State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–1179/P1
DAK:kjf:jf

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to renumber and amend*** 51.61 (6); ***to amend*** 51.13 (2) (b), 51.13 (3) (b), 51.13 (3) (c), 51.13 (7) (title), 51.13 (7) (a), 51.13 (7) (b), 51.13 (7) (c), 51.14 (3) (a), 51.20 (16) (a), 51.30 (5) (b) 1. and 51.30 (5) (b) 2.; and ***to create*** 51.13 (7) (b) 3., 51.61 (6) (a) and 51.61 (6) (b) of the statutes; **relating to:** informed consent for minors for treatment for mental illness and access to records.

Analysis by the Legislative Reference Bureau

Currently, the mental health laws distinguish between minors under 14 years of age and minors 14 years of age or older with regard to giving informed consent for outpatient treatment for mental illness or developmental disability; voluntary admission to and discharge from an inpatient facility for treatment and rehabilitation of mental illness or developmental disability; reexamination under, or modification or cancellation of, an involuntary commitment order for treatment for mental illness or developmental disability; transfer from a juvenile secured correctional facility to an inpatient facility for treatment for mental illness or developmental disability; access and consent to the release of court records and treatment records; and informed consent for medication and treatment. No distinction exists between a minor under 14 years of age and a minor 14 years of age or older with regard to treatment for alcoholism or drug abuse. If a minor wishes to be admitted to an inpatient facility, but the minor's parent who has legal custody of the minor or the minor's guardian refuses to execute the application for admission or cannot be found, the minor may petition the court assigned to exercise jurisdiction under the Children's Code (juvenile court) for approval of the admission.

Discharge upon request

Under current law, a minor 14 years of age or older who is voluntarily admitted to an inpatient facility for treatment for mental illness or developmental disability or a minor whose parent or guardian refused to execute an admission application or cannot be found who has petitioned successfully for admission may request that he or she be discharged from the facility and, subject to certain exceptions, must be discharged within 48 hours after submission of the request. A minor under 14 years of age ~~or a minor who is voluntarily admitted for treatment of alcoholism or drug abuse~~, however, may be discharged on his or her request only if his or her parent or guardian also requests discharge or after a hearing before the juvenile court to determine the continued appropriateness of the admission.

This bill requires that both the parent or guardian of a minor 14 years of age or older who has been voluntarily admitted to an inpatient facility for treatment of mental illness and the minor request discharge in writing. If the parent or guardian refuses to request discharge and the facility director avers, in writing, that the minor's treatment is appropriate and least restrictive, the minor may not be discharged, but may petition the juvenile court to hold a hearing on such a request to determine the continued appropriateness of the admission, as is the case for minors under 14 years of age under current law.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 51.13 (2) (b) of the statutes is amended to read:

51.13 **(2)** (b) Notwithstanding par. (a), any minor ~~who is 14 years of age or older and~~ who is admitted to an inpatient treatment facility for the primary purpose of treatment of mental illness ~~or~~, developmental disability, alcoholism, or drug abuse has the right to be discharged ~~within 48 hours after his or her request~~, as provided in, or as limited by, sub. (7) (b). ~~At the time of admission, any minor who is 14 years of age or older and who is admitted to an inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability, and the minor's parent or guardian, shall be informed of this right orally and in writing by the director of the hospital or such person's designee.~~ This paragraph does not apply to ~~individuals~~ minors who receive services in hospital emergency rooms.

SECTION 2. 51.13 (3) (b) of the statutes is amended to read:

51.13 **(3)** (b) ~~A~~ Prior to or at admission, ~~a minor 14 years of age or older who has been admitted to an inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability~~, a minor who is voluntarily admitted under sub. (1) (c) 1. or 2., and the minor's parent or guardian shall ~~also~~ be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of the minor's right to request discharge and to be discharged within 48 hours of the request, as provided under sub. (7) (b), if no ~~petition or~~ statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement, and the minor's right to consent to or refuse treatment as provided in s. 51.61 (6).

SECTION 3. 51.13 (3) (c) of the statutes is amended to read:

51.13 **(3)** (c) ~~A~~ Prior to or at admission, a minor ~~14 years of age or older~~, other than a minor specified under par. (b), who has been admitted to an inpatient facility for the primary purpose of treatment for ~~mental illness, alcoholism, or drug abuse, a minor under 14 years of age, other than a minor specified under par. (b), who has been admitted to an inpatient treatment facility for the primary purpose of treatment for~~ mental illness, developmental disability, alcoholism, or drug abuse, and the minor's parent or guardian shall ~~also~~ be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of the right of the minor and parent or guardian to request the minor's discharge as provided in or as limited by sub. (7) (b) and of the minor's right to a hearing to determine continued appropriateness of the admission as provided in sub. (7) (c).

INSERT 3-23

SECTION 4. 51.13 (7) (title) of the statutes is amended to read:

51.13 **(7)** (title) DISCHARGE OR CONTINUED APPROPRIATENESS OF ADMISSION.

If the minor refuses, the minor's parent or guardian may execute the application on the minor's behalf.

SECTION 5. 51.13 (7) (a) of the statutes is amended to read:

51.13 **(7)** (a) If a minor is admitted to an inpatient treatment facility while under 14 years of age, and if upon reaching age 14 is in need of further inpatient care and treatment primarily for mental illness ~~or~~ developmental disability, ~~alcoholism, or drug abuse,~~ the director of the facility shall request the minor and the minor's parent or guardian to execute an application for ~~voluntary~~ admission. Such an application may be executed within 30 days prior to a minor's 14th birthday. If the application is executed, a petition for review shall be filed in the manner prescribed in sub. (4), unless such a review has been held within the last 120 days. If the application is not executed by the time of the minor's 14th birthday, the minor shall be discharged unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement by the end of the next day in which the court transacts business.

RESTORE TO PLAIN TEXT

delete comma

renumbered 51.13 (7) (b) 1. and

change component

SECTION 6. 51.13 (7) (b) of the statutes is amended to read:

51.13 **(7)** (b) 1. Any ~~minor 14 years of age or older who is voluntarily admitted under this section for the primary purpose of treatment for mental illness or developmental disability, and any~~ minor who is voluntarily admitted under sub. (1) (c) 1. or 2., may request discharge in writing. ~~In the case of~~

2. For a minor 14 years of age or older who is ~~voluntarily~~ admitted under ~~this section~~ for the primary purpose of treatment for alcoholism or drug abuse or a minor under 14 years of age who is ~~voluntarily~~ admitted under ~~this section~~ for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse, the parent or guardian of the minor may ~~make the~~ request discharge in writing.

sub. (1) (a) or (b)

4. Upon receipt of any form of written request for discharge from a minor specified under subd. 1. or 3., the director of the facility in which the minor is admitted shall immediately notify the minor's parent or guardian, if available. ~~The~~

5. A minor specified in subd. 1., a minor specified in subd. 2. whose parent or guardian requests discharge in writing, and a minor specified in subd. 3. who requests and whose parent or guardian requests discharge in writing shall be discharged within 48 hours after submission of the request, exclusive of Saturdays, Sundays, and legal holidays, unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement.

SECTION 7. 51.13 (7) (b) 3. of the statutes is created to read:

51.13 **(7)** (b) 3. For a minor 14 years of age or older who is ~~voluntarily~~ admitted under this section for the primary purpose of treatment for mental illness, the minor and the minor's parent or guardian may request discharge in writing. If the parent or guardian of the minor refuses to request discharge and if the director of the facility to which the minor is admitted or his or her designee avers, in writing, that the minor is in need of psychiatric services, that the facility's therapy or treatment is appropriate to the minor's needs, and that inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor, the minor may not be discharged under this paragraph.

SECTION 8. 51.13 (7) (c) of the statutes is amended to read:

51.13 **(7)** (c) Any minor ~~14 years of age or older~~ who is ~~voluntarily~~ admitted under this section ~~for the primary purpose of treatment for alcoholism or drug abuse, and who is not discharged under par. (b), and any minor under 14 years of age who is voluntarily admitted under this section for the primary purpose of treatment for~~

~~mental illness, developmental disability, alcoholism, or drug abuse, and,~~ other than a minor to which par. (b) 1. applies, who is not discharged under par. (b)~~,~~ may submit a written request to the court for a hearing to determine the continued appropriateness of the admission. If the director or staff of the inpatient treatment facility to which a minor described in this paragraph is admitted observes conduct by the minor that demonstrates an unwillingness to remain at the facility, including ~~but not limited to~~ a written expression of opinion or unauthorized absence, the director shall file a written request with the court to determine the continued appropriateness of the admission. A request that is made personally by a minor under this paragraph shall be signed by the minor but need not be written or composed by the minor. A request for a hearing under this paragraph that is received by staff or the director of the facility in which the ~~child~~ minor is admitted shall be filed with the court by the director. The court shall order a hearing upon request if no hearing concerning the minor's admission has been held within 120 days ~~after~~ before receipt of the request. ~~The court shall appoint counsel and, if the court considers it necessary, a guardian ad litem to represent the minor and if.~~ If a hearing is held, the court shall hold the hearing within 14 days after receipt of the request, unless the parties agree to a longer period. After the hearing, the court shall ~~make disposition~~ dispose of the matter in the manner provided in sub. (4).

