer of each house of the legislature, for referral to the appropriate standing committees. Section 46.03 (5) (c) 4, created by this bill, requires DHSS to summarize and include in this report the annual reports filed with DHSS by jail officers, under s. 53.383 (2), as created by this bill, relating to the mental health treatment of jail prisoners.

**SECTION 2. 51.15 (1) (b) of the statutes is repealed and recreated to read:**

**51.15 (1) (b) The officer's or person's belief shall be based on any of the following:**

- 1. A specific recent overt act or attempt or threat to act or omission by the individual which is observed by the officer or person.**
- 2. A specific recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the officer or person by any other person, including any probation and parole agent authorized by the department to exercise control and supervision over a probationer or parolee.**

NOTE: Section 51.15 (1) (b) 2, affected by this bill, emphasizes that the belief, on the part of a law enforcement officer or other person authorized to initiate an emergency detention, that the individual being detained meets the criteria for emergency detention may be based upon behavior observed by and reliably reported to the officer or person by a probation and parole agent.

SECTION 3. 51.15 (5) of the statutes is amended to read:

51.15 (5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer 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 persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer 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 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 55.06 (11) (b), the subject individual may not be detained by the law enforcement officer and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and holidays.

NOTE: The amendment to s. 51.15 (5) by this bill adds language to remedy an internal inconsistency in that subsection and is not intended to be substantive.

SECTION 4. 51.20 (1) (a) (intro.) of the statutes is amended to read:

51.20 (1) (a) (intro.) Except as provided in pars. (ab), (am) ~~and~~, (ar) and (av), every written petition for examination shall allege that the subject individual to be examined:

NOTE: The insertion of the cross-reference to s. 51.20 (1) (av) reflects the creation of that paragraph, relating to an alternative standard for commitment of inmates sentenced to county jails or houses of correction, by this bill.

SECTION 5. 51.20 (1) (ar) 1 of the statutes is renumbered 51.20 (1) (ar), and 51.20 (1) (ar) (intro.), as renumbered, is amended to read:

51.20 (1) (ar) (intro.) If the individual is an inmate of a state prison, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and it shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the indi-

vidual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 53.11 ~~(7)~~(a). The petition shall have attached to it a signed statement by a licensed physician or a licensed psychologist of a state prison and a signed statement by a licensed physician or a licensed psychologist of a state treatment facility attesting either of the following:

NOTE: The renumbering of s. 51.20 (1) (ar) 1 reflects the repeal of s. 51.20 (1) (ar) 2 by this bill. The amendment to s. 51.20 (1) (ar) (intro.), as renumbered, changes a current cross-reference from s. 53.11 (7) (a) to s. 53.11. The current cross-reference to s. 53.11 (7) (a) is incorrect because the provision under s. 53.11 (7) (a), which relates to length of sentence for a returned parolee, is not the sole determinant of inmates' sentence lengths. The broader cross-reference to s. 53.11 includes other methods of determining sentence length.

SECTION 6. 51.20 (1) (ar) 2 of the statutes, as affected by 1987 Wisconsin Act 27, is repealed.

NOTE: Section 51.20 (1) (ar) 2, as affected by 1987 Wisconsin Act 27 and repealed by this bill, provides that the alternative standard for commitment applicable to state prison inmates does not apply to commitment petitions filed on or after July 1, 1989, or the effective date of the 1989-91 biennial budget act, whichever is later. As a result of the repeal, the alternative standard will continue to apply unless repealed by the legislature.

SECTION 7. 51.20 (1) (av) of the statutes is created to read:

51.20 (1) (av) 1. If the individual is an inmate who has been sentenced to imprisonment in a county jail or house of correction, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 53.11. The petition shall have attached to it a signed statement by a licensed physician, licensed psychologist or other mental health professional attesting either of the following:

a. That the inmate needs inpatient treatment at a state or county treatment facility because appropriate treatment is not available in the jail or house of correction.

b. That the inmate's treatment needs can be met on an outpatient basis in the jail or house of correction.