INSERT 6-19

SECTION 9. 51.14 (3) (a) of the statutes is amended to read:

51.14 **(3)** (a) ~~Either a~~ 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 or inability 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).~~ The parent or guardian of a

minor 14 years of age or older 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 the minor to provide the informed consent for outpatient mental health treatment required under s. 51.61 (6).

SECTION 10. 51.20 (16) (a) of the statutes is amended to read:

51.20 **(16)** (a) Except ~~in the case of alcoholic commitments~~ for a commitment under s. 51.45 (13), any patient who is involuntarily committed for treatment under this chapter, may on the patient's own verified petition, ~~except in the case of~~ a minor who is under 14 years of age, or on the verified petition of the patient's guardian, relative, friend, or any person providing treatment under the order of commitment, request a reexamination or request the court to modify or cancel an order of commitment.

INSERT 7-12

SECTION 11. 51.30 (5) (b) 1. of the statutes is amended to read:

51.30 **(5)** (b) 1. The guardian of an individual who is adjudged incompetent under ch. 880 shall have access to the individual's court and treatment records at all times. The parent, guardian, or person in the place of a parent of a developmentally disabled minor shall have access to the minor's court and treatment records at all times except in the case of a minor aged 14 or older who files a written objection to ~~such~~ the access with the custodian of the records. The parent, guardian, or person in the place of a parent of other minors shall have the same rights of access as are provided to subject individuals under this section, other than under subd. 2.

SECTION 12. 51.30 (5) (b) 2. of the statutes is amended to read:

51.30 **(5)** (b) 2. A minor ~~upon reaching the age of~~ who is aged 14 or older and voluntarily admitted under s. 51.13 (1) (b) or (c) 1. shall have access to his or her own court and treatment records, as provided in this section. ~~A minor under the age of~~

(7)(a)

~~14~~ All other minors shall have access to court records but only in the presence of parent, guardian, counsel, guardian ad litem, or judge and shall have access to treatment records as provided in this section but only in the presence of parent, guardian, counsel, guardian ad litem, or staff member of the treatment facility.

INSERT 8-4

SECTION 13. 51.61 (6) of the statutes is renumbered 51.61 (6) (intro.) and amended to read:

51.61 **(6)** (intro.) 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 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 shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor ~~14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse~~. In the case of a minor, ~~the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, 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 admission to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1. and~~

~~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.~~ all of the following apply:

SECTION 14. 51.61 (6) (a) of the statutes is created to read:

51.61 **(6)** (a) If the minor is under 14 years of age, for the receipt of services for mental illness, developmental disability, alcoholism, or drug abuse, the written, informed consent of the minor's parent or guardian is required, except ~~for services in an inpatient facility~~ as provided under s. 51.13 (1) (c) 2.

SECTION 15. 51.61 (6) (b) of the statutes is created to read:

51.61 **(6)** (b) If the minor is 14 years of age or older:

1. For the receipt of services for developmental disability, the written, informed consent of the minor and ~~the minor's~~ parent or guardian is required, except for ~~services in an inpatient facility as provided under s. 51.13 (1) (c) 1.~~

2. For the receipt of services for alcoholism or drug abuse, the written, informed consent of the minor's parent or guardian is required, except ~~for services in an inpatient facility as provided under s. 51.13 (1) (c) 1.~~

~~3.~~ For the receipt of ~~treatment, including~~ psychotropic medication, as defined in s. 50.035 (5) (a) 2., for mental illness, the written informed consent of the minor and of the minor's parent or guardian is required, except for all of the following:

a. ~~A refusal~~ of the minor's parent or guardian to provide written, informed consent for inpatient treatment for mental illness is reviewable under s. 51.13 (1) (c) 1., and ~~a refusal of the minor to provide written, informed consent for such inpatient treatment is reviewable under s. 51.13 (4) (d).~~

b. A refusal of the minor or the minor's parent or guardian to provide written, informed consent for outpatient treatment for mental illness is reviewable under s. 51.14 (3) (a) and (4) (g).

INSERT 10-3

SECTION 16. Initial applicability.

(1) This act first applies to the receipt of treatment in an approved inpatient treatment facility and to the receipt of outpatient mental health treatment, on the effective date of this subsection, regardless of whether admission to the inpatient facility or outpatient program occurred or was sought prior to the effective date of this subsection.

INSERT 10-9

SECTION 17. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after publication.

(END)

D-Note

INSERT ANAL 1

Execution of an application for inpatient treatment for mental illness and developmental disability.

Currently, a minor 14 years of age or older may, together with his or her parent with legal custody or guardian, execute an application for inpatient treatment in a publicly–funded treatment facility. For minors under 14 years of age, the parent or guardian may execute the application. The refusal of a minor 14 years of age or older to execute an application is reviewable by the court assigned to exercise jurisdiction under the Children's Code (juvenile court). If a minor wishes to be admitted to a publicly–funded inpatient facility and his or her parent or guardian refuses to execute an application or is unable to be found, the minor may petition juvenile court for approval of the admission. A minor 14 years of age or older may apply and be admitted to an inpatient treatment facility for diagnosis and evaluation for dental, medical, or psychiatric services for a period not to exceed 12 days; for a minor under 14 years of age, the application must be executed by the minor's parent or guardian. If a minor attains 14 years of age while admitted to an inpatient treatment facility, the facility director must request the minor and his or her parent or guardian to execute an application for admission if the minor is in need of further inpatient care; if the application is not executed by the minor's 14th birthday, he or she must be discharged unless, under certain time limits, a statement is filed for emergency detention or a petition is filed for emergency commitment, involuntary commitment, or protective placement.

This bill continues to permit a minor aged 14 years or older, together with his or her parent or guardian, to execute an application for admission to an inpatient facility. However, if the minor refuses to execute the application, the parent or guardian may do so on the minor's behalf. An inpatient admission made despite refusal by the minor must be reviewed by juvenile court, and the minor is entitled to receive, among other things, an independent evaluation and assistance from the state protection and advocacy agency. For short–term admissions, the bill requires that the application for a minor 14 years of age or older be executed by the minor and his or her parent or guardian, except that the parent or guardian may execute the application if the minor refuses. For a minor who attains age 14 while admitted to an inpatient treatment facility and who refuses to execute an application for admission, the bill permits the minor's parent or guardian to execute the application on the minor's behalf.

Admissions for privately–funded inpatient treatment for mental illness and developmental disability

Under current law, a minor may be admitted to a private inpatient treatment facility without complying with certain of the requirements that apply to admissions to publicly–funded treatment facilities.

This bill eliminates the distinctions in requirements between admissions for minors to publicly–funded and privately–funded inpatient treatment facilities for

mental illness and developmental disability, except that publicly-funded admissions continue to be through county departments of community program or developmental disabilities services or through the Department of Health and Family Services.

INSERT ANAL 2

This bill eliminates the right of a minor aged 14 years or older to be discharged from inpatient treatment for mental illness or developmental disability within 48 hours after solely requesting the discharge, except for a minor whose parent or guardian refused to consent to admission or was unable to be found or for whom there is no parent with legal custody and who was admitted to an inpatient facility after a hearing. Under the bill, a minor 14 years of age or older may request discharge together with a parent or guardian. If a minor 14 years of age of older wishes to be discharged and the parent or guardian refuses to request discharge and if the director of the treatment facility avers in writing that the minor is in need of psychiatric services or services for developmental disability, that the facility's therapy or treatment is appropriate to the minor's needs, and that inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the minor's needs, the minor may not be discharged. A minor who wishes to be discharged but whose parent or guardian refuses may request a hearing before juvenile court.

Transfer for treatment and returns from treatment

Under current law, a minor aged 14 years or older who is in need of services for developmental disability or psychiatric services and the minor's parent or guardian must consent for transfer of the minor from a secured juvenile facility to an inpatient treatment facility. Only the minor need consent if the minor has successfully petitioned for admission and has a parent or guardian who refuses to consent or cannot be found or has no parent with legal custody. The minor and his or her guardian have the same rights as are accorded for other admissions to inpatient treatment facilities. DHFS must file a petition for review of the transfer with the juvenile court. If the court is unable to determine that the consent was voluntary on the part of the minor, the court may order additional information or a hearing. If a notation of the minor's unwillingness appears on the face of the petition, or if a hearing has been requested by the minor or the minor's counsel, guardian ad litem, parent, or guardian, the court must hold a hearing to review the transfer. The parent or guardian of a minor under 14 years of age who is transferred to a treatment facility to receive services for developmental disability or psychiatric services may request transfer back to the secured correctional facility, secured child caring institution, or secured group home for the minor. For a minor 14 years of age or older, however, the minor may request return and be returned within 48 hours after submission of the request unless a statement is filed for emergency detention or a petition is filed for emergency commitment, involuntary commitment, or protective placement.

This bill continues to permit a minor aged 14 years or older, and the minor's parent or guardian, to consent for transfer of the minor from a secured juvenile facility to an inpatient treatment facility. However, if the minor refuses to consent, the parent or guardian may do so on the minor's behalf. A juvenile court must review a transfer made under the consent of the minor's parent or guardian despite the

minor's refusal, and the minor is granted the rights to an independent evaluation and to assistance from the state protection and advocacy agency as under other discharges from an inpatient treatment facility. The bill eliminates the right of a minor 14 years of age or older to request return to a secured juvenile facility from an inpatient treatment facility and to be returned within 48 hours. Instead, the bill requires that the minor and his or her parent or guardian request the return and provides that the return be made within 48 hours unless a statement is filed for emergency detention or a petition is filed for emergency commitment, involuntary commitment, or protective placement.