2. This paragraph does not apply to petitions filed under this section on or after July 1, 1990.

NOTE: Section 51.20 (1) (av), created by this bill, establishes an alternative commitment standard for inmates of jails and houses of correction. The standard is identical to the current alternative standard applicable to the commitment of state prison inmates. Under this standard, dangerousness need not be alleged or proven. The petition shall, instead, allege that the inmate is mentally ill, a proper subject for treatment, and in need of treatment. The petition shall specify whether inpatient or outpatient treatment is appropriate, and shall also allege that appropriate less restrictive forms of treatment have been unsuccessful.

The new alternative standard may not be used for petitions filed on or after July 1, 1990.

SECTION 8. 51.20 (7) (b) and (c), (11) (a) and (13) (a) 3 of the statutes are amended to read:

51.20 (7) (b) If the subject individual is not detained or is an inmate of a state prison, county jail or house of correction, the court shall hold a hearing within a reasonable time of the filing of the petition, to determine whether there is probable cause to believe the allegations made under sub. (1).

(c) If the court determines that there is probable cause to believe such allegations, it shall schedule the matter for a hearing within 14 days from the time of detention of the subject individual, except as provided in sub. (11) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time of detention of the subject individual. If the subject individual is not detained under s. 51.15 or this section or is an inmate of a state prison, county jail or house of correction, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment. In the event that the subject individual fails to appear for the hearing to determine probable cause for commitment, the court may issue an order for the subject individual's detention and shall hold the hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, from the time that the individual is detained.

(11) (a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel if the individual does not object, the court shall direct that a jury of 6 people be drawn to determine if the allegations specified in sub. (1) (a), (ar) or (av) are true. A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual or his or her counsel. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand. If an inmate of a state prison, county jail or house of correction demands a jury trial within 5 days after the prob-

able cause hearing, the final hearing shall be held within 28 days of the probable cause hearing. If an inmate of a state prison, county jail or house of correction demands a jury trial later than 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the date of demand.

(13) (a) 3. If the individual is not an inmate of a state prison, county jail or house of correction and the allegations specified in sub. (1) (a) are proven, order commitment to the care and custody of the appropriate county department under s. 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient treatment under care of such county department; or

NOTE: The amendments to s. 51.20 (7) (b) and (c) and (11) (a) apply time periods for holding probable cause hearings, final commitment hearings and jury trials, currently applicable to proceedings involving state prison inmates, to proceedings involving inmates of county jails and houses of correction.

The amendment to s. 51.20 (13) (a) 3 clarifies that disposition under this subdivision applies to commitment of persons other than inmates of state prisons, county jails or houses of correction. Dispositions involving state prison inmates are governed by s. 51.20 (13) (a) 4. Dispositions involving inmates of county jails and houses of correction are governed by s. 51.20 (13) (a) 4m, as created by this bill.

SECTION 9. 51.20 (13) (a) 4m of the statutes is created to read:

51.20 (13) (a) 4m. If the individual is an inmate of a county jail or house of correction and the allegations under sub. (1) (a) or (av) are proven, order commitment to the county department under s. 51.42 or 51.437 serving the inmate's county of residence or, if the inmate is a nonresident, order commitment to the department. The order shall either authorize the transfer of the inmate to a state or county treatment facility or, if inpatient care is not needed, authorize treatment on an outpatient basis in the jail or house of correction; or

NOTE: Under s. 51.20 (13) (a) 4m, as created by this bill, an inmate of a county jail or house of correction is committed to the appropriate county department under s. 51.42 or 51.437 serving the inmate's county of residence or, if the inmate is a nonresident, to the department. The commitment may be either on an inpatient basis in a state or county treatment facility or an outpatient basis in the jail or house of correction.

SECTION 10. 51.20 (13) (cm), (d), (f) and (g) 2g, 2m and 3 of the statutes are amended to read:

51.20 (13) (cm) If disposition is made under par. (a) 4 or 4m and ~~the department transfers~~ the inmate is transferred to a state or county treatment facility, the department or, in the case of a disposition under par. (a) 4m, the county department under s. 51.42 or 51.437 may, after evaluating the inmate and developing an appropriate treatment plan, transfer the inmate back to the prison, county jail or house of correction on a conditional basis. The inmate shall be informed of the terms and conditions of the transfer as provided in s. 51.35 (1) (a). If the inmate does not cooperate with the treatment or if the inmate is in need of additional inpatient treatment, the department or the county department under s. 51.42 or 51.437 may

return the inmate to a state or county treatment facility.

(d) A disposition under par. (a) 3, 4, 4m or 5 may be modified as provided in s. 51.35.

(f) The county department under s. 51.42 or 51.437 which receives an individual who is committed by a court under ~~this section~~ par. (a) 3 is authorized to place such individual in an approved treatment facility subject to any limitations which are specified by the court under par. (c) 2. The county department shall place the subject individual in the treatment program and treatment facility which is least restrictive of the individual's personal liberty, consistent with the treatment requirements of the individual. The county department shall have ongoing responsibility to review the individual's needs, in accordance with sub. (17), and transfer the person to the least restrictive program consistent with the individual's needs. If the subject individual is under the age of 22 years and if the facility appropriate for placement or transfer is a center for the developmentally disabled, placement or transfer of the individual shall be made only to the central center for the developmentally disabled unless the department authorizes the placement or transfer to the northern or southern center for the developmentally disabled.

(g) 2g. The total period a person may be committed pursuant to commitments ordered under par. (a) 4 or 4m, following proof of the allegations under sub. (1) (ar) or (av), may not exceed 180 days in any 365-day period.

2m. In addition to the provisions under subs. 1, 2 and 2g, no commitment ordered under par. (a) 4 or 4m may continue beyond the inmate's date of release as determined under s. 53.11 ~~(7)(a)~~.

3. The county department under s. 51.42 or 51.437 to whom the individual is committed under par. (a) 3 may discharge the individual at any time, and shall place a committed individual in accordance with par. (f). Upon application for extension of a commitment by the department or the county department having custody of the subject, the court shall proceed under subs. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a) 1 and evidences the conditions under sub. (1) (a) 2 or (am) or is a proper subject for commitment as prescribed in sub. (1) (ar) or (av), it shall order judgment to that effect and continue the commitment. The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

NOTE: The amendments to s. 51.20 (13): (1) extend the applicability of current provisions, relating to dispositions and transfers of prison inmates who have been committed, to include inmates of county jails and houses of correction who have been committed; (2) limit the applicability of provisions relating to placement and discharge, by the county department under s. 51.42 or 51.437, of persons committed to it, to persons who are not inmates of county jails or houses of correction; and (3) change a current cross-reference from s. 53.11

(7) (a) to s. 53.11. The current cross-reference to s. 53.11 (7) (a) is incorrect because the provision under s. 53.11 (7) (a), which relates to length of sentence for a returned parolee, is not the sole determinant of inmates' sentence lengths. The broader cross-reference to s. 53.11 includes other methods of determining sentence lengths.

SECTION 11. 51.20 (19) (b) 1m of the statutes is created to read:

51.20 (19) (b) 1m. Establishing standards and procedures for use of and periodic review of the use of psychotropic drugs on inmates in a county jail or house of correction who are being treated in the jail or house of correction under a commitment based on a petition under sub. (1) (a) or (av).

NOTE: Section 51.20 (19) (b) 1m, created by this bill, requires DHSS to promulgate rules establishing standards and procedures for the use of psychotropic drugs on prisoners in county jails and houses of correction under a commitment order. The rules shall also provide standards and procedures for the periodic review of the use of drugs on inmates in the jail or house of correction under a commitment order.