Consent for outpatient treatment for mental illness

Currently, a minor aged 14 years or older may, together with his or her parent or guardian, consent to outpatient treatment for mental illness. For minors under 14 years of age, the parent or guardian may consent. 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 the parent or guardian to provide the consent. In addition, review by juvenile court may be made directly or the juvenile court may review a decision by the mental health review officer.

This bill continues to permit a minor aged 14 years or older, together with his or her parent or guardian, to consent to outpatient treatment. However, if the minor refuses to execute the application, the parent or guardian may do so on the minor's behalf. A petition for review by the mental health officer must be filed by or on behalf of a minor whose parent or guardian has provided consent to outpatient treatment for the minor, despite the minor's refusal, and the minor has a right to review by juvenile court.

Psychotropic medication as treatment for mental illness

This bill requires a parent or guardian of a minor under 14 years of age to provide written, informed consent for the administration of psychotropic medication, as defined in the bill, to the minor as inpatient or outpatient treatment. For a minor 14 years of age or older, the minor and his or her parent or guardian must consent for the administration of psychotropic medication as inpatient or outpatient treatment, but if the minor refuses to consent, the parent or guardian may consent on the minor's behalf. A minor whose parent or guardian refuses to consent or cannot be found or who has no parent with legal custody may petition the juvenile court for approval of the administration of the psychotropic medication.

INSERT 2–11

SECTION 1. 51.01 (13r) of the statutes is created to read:

51.01 **(13r)** "Psychotropic medication" has the meaning given in s. 50.035 (5) (a) 1.

SECTION 2. 51.13 (1) (title) of the statutes is amended to read:

51.13 **(1)** (title) ADMISSION ~~THROUGH BOARD OR DEPARTMENT~~.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 3. 51.13 (1) (a) of the statutes is amended to read:

51.13 **(1)** (a) Except as provided in par. (c) and s. 51.45 (2m), the application for ~~voluntary~~ admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for alcoholism or drug abuse and the application for ~~voluntary~~ admission of a minor who is under 14 years of age to an approved inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse shall be executed by a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct by a minor who is the subject of an application for ~~voluntary~~ admission under this paragraph indicating that the minor does not agree to admission to the facility shall be noted on the face of the application and shall be noted in the petition required by sub. (4).

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 4. 51.13 (1) (b) of the statutes is amended to read:

51.13 **(1)** (b) The application for ~~voluntary~~ admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian, except as provided in par. (c) 1., except that, if the minor refuses to execute the application, a parent who has legal custody of the minor or the minor's guardian may execute the application on the minor's behalf.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 5. 51.13 (1) (c) 3. of the statutes is amended to read:

51.13 **(1)** (c) 3. The court may, at the minor's request, temporarily approve the admission under subd. 1. or 2. pending hearing on the petition. If a hearing is held under subd. 1. or 2., no review or hearing under sub. (4) is required.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 6. 51.13 (1) (d) of the statutes is amended to read:

51.13 **(1)** (d) A minor against whom a petition or statement has been filed under s. 51.15, 51.20, or 51.45 (12) or (13) may be admitted under this section. The court may permit the minor to become a ~~voluntary~~ patient under this section upon approval by the court of an application executed under par. (a), (b), or (c). The court shall then dismiss the proceedings under s. 51.15, 51.20, or 51.45 (12) or (13). If a hearing is held under this subsection, no hearing under sub. (4) is required.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 7. 51.13 (1) (e) of the statutes is amended to read:

51.13 **(1)** (e) A minor may be admitted immediately upon the approval of the application executed under par. (a) or (b) by the treatment director of the facility or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee, and, if the county department is to be responsible for the cost of the minor's therapy and treatment, the director of the appropriate county department under s. 51.42 or 51.437 ~~if the county department is to be responsible for the cost of the minor's therapy and treatment~~. Admission under par. (c) or (d) shall also be approved, within 14 days of the minor's admission, by the treatment director of the facility or his or her designee, or in the case of a center for the developmentally disabled, the director of the center or his or her designee and, if the county department is to be responsible for the cost of the minor's therapy and treatment, the director of the appropriate county department under s. 51.42 or 51.437.

(em) Approval under par. (e) shall be based upon an informed professional opinion that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse, that the treatment facility offers inpatient therapy or treatment that is appropriate for the minor's needs, and that inpatient care in the facility is the least restrictive therapy or treatment consistent with the minor's needs. In the case of a minor who is being admitted for the primary purpose of treatment for alcoholism or drug abuse, approval shall also be based on the results of an alcohol or other drug abuse assessment that conforms to the criteria specified in s. 938.547 (4).

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 374; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 8. 51.13 (1) (f) of the statutes is repealed.

SECTION 9. 51.13 (2) of the statutes is repealed.

SECTION 10. 51.13 (3) (a) and (c) of the statutes are consolidated, renumbered 51.13 (3) (am) and amended to read:

51.13 **(3)** (am) Prior to admission if possible, or as soon thereafter as possible, the minor who is admitted under sub. (1) (a) or (b) and the minor's parent or guardian shall be informed by the director of the facility or his or her designee, both orally and in writing, in easily understandable language, of the review procedure in sub. (4), including the standards to be applied by the court and the possible dispositions~~,~~; the minor's right to an independent evaluation, if ordered by the court; the minor's right to assistance from the state protection and advocacy agency designated under s. 51.62 (2) (a); the right under sub. (4) (d) to a hearing upon request under sub. (4)~~, and~~; the minor's right to appointed counsel as provided in sub. (4) (d) if a hearing is held~~.~~ ~~(c) A minor 14 years of age or older who has been admitted to an inpatient facility for the primary purpose of treatment for alcoholism or drug abuse, a minor under 14~~

~~years of age who has been admitted to an inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse, and the minor's parent or guardian shall also be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of;~~ and, for a minor other than a minor specified under par. (b), the right of the minor or parent or guardian to request the minor's discharge as provided in or limited by sub. (7) (b); and ~~of~~ the minor's right to a hearing to determine continued appropriateness of the admission as provided in sub. (7) (c).

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.
History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

INSERT 3–23

SECTION 11. 51.13 (4) (a) (intro.) of the statutes is amended to read:

51.13 **(4)** (a) (intro.) Within 3 days after the admission of a minor under sub. (1), or within 3 days after an application is executed for admission of the minor, whichever occurs first, the treatment director of the facility to which the minor is admitted or, in the case of a center for the developmentally disabled, the director of the center, shall file a verified petition for review of the admission in the court assigned to exercise jurisdiction under chs. 48 and 938 in the county in which the facility is located. A copy of the application for admission and of any relevant professional evaluations shall be attached to the petition. The petition shall contain all of the following:

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 12. 51.13 (4) (c) of the statutes is amended to read:

51.13 **(4)** (c) A copy of the petition shall be provided by the petitioner to the minor and, if available, his or her parents or guardian within 5 days after admission.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 13. 51.13 (4) (d) of the statutes is amended to read:

51.13 **(4)** (d) Within 5 days after the filing of the petition, the court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether there is a prima facie showing that the minor is in need of psychiatric services, or services for developmental disability, alcoholism, or drug abuse, ~~that~~ whether the treatment facility offers inpatient therapy or treatment that is appropriate to the minor's needs; ~~and that~~ whether inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor~~,~~; and, if the minor is 14 years of age or older and has been admitted to the treatment facility for the primary purpose of treatment for mental illness or developmental disability, whether the admission ~~is voluntary on the part of the minor~~ was made under an application executed by the minor and the minor's parent or guardian. If such a showing is made, the court shall permit ~~voluntary~~ admission. If the court is unable to make those determinations based on the petition and accompanying documents, the court may dismiss the petition as provided in par. (h); order additional information, including an independent evaluation, to be produced as necessary for the court to make those determinations within 14 days after admission or application for admission, whichever is sooner; or hold a hearing within 14 days after admission or application for admission, whichever is sooner. If a notation of the minor's unwillingness appears on the face of the petition, if the admission was made under an application executed by the minor's parent or guardian despite the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel, parent, or guardian, the court shall order an independent evaluation of the minor and hold a hearing to review the admission within 14 days after admission or application for admission, whichever is sooner, and shall appoint counsel to

represent the minor if the minor is unrepresented. If the court considers it necessary, the court shall also appoint a guardian ad litem to represent the minor. The minor may receive assistance from the state protection and advocacy agency designated under s. 51.62 (2) (a).

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 14. 51.13 (4) (g) (intro.) of the statutes is amended to read:

51.13 **(4)** (g) (intro.) If the court finds, under a hearing under par. (d), that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse in an inpatient facility, that the inpatient facility to which the minor is admitted offers therapy or treatment that is appropriate for the minor's needs and that is the least restrictive therapy or treatment consistent with the minor's needs, ~~and, in the case of a minor 14 years of age or older who is being admitted for the primary purpose of treatment for mental illness or developmental disability, that the application is voluntary on the part of the minor,~~ the court shall permit ~~voluntary~~ admission. If the court finds that the therapy or treatment in the inpatient facility to which the minor is admitted is not appropriate or is not the least restrictive therapy or treatment consistent with the minor's needs, the court may order placement in or transfer to another more appropriate or less restrictive inpatient facility, except that the court may not permit or order placement in or transfer to the northern or southern centers for the developmentally disabled of a minor unless the department gives approval for the placement or transfer, and ~~if~~ unless the order of the court is approved by all of the following if applicable:

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 15. 51.13 (4) (g) 1. of the statutes is repealed.