SECTION 12. 51.35 (1) (e) of the statutes is amended to read:

51.35 (1) (e) Whenever any transfer between different treatment facilities results in a greater restriction of personal freedom for ~~the a~~ a patient and whenever the patient is transferred from outpatient to inpatient status, ~~such the~~ the patient shall be informed 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. 967.06 and ch. 977, if the patient is indigent, and the right to petition a court where the patient is located or the committing court for a review of the transfer. This paragraph does not apply to a return to a more restrictive facility if such return occurs within 7 days of a temporary transfer from such facility and the return was part of a previously established plan of which the patient was notified at the time of the temporary transfer. This paragraph does not apply to a return of an inmate to a state or county treatment facility under s. 51.20 (13) (cm).

SECTION 13. 51.37 (8) of the statutes is amended to read:

51.37 (8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or inmate who is found to be mentally ill or drug dependent except that the petition shall be made to the court which made the finding or, if the prisoner or inmate is detained by transfer, to the circuit court of the county in which he or she is detained. If upon rehearing it is found that the standards for recommitment under s. 51.20 (13) (g) no longer apply to the prisoner or inmate or that he or she is not in need of psychiatric or psychological treatment, the prisoner or inmate shall be returned to the prison or county jail or house of correction unless it is past his or her release date as determined under s. 53.11 ~~(7)(a)~~, in which case he or she shall be discharged.

(b) If the condition of any prisoner or inmate committed or transferred under this section requires psy-

chiatric or psychological treatment after his or her date of release as determined under s. 53.11 (7)(a), the director of the state treatment facility shall, within a reasonable time before the ~~prisoner's~~ prisoner or inmate release date of the prisoner or inmate, make a written application to the court which committed the prisoner or inmate under sub. (5) (a). Thereupon, the proceeding shall be upon application made under s. 51.20, but no physician or psychologist who is connected with a state prison, Winnebago or Mendota mental health institute or any county jail or house of correction may be appointed as an examiner. If the court does not commit the prisoner or inmate, it may dismiss the application and order the prisoner or inmate returned to the institution from which he or she was transferred until the ~~prisoner's~~ prisoner or inmate release date of the prisoner or inmate. If the court commits the prisoner or inmate for the period commencing upon his or her release date, such commitment shall be to the care and custody of the county department under s. 51.42 or 51.437.

NOTE: The amendments to s. 51.37 (8): (1) add references to inmates of county jails and houses of correction who are also subject to the provisions of this subsection; and (2) change the current cross-reference found in this subsection from s. 53.11 (7) (a) to s. 53.11. The current cross-reference to s. 53.11 (7) (a) is incorrect, because s. 53.11 (7) (a), which relates to length of sentence for a returned parolee, is not the sole determinant of prisoner and inmate sentence lengths. The broader cross-reference to s. 53.11 includes other methods of determining sentence lengths.

SECTION 14. 53.30 of the statutes is amended to read:

**53.30 Definition of jail.** In ss. 53.30 to 53.43, "jail" includes municipal prisons and rehabilitation facilities established by under s. 59.07 (76) by whatever name they are known. In s. 53.37 (1) (a) and (3) (a), "jail" does not include lockup facilities. "Lockup facilities" means those facilities of a temporary place of detention at a police station which are used exclusively to hold persons under arrest until they can be brought before a court, and are not used to hold persons pending trial who have appeared in court or have been committed to imprisonment for nonpayment of fines or forfeitures. In s. 53.365, "jail" does not include rehabilitation facilities established under s. 59.07 (76).

NOTE: The amendment to s. 53.30 excludes county rehabilitation facilities established under s. 59.07 (76) from the program standards for jails adopted under s. 53.365, as created by this bill.

SECTION 15. 53.365 of the statutes is created to read:

**53.365 Jail and house of correction program standards.** (1) STANDARDS. The department shall establish, by rule, program standards for jails and houses of correction. The standards shall require all of the following:

(a) *Policy and procedure manual.* That the sheriff or other keeper of a jail or house of correction develop a written policy and procedure manual for the operation of the jail or house of correction which reflects the jail's or house of correction's physical characteristics,

the number and types of prisoners in the jail or house of correction and the availability of outside resources to the jail or house of correction. The manual shall include all of the following:

1. Policies and procedures for screening prisoners for medical illnesses or disabilities, mental illnesses, developmental disabilities and alcohol or other drug abuse problems. The rules shall establish functional objectives for screening but may not require jails or houses of correction to use only one particular method to meet the objectives. The policies and procedures shall include the use of outside resources, such as county mental health staff or hospital resources, and shall include agreements with these resources, as appropriate, to ensure adequate services to prisoners identified as needing services.

2. Identification of the facilities and programs, including outside facilities and programs, that will be provided for long-term prisoners, including prisoners who are charged with a crime and detained prior to trial and prisoners who are sentenced to jail or a house of correction. The rules shall establish functional objectives for programs for these prisoners but may not require counties to use only one particular method of providing programs for these prisoners.

(b) *Crisis intervention services.* That the sheriff or other keeper of the jail or house of correction ensure that the jail or house of correction has available, ~~24 hours per day~~ emergency services for crisis intervention for prisoners with medical illnesses or disabilities, mental illnesses, developmental disabilities or alcohol or other drug abuse problems.

(2) APPROVAL OF POLICY AND PROCEDURE MANUAL. The sheriff or other keeper of a jail or house of correction shall submit, no later than ~~January 1, 1989~~ January 1, 1989, a policy and procedure manual developed under sub. (1) (a) to the department for approval, as provided by the department by rule. Thereafter, the sheriff or other keeper of a jail or house of correction shall submit any substantive changes to the manual to the department for approval, as provided by the department by rule. The department shall approve or disapprove the manual or any changes made in the manual, in writing, within 90 days after submission of the manual. If the department disapproves the manual or any changes to a manual, it shall include in the written disapproval a statement of the reasons for the disapproval. Within 60 days after disapproval, the sheriff or other keeper of the jail or house of correction shall modify the manual and resubmit it to the department for approval.

(3) CONSULTATION IN RULE DEVELOPMENT. In developing rules under this section, the department shall consult with the department of justice.

NOTE: Section 53.365, created by this bill, requires DHSS to establish program standards for jails (including municipal lockups) and houses of correction, by rule.

Under sub. (1) (a), the standards shall include a requirement that each jail and house of correction develop a written policy and procedure manual which reflects the jail's or house's unique characteristics.

Vetoed  
in Part

Vetoed  
in Part

Under sub. (1) (a) 1, the manual shall include policies and procedures for screening prisoners for medical illnesses or disabilities, mental illnesses, developmental disabilities and alcohol or other drug abuse problems.

Under sub. (1) (a) 2, the policy and procedure manual shall also specify the facilities and programs, including outside facilities and programs, that will be provided for long-term prisoners.

Under sub. (1) (a) 1 and 2, the rules shall establish functional objectives for screening prisoners and for services to long-term prisoners, but may not require counties to use only one particular method in meeting objectives.

Under sub. (1) (b), jails or houses of correction shall have continuous crisis intervention services available 24 hours per day to prisoners with medical illnesses or disabilities, mental illnesses, developmental disabilities or alcohol or other drug abuse problems.

Under sub. (2), the policy and procedure manual shall first be submitted to DHSS by January 1, 1989, for approval. Subsequent changes in the manual shall also be submitted to DHSS for approval.

Under sub. (3), in developing the rules, DHSS shall consult with the department of justice.

SECTION 15m. 53.381 of the statutes is created to read:

**53.381 Emergency services for crisis intervention for prisoners.** The costs of providing emergency services for crisis intervention for prisoners of a jail or house of correction with medical illnesses or disabilities, mental illnesses, developmental disabilities or alcohol or other drug abuse problems are payable according to the criteria under s. 53.38 (2).

SECTION 16. 53.383 of the statutes is created to read:

**53.383 Mental health treatment of prisoners.** (1) Prior to filing a petition for commitment of a prisoner under s. 51.20 (1) (av), the sheriff or other keeper of a jail or house of correction shall do all of the following:

(a) Attempt to use less restrictive forms of treatment with the prisoner. Less restrictive forms of treatment shall include, but are not limited to, voluntary treatment within the county jail or house of correction or voluntary transfer to a state or county treatment facility.