SECTION 16. 51.13 (4) (h) (intro.) of the statutes is amended to read:

51.13 **(4)** (h) (intro.) If the court does not permit ~~voluntary~~ admission under par. (g), it shall do one of the following:

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 17. 51.13 (6) (a) of the statutes is amended to read:

51.13 **(6)** (a) A minor may be admitted to an inpatient treatment facility without review of the application under sub. (4) for diagnosis and evaluation or for dental, medical, or psychiatric services for a period not to exceed 12 days. The application for short–term admission of a minor shall be executed by the minor's parent with legal custody of the minor or the minor's guardian~~, and~~. However, if the minor is 14 years of age or older and is being admitted for the primary purpose of diagnosis, evaluation, or services for mental illness or developmental disability, the application shall be executed by the minor's parent or guardian and the minor, except that, if the minor refuses to execute the application, the parent or the guardian may execute the application. A minor may not be readmitted to an inpatient treatment facility for psychiatric services under this paragraph within 120 days of a previous admission under this paragraph.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

SECTION 18. 51.13 (6) (c) of the statutes is amended to read:

51.13 **(6)** (c) At the end of the 12–day period, the minor shall be released unless an application has been filed for ~~voluntary~~ admission under sub. (1) ~~or a petition or~~ ; a statement has been filed for emergency detention~~,~~ ;or a petition has been filed for emergency commitment, involuntary commitment, or protective placement.

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326.

INSERT 6–19

SECTION 19. 51.135 of the statutes is created to read:

51.135 Administration of psychotropic medication to minors. (1) (a) A parent with legal custody or the guardian of a minor under 14 years of age shall

provide written, informed consent for the administration of psychotropic medication to the minor as inpatient or outpatient treatment for mental illness.

(b) A parent with legal custody or the guardian of a minor 14 years of age or older and the minor shall provide written, informed consent for the administration of psychotropic medication to the minor as inpatient or outpatient treatment for mental illness, except that, if the minor refuses to consent to administration of the psychotropic medication, the parent or guardian may provide consent on the minor's behalf.

(2) If a minor wishes to provide written, informed consent for the administration of psychotropic medication as inpatient or outpatient treatment of the minor for mental illness, but the minor's parent with legal custody or guardian refuses to consent to administration of the psychotropic mediation or cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the administration. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last–known address. If, after a hearing, the court determines that the consent of the parent or guardian is being unreasonably withheld, that the parent or guardian cannot be found, or that there is no parent with legal custody, and that the administration is appropriate to the minor's needs, the court shall approve the administration of the psychotropic medication without the consent of the parent or guardian.

SECTION 20. 51.14 (title) of the statutes is amended to read:

51.14 (title) **Outpatient <u>mental health</u> treatment of minors.**

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 21. 51.14 (1) of the statutes is amended to read:

51.14 **(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~~ that is not inpatient treatment.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 22. 51.14 (1m) of the statutes is created to read:

51.14 **(1m)** CONSENT TO TREATMENT. A parent who has legal custody of a minor under 14 years of age or the minor's guardian may provide informed consent to outpatient treatment for mental illness for the minor. A minor 14 years of age or older and a parent who has legal custody of the minor or the minor's guardian may provide informed consent to outpatient treatment for mental illness for the minor, except that, if the minor refuses to consent, the parent or guardian may provide informed consent to the outpatient treatment on the minor's behalf.

INSERT 7–12

SECTION 23. 51.14 (3) (b) 3. of the statutes is amended to read:

51.14 **(3)** (b) 3. The facts substantiating the petitioner's belief that the minor needs, or does not need, outpatient mental health treatment.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 24. 51.14 (3) (f) of the statutes is amended to read:

51.14 **(3)** (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.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 25. 51.14 (3) (g) of the statutes is amended to read:

51.14 **(3)** (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 or inability of the ~~minor or the~~ minor's parent or guardian to provide informed consent for outpatient treatment or on the provision of informed consent by the parent or guardian despite the minor's refusal. The mental health review officer shall provide notice of the date, time and place of the hearing to the minor and , if available, the minor's parent or guardian at least 96 hours prior to the hearing.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 26. 51.14 (3) (h) (intro.) of the statutes is amended to read:

51.14 **(3)** (h) (intro.) 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)~~ sub. (1m), 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 or unable to provide consent, is not required for outpatient mental health treatment for the minor or, if the parent or guardian provided informed consent despite the minor's refusal, the outpatient mental health treatment for the minor is appropriate:

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 27. 51.14 (3) (h) 1. of the statutes is amended to read:

51.14 **(3)** (h) 1. The informed consent of the parent or guardian is unreasonably withheld or the refusal of the minor to provide informed consent is unreasonable.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 28. 51.14 (3) (j) of the statutes is amended to read:

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

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 29. 51.14 (4) (a) of the statutes is amended to read:

51.14 **(4)** (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~~ applies, the minor ~~or his or her parent or guardian~~ may petition a court assigned to exercise jurisdiction under chs. 48 and 938 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~~ or inability of the minor's parent or guardian to provide the informed consent for outpatient mental health treatment required under ~~s. 51.61 (6)~~ sub. (1m) or for a review of the provision of informed consent by the parent or guardian despite the minor's refusal.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 30. 51.14 (4) (g) (intro.) of the statutes is amended to read:

51.14 **(4)** (g) (intro.) 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)~~ sub. (1m), 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 or is unable to provide consent, is not required for outpatient mental health treatment for the minor or that, if the parent or guardian provided informed consent despite the minor's refusal, the outpatient mental health treatment for the minor is appropriate, if the court finds all of the following:

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326.

SECTION 31. 51.22 (2) of the statutes is amended to read:

51.22 **(2)** Except ~~as provided in s. 51.13 (2), voluntary~~ for admissions that do not involve the department or a county department under s. 51.42 or 51.437 or a

contract between a treatment facility and the department or a county department, admissions under ss. 51.10, 51.13, and 51.45 (10) shall be through the county department under s. 51.42 or 51.437 serving the person's county of residence, or through the department if the person to be admitted is a nonresident of this state. Admissions through a county department under s. 51.42 or 51.437 shall be made in accordance with s. 51.42 (3) (as) 1. or 51.437 (4rm) (a). Admissions through the department shall be made in accordance with sub. (3).

History: 1975 c. 430; 1977 c. 428; 1983 a. 27 s. 2202 (20); 1983 a. 474; 1985 a. 176; 1989 a. 31; 2001 a. 16.

INSERT 8–4

SECTION 32. 51.35 (3) (a) of the statutes is amended to read:

51.35 **(3)** (a) A licensed psychologist of a secured correctional facility, a secured child caring institution, or a secured group home, or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the secured correctional facility, secured child caring institution, or secured group home is, in his or her opinion, in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, and who has obtained ~~voluntary~~ consent to make a transfer for treatment, shall make a report, in writing, to the superintendent of the secured correctional facility, secured child caring institution, or secured group home, stating the nature and basis of the belief and verifying the consent. In the case of a minor age 14 or older who is in need of services for developmental disability or who is in need of psychiatric services, the minor and the minor's parent or guardian shall consent unless the minor is admitted under s. 51.13 (1) (c) 1. or unless the minor refuses to consent, in which case the minor's parent or guardian may consent on behalf of the minor. In the case of a minor age 14 or older who is in need of services for alcoholism or drug dependency or a minor under the age of 14 who is in need of services for developmental disability, alcoholism,

or drug dependency or in need of psychiatric services, only the minor's parent or guardian ~~need~~ consent unless the minor is admitted under s. 51.13 (1) (c). The superintendent shall inform, orally and in writing, the minor and the minor's parent or guardian, that transfer is being considered and shall inform them of the basis for the request and their rights as provided in s. 51.13 (3). If the department of corrections, upon review of a request for transfer, determines that transfer is appropriate, that department shall immediately notify the department of health and family services and, if the department of health and family services consents, the department of corrections may immediately transfer the individual. The department of health and family services shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county where the treatment facility is located.

History: 1975 c. 430 ss. 18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987 a. 366, 403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77, 292; 1997 a. 35; 1999 a. 9; 2001 a. 16 ss. 1967f to 1967j, 4034zi; 2003 a. 33.

SECTION 33. 51.35 (3) (b) of the statutes is amended to read:

51.35 **(3)** (b) The court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether the transfer under par. (a) of the minor to an inpatient facility is appropriate and consistent with the needs of the minor and, if the minor is 14 years of age or older and is being transferred for the purpose of receiving services for developmental disability or psychiatric services, whether consent for the transfer ~~is voluntary on the part of the minor~~ was provided by the minor and his or her parent or guardian or whether the minor was admitted under s. 51.13 (1) (c) 1. If the court is unable to make those determinations based on the petition and accompanying documents, the court may order additional information, including an independent evaluation, to be produced as necessary to make those determinations within 14 days

after admission, or the court may hold a hearing within 14 days after admission. If a notation of the minor's unwillingness appears on the face of the petition, if the transfer was made under a consent of the minor's parent or guardian despite the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel, guardian ad litem, parent, or guardian, the court shall order an independent evaluation of the minor, hold a hearing, and appoint counsel or a guardian ad litem for the minor as provided in s. 51.13 (4) (d). The minor may receive assistance from the state protection and advocacy agency designated under s. 51.62 (2) (a). At the conclusion of the hearing, the court shall approve or disapprove the request for transfer. If the minor is under the continuing jurisdiction of the court of another county, the court may order the case transferred together with all appropriate records to that court.