(b) Ensure that the prisoner has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under ch. 51, and ensure that the prisoner has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician, licensed psychologist or other mental health professional.

(2) On or before January 30 annually, the sheriff or other keeper of a jail or house of correction shall report to the department on all of the following for the previous calendar year:

(a) The number of prisoners from the jail or house of correction who were transferred to a state treatment facility and the number who were transferred to a county treatment facility under each of the following:

1. A commitment under s. 51.20 (1) (a).

2. A commitment under s. 51.20 (1) (av).

3. A voluntary transfer under s. 51.37 (5).

4. An emergency transfer under s. 51.37 (5).

(b) The length of stay in the treatment facility of each prisoner reported under par. (a).

(c) The number of prisoners committed to treatment on an outpatient basis in the jail or house of correction under s. 51.20 (1) (av) who were treated in the jail or house of correction with psychotropic drugs during the year and, for each such prisoner, the prisoner's diagnosis and the types of drugs used.

(3) The report under sub. (2) shall include a description of the mental health services that are available to prisoners on either a voluntary or involuntary basis.

NOTE: Section 53.383, created by this bill, requires sheriffs or other keepers of jails and houses of correction to do all of the following:

1. Attempt to use less restrictive forms of mental health treatment for a prisoner prior to filing a petition for commitment of the prisoner using the new alternative commitment standard. Less restrictive forms of treatment than commitment include voluntary treatment within the jail or house of correction or voluntary transfer to a state or county treatment facility.

2. Ensure the following: (a) that the prisoner has been fully informed of his or her mental health treatment needs, the mental health services available to him or her and his or her rights as a patient under ch. 51; and (b) that the prisoner has had an opportunity to discuss, with a mental health professional, his or her treatment needs, available services and rights as a patient. These requirements shall be fulfilled prior to the filing of a petition for commitment under the new standard.

3. Annually, on or before January 30, file a report with DHSS, covering the previous calendar year, on: (a) the number of jail or house of correction prisoners transferred to a state or county treatment facility on a voluntary basis, under an emergency transfer, under a commitment based on one of the dangerousness standards and under a commitment based on the new alternative standard; (b) the number of prisoners committed to outpatient treatment in the jail or house of correction under the new alternative standard who have been treated with psychotropic drugs in the jail or house of correction, each such prisoner's diagnosis and the types of drugs being used; and (c) a description of the mental health services available to prisoners of the jail or house of correction on either a voluntary or involuntary basis.

Under s. 46.03 (5) (c) 4, as created by this bill, the reports filed with DHSS under this requirement will be summarized by DHSS and the summary filed with the legislature.

SECTION 17. 165.85 (4) (an) and (ap) of the statutes are amended to read:

165.85 (4) (an) Except as provided in ~~par. (a)~~ pars. (ap) and (ar), jail officers are required to meet the requirements of pars. (b) 2 and (c) as a condition of tenure or continued employment regardless of the date of their appointment.

(ap) Jail officers serving under permanent appointment prior to July 2, 1983, are not required to meet any requirement of ~~pars. (b) 2 and par. (c)~~ as a condition of tenure or continued employment. The failure of any such jail officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise

eligible. ~~Those jail officers may voluntarily participate in this program.~~

NOTE: The amendments to s. 165.85 (4) (an) and (ap) reflect the creation of s. 165.85 (4) (ar) by this bill.

SECTION 18. 165.85 (4) (ar) of the statutes is created to read:

165.85 (4) (ar) 1. A jail officer permanently appointed prior to July 1, 1988, including an officer who prior to July 1, 1988, completed a program of at least 80 hours of training that met the requirements of s. 165.85 (4) (b) 2, 1985 stats., shall meet the requirements ~~of at least 80 hours of training~~ under par. (b) 2 by June 30, 1993.