History: 1975 c. 430 ss. 18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987 a. 366, 403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77, 292; 1997 a. 35; 1999 a. 9; 2001 a. 16 ss. 1967f to 1967j, 4034zi; 2003 a. 33.

SECTION 34. 51.35 (3) (g) of the statutes is amended to read:

51.35 **(3)** (g) A minor 14 years of age or older who is transferred to a treatment facility under par. (a) for the purpose of receiving services for developmental disability or psychiatric services and the minor's parent or guardian may request in writing a return to the secured correctional facility, secured child caring institution, or secured group home, except that, if the minor refuses to make the request, the parent or guardian may make the request on behalf of the minor. In the case of a minor 14 years of age or older who is transferred to a treatment facility under par. (a) for the purpose of receiving services for alcoholism or drug dependency or a minor under 14 years of age, who is transferred to a treatment facility under par. (a) for the purpose of receiving services for developmental disability, alcoholism, or drug dependency, or psychiatric services, the parent or guardian may make the request.

Upon receipt of a request for return from a minor 14 years of age or older, the director shall immediately notify the minor's parent or guardian, if available. ~~The minor~~ A minor 14 years of age or older who requests and whose parent or guardian requests and a minor who was admitted under s. 51.13 (1) (c) 1. who requests discharge in writing shall be returned to the secured correctional facility, secured child caring institution, or secured group home within 48 hours after submission of the request unless a ~~petition or~~ statement is filed for emergency detention~~,~~ or a petition is filed for emergency commitment, involuntary commitment, or protective placement.

History: 1975 c. 430 ss. 18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987 a. 366, 403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77, 292; 1997 a. 35; 1999 a. 9; 2001 a. 16 ss. 1967f to 1967j, 4034zi; 2003 a. 33.

SECTION 35. 51.35 (4) (d) of the statutes is amended to read:

51.35 **(4)** (d) The director of an inpatient facility may, under the requirements of s. 51.10 (5) (c) or 51.13 (7), grant a discharge or may terminate services to any patient ~~voluntarily~~ admitted under s. 51.10 or 51.13 ~~when such patient requests a discharge. Such discharge shall conform to the requirements of s. 51.10 (5) (c) or 51.13 (7)~~.

History: 1975 c. 430 ss. 18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987 a. 366, 403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77, 292; 1997 a. 35; 1999 a. 9; 2001 a. 16 ss. 1967f to 1967j, 4034zi; 2003 a. 33.

SECTION 36. 51.45 (10) (am) of the statutes is amended to read:

51.45 **(10)** (am) A minor may apply for ~~voluntary~~ treatment directly to an approved public treatment facility, but only for those forms of treatment specified in sub. (7) (b) 5. and 7. Section 51.13 ~~shall govern voluntary~~ governs admission of a minor alcoholic to an inpatient treatment facility.

History: 1973 c. 198; 1975 c. 200, 428; 1975 c. 430 s. 80; 1977 c. 29; 1977 c. 187 ss. 44, 134, 135; 1977 c. 203 s. 106; 1977 c. 428; 1977 c. 449 s. 497; Sup. Ct. Order, 83 Wis. 2d xiii (1987); 1979 c. 32 s. 92 (11); Sup. Ct. Order, eff. 1–1–80; 1979 c. 221 ss. 417, 2200 (20); 1979 c. 300, 331, 356; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 289, 314; 1983 a. 27 ss. 1116 to 1121, 2202 (20); 1985 a. 29 s. 3202 (56); 1985 a. 139; 1985 a. 176 ss. 533 to 556, 615; 1985 a. 265; 1985 a. 332 s. 251 (1); 1987 a. 339, 366; 1989 a. 31, 336, 359; 1991 a. 39; 1993 a. 16, 27, 213, 451, 490; 1995 a. 27 ss. 3268, 3269, 9145 (1); 1995 a. 77, 225; 1997 a. 27, 35, 237; 1999 a. 9; 2001 a. 61.

SECTION 37. 51.45 (11) (a) of the statutes is amended to read:

51.45 **(11)** (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. Any law enforcement officer, or

designated person upon the request of a law enforcement officer, may assist a person who appears to be intoxicated in a public place and to be in need of help to his or her home, an approved treatment facility or other health facility, if such person consents to the proffered help. Section 51.13 ~~shall govern voluntary~~ governs admission of an intoxicated minor to an inpatient facility under this paragraph.

History: 1973 c. 198; 1975 c. 200, 428; 1975 c. 430 s. 80; 1977 c. 29; 1977 c. 187 ss. 44, 134, 135; 1977 c. 203 s. 106; 1977 c. 428; 1977 c. 449 s. 497; Sup. Ct. Order, 83 Wis. 2d xiii (1987); 1979 c. 32 s. 92 (11); Sup. Ct. Order, eff. 1–1–80; 1979 c. 221 ss. 417, 2200 (20); 1979 c. 300, 331, 356; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 289, 314; 1983 a. 27 ss. 1116 to 1121, 2202 (20); 1985 a. 29 s. 3202 (56); 1985 a. 139; 1985 a. 176 ss. 533 to 556, 615; 1985 a. 265; 1985 a. 332 s. 251 (1); 1987 a. 339, 366; 1989 a. 31, 336, 359; 1991 a. 39; 1993 a. 16, 27, 213, 451, 490; 1995 a. 27 ss. 3268, 3269, 9145 (1); 1995 a. 77, 225; 1997 a. 27, 35, 237; 1999 a. 9; 2001 a. 61.

SECTION 38. 51.47 (1) of the statutes is amended to read:

51.47 **(1)** Except as provided in subs. (2) and (3), any physician or health care facility licensed, approved, or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation, or treatment services, on an outpatient basis, for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian and may render those services to a minor under 12 years of age without obtaining the consent of or notifying the minor's parent or guardian, but only if a parent with legal custody or guardian of the minor under 12 years of age cannot be found or there is no parent with legal custody of the minor under 12 years of age. An assessment under this subsection shall conform to the criteria specified in s. 938.547 (4). Unless consent of the minor's parent or guardian is required under sub. (2), the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under s. 46.03 (18) (b).

History: 1979 c. 331; 1985 a. 281; 2001 a. 16.

INSERT 10–3

SECTION 39. 51.61 (6) (b) of the statutes is created to read:

51.61 (6) (b) If the minor is 14 years of age or older:

1. Except as provided in subd. 5., for the receipt of inpatient treatment for developmental disability or mental illness, the minor and a parent with legal custody of the minor or the minor's guardian shall execute the application, except for all of the following:

a. A refusal or inability of the minor's parent or guardian to provide written, informed consent for inpatient treatment for mental illness or developmental disability is reviewable under s. 51.13 (1) (c) 1.

b. If the minor refuses to execute an application for or consent to a transfer for inpatient treatment for mental illness or developmental disability, the minor's parent or guardian may execute the application or consent on the minor's behalf. Refusal by the minor to execute the application or consent is reviewable under ss. 51.13 (3) and (4) and 51.35 (3) (b).

2. For the receipt of inpatient treatment for alcoholism or drug abuse, a parent with legal custody of the minor or the minor's guardian shall execute the application, except as provided in s. 51.47 (2) (b), (c), and (d) and except that a refusal or inability of the minor's parent or guardian to provide written, informed consent for inpatient treatment for alcoholism or drug abuse is reviewable under s. 51.13 (1) (c) 1.

3. Except as provided in subd. 5., for the receipt of outpatient treatment for mental illness or developmental disability, the minor and a parent with legal custody of the minor or the minor's guardian shall provide written, informed consent, except for all of the following:

a. A refusal or inability of the minor's parent or guardian to provide written, informed consent is reviewable under s. 51.14 (3) and (4).

b. If the minor refuses to provide written, informed consent, the minor's parent or guardian may provide written, informed consent on behalf of the minor. Refusal by the minor to provide written, informed consent is reviewable under s. 51.14 (3) and (4).

4. For the receipt of outpatient treatment for alcoholism or drug abuse, s. 51.47 applies.

5. For the receipt of psychotropic medication as inpatient or outpatient treatment for mental illness, s. 51.135 applies.

INSERT 10–9

SECTION 40. Initial applicability.

(1) INPATIENT TREATMENT. The treatment of sections 51.13 (1) (title), (a), (b), (c) 3., (d), (e), and (f), (2), (3) (a), (b), and (c), (4) (a) (intro.), (c), (d), (g) (intro.) and 1., (h) (intro.), (6) (a) and (c), and (7) (a), 51.22 (2), 51.45 (11) (a), and 51.61 (6) (intro.) and (b) (intro.), 1., 2., and 5. of the statutes first applies to inpatient treatment applied for or received in an approved inpatient treatment facility on the effective date of this subsection, regardless of whether admission to the inpatient facility occurred or was sought prior to the effective date of this subsection.

(2) CONSENT PROVIDED FOR OUTPATIENT TREATMENT. The treatment of sections 51.14 (title), (1), (1m), (3) (a), (b) 3., (f), (g), (h) (intro.) and 1., and (j), and (4) (a) and (g) (intro.), 51.45 (10) (am), 51.47 (1), and 51.61 (6) (intro.), (b) (intro.), 3., 4., and 5. of the statutes first applies to outpatient treatment consented to or received on the effective date of this subsection, regardless of whether consent for the treatment occurred or was sought prior to the effective date of this subsection.

(3) TRANSFERS OF TREATMENT. The treatment of sections 51.35 (3) (a), (b), and (g) and (4) (d) of the statutes first applies to transfers of treatment consented to on

, the renumbering and amendment of section 51.13 (7) (b) of the statutes,

the effective date of this subsection, regardless of whether consent for the transfer was sought prior to the effective date of this subsection.

(4) DISCHARGE FROM INPATIENT FACILITIES. The treatment of sections 51.13 (7) (title), (b), and (c) and 51.325 (4) (d) of the statutes and the creation of section 51.12 (7) (b) 3. of the statutes first apply to discharges from inpatient facilities made on the effective date of this subsection, regardless of whether the discharge was sought prior to the effective date of this subsection.

(5) PSYCHOTROPIC MEDICATION. The treatment of sections 51.01 (13r), 51.135, and 51.61 (6) (intro.), (a), (b) (intro.), 1. (intro.), 3. (intro.), and 5. of the statutes first applies to the administration of psychotropic medication on the effective date of this subsection.

of the statutes, the renumbering and amendment of section 51.61 (6) of the statutes, and the creation of section

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1179/P2dn
DAK:kjf:jf

Date

To Senator Roessler:

This draft continues to be in preliminary form, because numerous questions arose in redrafting, and I would appreciate your having whoever you feel appropriate review this version. These are my questions:

1. Section 51.13 (1) (a), stats., does not seem to be congruent with s. 51.47 (2) (b), (c), and (d), stats., with respect to detoxification of up to 72 hours. Should an exception be drafted to s. 51.13 (1) (a), stats., for this circumstance? Please also see s. 51.45 (10) (am) and (11) (a), stats., and my draft of s. 51.61 (6) (b) 2.

2. I have revised s. 51.13 (1) (e) and incorporated into it the language currently in s. 51.13 (1) (f), stats., and created s. 51.13 (1) (em), to clarify that the standard for approval of admission applies to an admission under s. 51.13 (1) (c) or (d), stats., as well as to an admission under s. 51.13 (1) (a) or (b), stats. Since s. 51.13 (2), stats., is being repealed in this draft, the standards under s. 51.13 (1) also apply to a minor's private inpatient admission. To further make public and private admissions and other treatment of minors identical, I have amended s. 51.22 (2), stats. Please review.

3. Please review the treatment of s. 51.13 (3) (am) (which consolidates s. 51.13 (a) and (c), stats.); have I characterized the rights as you intend?

4. Please review the amendment to s. 51.13 (3) (b), stats., which, under this bill, applies only to a minor admitted under s. 51.13 (1) (c) 1. or 2. This paragraph currently refers to "the minor's right to consent to or refuse treatment as provided in s. 51.61 (6)". Please review ss. 51.61 (6) (b) 5. and 51.125 (1), which enable such a minor aged at least 14 (one for whom a parent refuses to consent to admission or is unavailable) to consent to psychotropic medication on his or her own behalf.

5. I have made admission, treatment, etc., of minors admitted for treatment for developmental disability identical to that for minors admitted for treatment for mental illness.

6. My notes indicate that the group present at the meeting on January 25, 2005, agreed that a review under s. 51.13 (4), stats., should be held at the request of the minor. However, under s. 51.13 (4) (a), stats., currently, the petition for review is required to be filed without exception, by the treatment director of the facility or by the director

of the center for the developmentally disabled, so it seemed to me unnecessary additionally to permit the minor to file. Moreover, under s. 51.13 (4) (d), stats., a minor (or a parent or guardian) may request a hearing. If my understanding of the minor's right is incorrect, please let me know, and I will redraft.

7. Under this draft, if a minor aged 14 or older refuses to consent to admission for inpatient treatment of mental illness or developmental disability, his or her parent or guardian may consent on the minor's behalf. Under current law, a minor aged 14 or older who has been admitted is able to request and receive discharge within 48 hours; that right is extinguished under this draft except for minors who have sought admittance and been admitted despite the refusal or other failure of a parent or guardian to consent. Under current law, any unwillingness on the part of a minor for inpatient treatment must be noted on the petition for review (s. 51.13 (4) (a) 6., stats.); in order to permit voluntary admission under s. 51.13, stats., the court must determine whether the admission is voluntary on the part of the minor (s. 51.13 (4) (d) and (g) (intro.), stats.; the court must hold a hearing to review the admission within 14 days if a notation of the minor's unwillingness appears on the face of the petition (s. 51.13 (4) (d), stats.); the court may not permit or order placement to the northern or southern centers for the developmentally disabled unless the minor approves (s. 51.13 (4) (g) 1., stats.); the director or staff of the treatment facility must file a written request with the court to determine the continued appropriateness of an admission if they observe conduct by the minor that demonstrates an unwillingness to remain at the facility (s. 51.13 (7) (c), stats.); under s. 51.35 (3) (b), stats., the court must determine whether the transfer of a minor aged 14 or older to an inpatient facility is, among other things, voluntary on the part of the minor; and under s. 51.35 (4) (c), stats., the director of an inpatient facility may discharge a patient voluntarily admitted under s. 51.13 under a best interest standard. If a notation of the minor's unwillingness appears on the face of the petition, the court must hold a hearing and appoint counsel or a guardian ad litem for the minor. I have done the following:

a. Amended s. 51.13 (4) (d), stats., so that a court must dismiss the petition, order an independent evaluation, or hold a hearing for a minor who refused to execute an application but whose parent or guardian executed it on his or her behalf.

b. Amended s. 51.13 (4) (g) (intro.), stats., to repeal the requirement that the court find that the admission is voluntary on the part of the minor, since these findings may be the result of a hearing held for a minor who refuses to execute an application.

c. Repealed s. 51.13 (4) (g) 1., stats.; should, instead, this provision be retained for a minor admitted under s. 51.13 (1) (c) 1., stats.?

d. Amended s. 51.35 (3) (b), stats., to make it similar to s. 51.13 (4) (d), as affected by this draft.

e. Not affected s. 51.35 (4) (c), stats.

8. My notes indicate that the group felt that s. 51.13 (7) (a), stats., particularly the last sentence, should be changed; however, I'm uncertain what change is sought. Please review my amendment in the *second* sentence, which provides for a minor's refusal.

Does a minor who is under 14 and who was admitted for inpatient treatment of alcoholism or other drug abuse get a review such as the one specified under this paragraph?

9. Should a minor aged 14 or older who refuses to execute an application but whose parent or guardian admits under s. 51.13 (6) (a), stats., for short–term diagnosis and evaluation, be entitled to a review under s. 51.13 (4), stats.?

10. I have accorded a minor who receives a hearing under s. 51.13 (7) (c), stats., the rights (including an independent evaluation) of a minor who receives a hearing under s. 51.13 (4) (d), stats. Also, there seem to be no standards for the court to use in making a determination under s. 51.13 (7) (c), stats., so I have required the court to use the standards specified in s. 51.13 (4) (d), stats. Please review.

11. Please review this draft's treatment of ss. 51.135 and 51.61 (6).

12. I have made the change to the definition of "outpatient mental health treatment" in s. 51.14 (1) that it was my understanding that the group requested. However, since "inpatient treatment" is not defined, this definition now may be impermissibly vague. If I misunderstood the request, please let me know and I will redraft.

13. I have made s. 51.35 (3) (b) and (g), stats., ~~ever~~ apply to a minor who is voluntarily admitted under s. 51.13 (1) (c), stats. Is this correct? Should s. 51.13 (7) apply to s. 51.35 (3) (g), stats.?

14. With regard to differentiating between outpatient and inpatient treatment, please review my amendments to s. 51.47 (1), stats.; correct? Note that this statute seems unclear as to whether *only* the parent or guardian or *also* the minor under 12 years of age need consent to outpatient treatment; do you want any change to clarify?

15. Please note that, both for inpatient treatment (s. 51.12 (1) (b), stats.) and outpatient treatment (s. 51.14 (1m), stats.), I have required that both the parent or guardian and the minor aged 14 or older consent and have specified that the parent or guardian may consent on behalf of a minor who refuses to do so. I have eliminated the authority under s. 51.14 (3) (a) and (f), stats., for a parent or guardian to seek review of the refusal of a minor aged 14 or older to provide informed consent for outpatient treatment, because the parent or guardian may override the minor's refusal. However, I have revised ss. 51.14 (3) (a) and 51.35 (3) (g), stats., to provide for an automatic review of the minor's need for outpatient treatment in the situation where the parent or guardian overrides the minor's refusal, as there is under s. 51.13 (4), stats., for such a situation involving inpatient treatment. Is this what you intend?

16. The group did not, according to my notes, address my Drafter's Note #4. for 05–1179/P1 concerning the release of records. Is s. 51.30 (5) (b) 1. and 2., stats., drafted as you wish?