Vetoed in Part

2. A jail officer who has completed at least 80 hours of preparatory training which met the requirements of s. 165.85 (4) (b) 2, 1985 stats., may meet the requirements of subd. 1 by completing a program ~~of at least 40 hours~~ of training approved by the board. The program shall devote at least 16 hours ~~of the program~~ to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers.

Vetoed in Part  
Vetoed in Part

NOTE: Section 165.85 (4) (ar) 1, created by this bill, requires jail officers permanently appointed prior to the effective date of this bill (including officers who, prior to July 1, 1988, completed a training program of at least 80 hours) to complete a 120-hour jail officer preparatory training program by June 30, 1993. Under s. 165.85 (4) (b) 2, as amended by this bill, the 120-hour program shall include at least 16 hours on the methods of supervision of special needs inmates.

Section 165.85 (4) (ar) 2, created by this bill, allows jail officers who have completed at least 80 hours of training to complete a 40-hour program approved by the board. At least 16 hours of this additional program must be devoted to methods of supervision of special needs inmates. Completion of the 40-hour program by these officers satisfies the 120-hour requirement.

SECTION 19. 165.85 (4) (b) 2 and (5) (b) of the statutes are amended to read:

165.85 (4) (b) 2. No person may be appointed as a jail officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of jail officer training approved by the board and has been certified by the board as being qualified to be a jail officer. The program shall include at least ~~80~~ 120 hours of training. ~~The 80-hour training program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers.~~ The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Jail officer training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

Vetoed in Part

(5) (b) The board shall authorize the reimbursement to each political subdivision of the salary and of

the allowable tuition, living and travel expenses incurred by officers who satisfactorily complete training at schools approved by the board. Reimbursement of these expenses shall be 100% for the first 240 hours of conventional or competency-based law enforcement recruit training, 60% for additional conventional law enforcement recruit training up to 320 hours or 100% for additional competency-based law enforcement recruit training up to 320 hours ~~and~~, 100% for the first ~~80~~ 120 hours of conventional or competency-based jail officer training and 100% ~~for the first 40 hours of training under sub. (4) (ar) 2.~~ After June 30, 1985, if the claims under this paragraph exceed the moneys available for reimbursement, the department shall prorate the reimbursement of salary expenses under this paragraph. Funds may also be distributed for attendance at other training programs and courses or for training services on a priority basis to be decided by the department of justice.

Vetoed in Part  
Vetoed in Part

NOTE: The amendments to s. 165.85 (4) (b) 2 increase the number of hours of preparatory training that permanent jail officer appointees are required to complete from 80 hours to 120 hours. The amendments also require 16 hours of the 120-hour program to be devoted to methods of supervision of special needs inmates.

Currently, the law enforcement standards board is required to authorize reimbursement for 100% of expenses incurred by jail officers who satisfactorily complete the first 80 hours of jail officer training. The amendment to s. 165.85 (5) (b) requires the law enforcement standards board to authorize reimbursement for 100% of expenses incurred by jail officers who satisfactorily complete: (1) the first 120 hours of jail officer training, rather than the first 80 hours; or (2) the first 40 hours of training under s. 165.85 (4) (ar) 2, as created by this bill.

SECTION 20. 971.17 (3) of the statutes is amended to read:

971.17 (3) ~~If, within 5 years of the conditional release of a committed person the maximum period for which a person could have been imprisoned if convicted of the offense charged, subject to s. 53.11 and the credit provisions of s. 973.155, the court determines after a hearing that the conditions of release have not been fulfilled and that the safety of such the person or the safety of others requires that his or her conditional release be revoked, the court shall forthwith immediately order him the person recommitted to the department, subject to discharge or release only in accordance with sub. (2).~~

NOTE: Currently, the maximum time period during which a court may revoke the conditional release of a criminally committed person and recommit the person is 5 years or the latest date on which a person could have been imprisoned, minus any credit for good time, whichever period is shorter. The amendment to s. 971.17 (3) extends this time period to the maximum period for which the person could have been imprisoned, if convicted, minus any credit for good time. As a result, the authority of DHSS to supervise criminally committed persons who have been conditionally released is extended for this same duration.