17. Shouldn't s. 51.45 (10) (am), stats., apply only to a minor aged 12 or older, to be consistent with s. 51.47 (1), stats?

Please let me know what further assistance I may provide you with regard to this draft.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266–0137
E–mail: debora.kennedy@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1179/P2dn
DAK:kjf:jf

March 2, 2005

To Senator Roessler:

This draft continues to be in preliminary form, because numerous questions arose in redrafting, and I would appreciate your having whoever you feel appropriate review this version. These are my questions:

1. Section 51.13 (1) (a), stats., does not seem to be congruent with s. 51.47 (2) (b), (c), and (d), stats., with respect to detoxification of up to 72 hours. Should an exception be drafted to s. 51.13 (1) (a), stats., for this circumstance? Please also see s. 51.45 (10) (am) and (11) (a), stats., and my draft of s. 51.61 (6) (b) 2.

2. I have revised s. 51.13 (1) (e) and incorporated into it the language currently in s. 51.13 (1) (f), stats., and created s. 51.13 (1) (em), to clarify that the standard for approval of admission applies to an admission under s. 51.13 (1) (c) or (d), stats., as well as to an admission under s. 51.13 (1) (a) or (b), stats. Since s. 51.13 (2), stats., is being repealed in this draft, the standards under s. 51.13 (1) also apply to a minor's private inpatient admission. To further make public and private admissions and other treatment of minors identical, I have amended s. 51.22 (2), stats. Please review.

3. Please review the treatment of s. 51.13 (3) (am) (which consolidates s. 51.13 (a) and (c), stats.); have I characterized the rights as you intend?

4. Please review the amendment to s. 51.13 (3) (b), stats., which, under this bill, applies only to a minor admitted under s. 51.13 (1) (c) 1. or 2. This paragraph currently refers to "the minor's right to consent to or refuse treatment as provided in s. 51.61 (6)." Please review ss. 51.61 (6) (b) 5. and 51.135 (1), which enable such a minor aged at least 14 (one for whom a parent refuses to consent to admission or is unavailable) to consent to psychotropic medication on his or her own behalf.

5. I have made admission, treatment, etc., of minors admitted for treatment for developmental disability identical to that for minors admitted for treatment for mental illness.

6. My notes indicate that the group present at the meeting on January 25, 2005, agreed that a review under s. 51.13 (4), stats., should be held at the request of the minor. However, under s. 51.13 (4) (a), stats., currently, the petition for review is required to be filed without exception, by the treatment director of the facility or by the director

of the center for the developmentally disabled, so it seemed to me unnecessary additionally to permit the minor to file. Moreover, under s. 51.13 (4) (d), stats., a minor (or a parent or guardian) may request a hearing. If my understanding of the minor's right is incorrect, please let me know, and I will redraft.

7. Under this draft, if a minor aged 14 or older refuses to consent to admission for inpatient treatment of mental illness or developmental disability, his or her parent or guardian may consent on the minor's behalf. Under current law, a minor aged 14 or older who has been admitted is able to request and receive discharge within 48 hours; that right is extinguished under this draft except for minors who have sought admittance and been admitted despite the refusal or other failure of a parent or guardian to consent. Under current law, any unwillingness on the part of a minor for inpatient treatment must be noted on the petition for review (s. 51.13 (4) (a) 6., stats.); in order to permit voluntary admission under s. 51.13, stats., the court must determine whether the admission is voluntary on the part of the minor (s. 51.13 (4) (d) and (g) (intro.), stats.; the court must hold a hearing to review the admission within 14 days if a notation of the minor's unwillingness appears on the face of the petition (s. 51.13 (4) (d), stats.); the court may not permit or order placement to the northern or southern centers for the developmentally disabled unless the minor approves (s. 51.13 (4) (g) 1., stats.); the director or staff of the treatment facility must file a written request with the court to determine the continued appropriateness of an admission if they observe conduct by the minor that demonstrates an unwillingness to remain at the facility (s. 51.13 (7) (c), stats.); under s. 51.35 (3) (b), stats., the court must determine whether the transfer of a minor aged 14 or older to an inpatient facility is, among other things, voluntary on the part of the minor; and under s. 51.35 (4) (c), stats., the director of an inpatient facility may discharge a patient voluntarily admitted under s. 51.13 under a best interest standard. If a notation of the minor's unwillingness appears on the face of the petition, the court must hold a hearing and appoint counsel or a guardian ad litem for the minor. I have done the following:

a. Amended s. 51.13 (4) (d), stats., so that a court must dismiss the petition, order an independent evaluation, or hold a hearing for a minor who refused to execute an application but whose parent or guardian executed it on his or her behalf.

b. Amended s. 51.13 (4) (g) (intro.), stats., to repeal the requirement that the court find that the admission is voluntary on the part of the minor, since these findings may be the result of a hearing held for a minor who refuses to execute an application.

c. Repealed s. 51.13 (4) (g) 1., stats.; should, instead, this provision be retained for a minor admitted under s. 51.13 (1) (c) 1., stats.?

d. Amended s. 51.35 (3) (b), stats., to make it similar to s. 51.13 (4) (d), as affected by this draft.

e. Not affected s. 51.35 (4) (c), stats.

8. My notes indicate that the group felt that s. 51.13 (7) (a), stats., particularly the last sentence, should be changed; however, I'm uncertain what change is sought. Please review my amendment in the *second* sentence, which provides for a minor's refusal.

Does a minor who is under 14 and who was admitted for inpatient treatment of alcoholism or other drug abuse get a review such as the one specified under this paragraph?

9. Should a minor aged 14 or older who refuses to execute an application but whose parent or guardian admits under s. 51.13 (6) (a), stats., for short–term diagnosis and evaluation, be entitled to a review under s. 51.13 (4), stats.?

10. I have accorded a minor who receives a hearing under s. 51.13 (7) (c), stats., the rights (including an independent evaluation) of a minor who receives a hearing under s. 51.13 (4) (d), stats. Also, there seem to be no standards for the court to use in making a determination under s. 51.13 (7) (c), stats., so I have required the court to use the standards specified in s. 51.13 (4) (d), stats. Please review.

11. Please review this draft's treatment of ss. 51.135 and 51.61 (6).

12. I have made the change to the definition of "outpatient mental health treatment" in s. 51.14 (1) that it was my understanding that the group requested. However, since "inpatient treatment" is not defined, this definition now may be impermissibly vague. If I misunderstood the request, please let me know and I will redraft.

13. I have made s. 51.35 (3) (b) and (g), stats., apply to a minor who is voluntarily admitted under s. 51.13 (1) (c) 1., stats. Is this correct? Should s. 51.13 (7) apply to s. 51.35 (3) (g), stats.?

14. With regard to differentiating between outpatient and inpatient treatment, please review my amendments to s. 51.47 (1), stats.; correct? Note that this statute seems unclear as to whether *only* the parent or guardian or *also* the minor under 12 years of age need consent to outpatient treatment; do you want any change to clarify?

15. Please note that, both for inpatient treatment (s. 51.13 (1) (b), stats.) and outpatient treatment (s. 51.14 (1m), stats.), I have required that both the parent or guardian and the minor aged 14 or older consent and have specified that the parent or guardian may consent on behalf of a minor who refuses to do so. I have eliminated the authority under s. 51.14 (3) (a) and (f), stats., for a parent or guardian to seek review of the refusal of a minor aged 14 or older to provide informed consent for outpatient treatment, because the parent or guardian may override the minor's refusal. However, I have revised ss. 51.14 (3) (a) and 51.35 (3) (g), stats., to provide for an automatic review of the minor's need for outpatient treatment in the situation where the parent or guardian overrides the minor's refusal, as there is under s. 51.13 (4), stats., for such a situation involving inpatient treatment. Is this what you intend?

16. The group did not, according to my notes, address my Drafter's Note #4. for 05–1179/P1 concerning the release of records. Is s. 51.30 (5) (b) 1. and 2., stats., drafted as you wish?

17. Shouldn't s. 51.45 (10) (am), stats., apply only to a minor aged 12 or older, to be consistent with s. 51.47 (1), stats.?

Please let me know what further assistance I may provide you with regard to this draft.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266–0137
E–mail: debora.kennedy@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1179/P2dn
DAK:kjf:jf

March 2, 2005

To Senator Roessler:

This draft continues to be in preliminary form, because numerous questions arose in redrafting, and I would appreciate your having whoever you feel appropriate review this version. These are my questions:

1. Section 51.13 (1) (a), stats., does not seem to be congruent with s. 51.47 (2) (b), (c), and (d), stats., with respect to detoxification of up to 72 hours. Should an exception be drafted to s. 51.13 (1) (a), stats., for this circumstance? Please also see s. 51.45 (10) (am) and (11) (a), stats., and my draft of s. 51.61 (6) (b) 2.

2. I have revised s. 51.13 (1) (e) and incorporated into it the language currently in s. 51.13 (1) (f), stats., and created s. 51.13 (1) (em), to clarify that the standard for approval of admission applies to an admission under s. 51.13 (1) (c) or (d), stats., as well as to an admission under s. 51.13 (1) (a) or (b), stats. Since s. 51.13 (2), stats., is being repealed in this draft, the standards under s. 51.13 (1) also apply to a minor's private inpatient admission. To further make public and private admissions and other treatment of minors identical, I have amended s. 51.22 (2), stats. Please review.