~~SECTION 21. Nonstatutory provisions, creation of the office of jails in the department of health and social services. (1) Notwithstanding section 15.02 (4) of the~~

Vetoed in Part

**Vetoed in Part** statutes, effective July 1, 1988, the secretary of health and social services shall do all of the following:

(a) Create a subunit on jails in the subunit of the department of health and social services which is responsible for administering corrections.

(b) Transfer to the subunit on jails created under paragraph (a) the functions related to jails and houses of correction of the department's subunit responsible for administering corrections, including those portions of the responsibilities under sections 46.16 and 46.17 of the statutes and section 53.365 of the statutes, as created by this act, which relate to jails and houses of correction.

**Vetoed in Part** (2) Subsection (1) does not prohibit subsequent revision of the department's structure, following the reorganization required under subsection (1), to improve the department's administration of its program responsibilities.

NOTE: This SECTION directs DHSS to establish, effective July 1, 1988, a subunit on jails (e.g., an office of jails) in its subunit responsible for corrections (currently, the division of corrections). DHSS shall transfer to the new office the division's jail-related responsibilities, including the approval of jails' and houses of correction's policy and procedure manuals under section 53.365 of the statutes, as created by this bill.

**Vetoed in Part** SECTION 22. ~~Appropriation changes, health and social services.~~ The appropriation to the department of health and social services under section 20.435 (3) (a) of the statutes, as affected by the acts of 1987, is increased by \$4,300 for fiscal year 1987-88 and by \$51,800 for fiscal year 1988-89 to fund 1.0 FTE GPR administrative officer position and 0.5 FTE GPR program assistant position in the department's subunit on jails.

NOTE: This SECTION increases an appropriation to DHSS to fund 1.0 full-time equivalent administrative officer position and 0.5 full-time equivalent program assistant position in the office of jails. In addition to these positions, it is expected that DHSS will transfer 5.0 full-time equivalent detention facility specialist positions to the new office.

**Vetoed in Part** SECTION 22m. ~~Appropriation changes, justice.~~ The dollar amount in the schedule under section 20.005 (3) of the statutes for the appropriation to the department of justice under section 20.435 (2) (g) of

**Vetoed in Part** the statutes, as affected by the acts of 1987, is increased by \$260,000 for fiscal year 1988-89 to fund local law enforcement training.

SECTION 23. **Initial applicability.** (1) The treatment of section 51.15 (1) (b) and (5) of the statutes first applies to emergency detentions initiated on the effective date of this subsection.

(2) The treatment of section 971.17 (3) of the statutes first applies to persons conditionally released on the effective date of this subsection.

(3) The treatment of sections 51.20 (1) (a) (intro.), (ar) 1 and (av), (7) (b) and (c), (11) (a) and (13) (a) 3 and 4m, (cm), (d), (f) and (g) 2g, 2m and 3, 51.35 (1) (e), 51.37 (8) and 53.383 of the statutes first applies to proceedings in which a petition is filed, under section 51.20 (1) of the statutes, on the effective date of this subsection and to proceedings in which an application for an extension of a commitment has been made, under section 51.20 (13) (g) 3 of the statutes, on the effective date of this subsection.

SECTION 24. **Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 165.85 (4) (an), (ap), (ar) and (b) 2 and (5) (b) of the statutes takes effect on July 1, 1988.

NOTE: The effective date of this bill is the day after publication, except that the provisions of the bill relating to jail officer training shall take effect on July 1, 1988.

Under the effective date and initial applicability provisions:

1. The provision of the bill relating to the authority of law enforcement officers to initiate emergency detentions based on information reliably reported by probation and parole agents applies to emergency detentions initiated on or after the day after publication of the bill.

2. The provision relating to the change in the period for revocation of conditional release applies to persons conditionally released on or after the day after publication of the bill.

3. The provisions relating to the alternative commitment standard for inmates of jails and houses of correction apply to commitment proceedings in which a petition for commitment is filed or an application for an extension of a commitment is made on or after the day after publication of the bill.