3. Please review the treatment of s. 51.13 (3) (am) (which consolidates s. 51.13 (a) and (c), stats.); have I characterized the rights as you intend?

4. Please review the amendment to s. 51.13 (3) (b), stats., which, under this bill, applies only to a minor admitted under s. 51.13 (1) (c) 1. or 2. This paragraph currently refers to "the minor's right to consent to or refuse treatment as provided in s. 51.61 (6)." Please review ss. 51.61 (6) (b) 5. and 51.135 (1), which enable such a minor aged at least 14 (one for whom a parent refuses to consent to admission or is unavailable) to consent to psychotropic medication on his or her own behalf.

5. I have made admission, treatment, etc., of minors admitted for treatment for developmental disability identical to that for minors admitted for treatment for mental illness.

6. My notes indicate that the group present at the meeting on January 25, 2005, agreed that a review under s. 51.13 (4), stats., should be held at the request of the minor. However, under s. 51.13 (4) (a), stats., currently, the petition for review is required to be filed without exception, by the treatment director of the facility or by the director

of the center for the developmentally disabled, so it seemed to me unnecessary additionally to permit the minor to file. Moreover, under s. 51.13 (4) (d), stats., a minor (or a parent or guardian) may request a hearing. If my understanding of the minor's right is incorrect, please let me know, and I will redraft.

7. Under this draft, if a minor aged 14 or older refuses to consent to admission for inpatient treatment of mental illness or developmental disability, his or her parent or guardian may consent on the minor's behalf. Under current law, a minor aged 14 or older who has been admitted is able to request and receive discharge within 48 hours; that right is extinguished under this draft except for minors who have sought admittance and been admitted despite the refusal or other failure of a parent or guardian to consent. Under current law, any unwillingness on the part of a minor for inpatient treatment must be noted on the petition for review (s. 51.13 (4) (a) 6., stats.); in order to permit voluntary admission under s. 51.13, stats., the court must determine whether the admission is voluntary on the part of the minor (s. 51.13 (4) (d) and (g) (intro.), stats.; the court must hold a hearing to review the admission within 14 days if a notation of the minor's unwillingness appears on the face of the petition (s. 51.13 (4) (d), stats.); the court may not permit or order placement to the northern or southern centers for the developmentally disabled unless the minor approves (s. 51.13 (4) (g) 1., stats.); the director or staff of the treatment facility must file a written request with the court to determine the continued appropriateness of an admission if they observe conduct by the minor that demonstrates an unwillingness to remain at the facility (s. 51.13 (7) (c), stats.); under s. 51.35 (3) (b), stats., the court must determine whether the transfer of a minor aged 14 or older to an inpatient facility is, among other things, voluntary on the part of the minor; and under s. 51.35 (4) (c), stats., the director of an inpatient facility may discharge a patient voluntarily admitted under s. 51.13 under a best interest standard. If a notation of the minor's unwillingness appears on the face of the petition, the court must hold a hearing and appoint counsel or a guardian ad litem for the minor. I have done the following:

a. Amended s. 51.13 (4) (d), stats., so that a court must dismiss the petition, order an independent evaluation, or hold a hearing for a minor who refused to execute an application but whose parent or guardian executed it on his or her behalf.

b. Amended s. 51.13 (4) (g) (intro.), stats., to repeal the requirement that the court find that the admission is voluntary on the part of the minor, since these findings may be the result of a hearing held for a minor who refuses to execute an application.

c. Repealed s. 51.13 (4) (g) 1., stats.; should, instead, this provision be retained for a minor admitted under s. 51.13 (1) (c) 1., stats.?

d. Amended s. 51.35 (3) (b), stats., to make it similar to s. 51.13 (4) (d), as affected by this draft.

e. Not affected s. 51.35 (4) (c), stats.

8. My notes indicate that the group felt that s. 51.13 (7) (a), stats., particularly the last sentence, should be changed; however, I'm uncertain what change is sought. Please review my amendment in the *second* sentence, which provides for a minor's refusal.

Does a minor who is under 14 and who was admitted for inpatient treatment of alcoholism or other drug abuse get a review such as the one specified under this paragraph?

9. Should a minor aged 14 or older who refuses to execute an application but whose parent or guardian admits under s. 51.13 (6) (a), stats., for short–term diagnosis and evaluation, be entitled to a review under s. 51.13 (4), stats.?

10. I have accorded a minor who receives a hearing under s. 51.13 (7) (c), stats., the rights (including an independent evaluation) of a minor who receives a hearing under s. 51.13 (4) (d), stats. Also, there seem to be no standards for the court to use in making a determination under s. 51.13 (7) (c), stats., so I have required the court to use the standards specified in s. 51.13 (4) (d), stats. Please review.

11. Please review this draft's treatment of ss. 51.135 and 51.61 (6).

12. I have made the change to the definition of "outpatient mental health treatment" in s. 51.14 (1) that it was my understanding that the group requested. However, since "inpatient treatment" is not defined, this definition now may be impermissibly vague. If I misunderstood the request, please let me know and I will redraft.

13. I have made s. 51.35 (3) (b) and (g), stats., apply to a minor who is voluntarily admitted under s. 51.13 (1) (c) 1., stats. Is this correct? Should s. 51.13 (7) apply to s. 51.35 (3) (g), stats.?

14. With regard to differentiating between outpatient and inpatient treatment, please review my amendments to s. 51.47 (1), stats.; correct? Note that this statute seems unclear as to whether *only* the parent or guardian or *also* the minor under 12 years of age need consent to outpatient treatment; do you want any change to clarify?

15. Please note that, both for inpatient treatment (s. 51.13 (1) (b), stats.) and outpatient treatment (s. 51.14 (1m), stats.), I have required that both the parent or guardian and the minor aged 14 or older consent and have specified that the parent or guardian may consent on behalf of a minor who refuses to do so. I have eliminated the authority under s. 51.14 (3) (a) and (f), stats., for a parent or guardian to seek review of the refusal of a minor aged 14 or older to provide informed consent for outpatient treatment, because the parent or guardian may override the minor's refusal. However, I have revised ss. 51.14 (3) (a) and 51.35 (3) (g), stats., to provide for an automatic review of the minor's need for outpatient treatment in the situation where the parent or guardian overrides the minor's refusal, as there is under s. 51.13 (4), stats., for such a situation involving inpatient treatment. Is this what you intend?

16. The group did not, according to my notes, address my Drafter's Note #4. for 05–1179/P1 concerning the release of records. Is s. 51.30 (5) (b) 1. and 2., stats., drafted as you wish?

17. Shouldn't s. 51.45 (10) (am), stats., apply only to a minor aged 12 or older, to be consistent with s. 51.47 (1), stats.?

Please let me know what further assistance I may provide you with regard to this draft.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266–0137
E–mail: debora.kennedy@legis.state.wi.us

See note re DG re 14+ minors consenting w/o parent to outpt. treatment

1179/P2 HEARINGS

ADMISSIONS

51.13 (1) (c) 3. CURRENT LAW: **Hearing** on petition for admission to inpatient facility. brought by minor w/o p or g; if hearing is held, no hearing under 51.13 (4) is required

51.13 (1) (d) CURRENT LAW: **Hearing** for minor against whom petition under 51.15, 51.20, 51.45 (12) or (13) has been filed who is being admitted under 51.13 (1) (a), (b), or (c); if hearing is held, no hearing under 51.13 (4) (d) is required

51.12 (4) (d) CURRENT LAW: **Paper review** unless minor 14+ w/mi or dd was admitted unwillingly; if so, **hearing**

BILL: **Paper review** unless p or g admits minor 14+ w/mi or dd w/o consent; if so, **hearing**

SHORT TERM ADMISSIONS

51.13 (6) CURRENT LAW: **No hearing**; minor 14+ w/ mi or dd consents with p or g

BILL: **No hearing**; p or g can admit if minor 14+ w/mi or dd refuses

DISCHARGES

51.13 (7) (a) CURRENT LAW: Minor admitted under age 14 has 14th birthday; minor and p or g execute application. for admission; automatic review under 51.13 (4) (**paper review** or, if unwilling, **hearing**, unless hearing held within last 120 days)

BILL: P or g can admit if minor refuses (would automatically require **hearing** under 51.13 (4)

51.13 (7) (b), (c) CURRENT LAW: Minor 14+ w/ mi or dd and special minors can request and be granted discharge w/in 48 hrs; minor 14+ w/AODA and minors –14 who are not discharged and special minors may request **hearing**, which must be held unless hearing re minor's admission had been held within 120 days

BILL: Minor 14+ w/ mi or dd and p or g must request discharge; any minor, other than special minor may submit request for hearing to court; court must hold **hearing** if p or g refuses discharge

Q: add 120 day requirement as under current law? Yes

PSYCHOTROPIC MEDICATION

51.61 (6) CURRENT LAW: Written, informed consent of minor 14+ w/ mi or dd and p or g required; written, informed consent of p or g required for minor 14+ w/ AODA or minor –14;

refusal for inpatient admission reviewable under 51.13 (1) (c) 1. [this cross reference is wrong in current law]; refusal for outpatient treatment is reviewable under 51.14 **(hearing)**

51.135 BILL: P or g consent for minor –14; p or g and minor consent for minor 14+, except p or g can override refusal of minor. **Hearing if p or g refuses consent, but no hearing if minor refuses**

OUTPATIENT TREATMENT

51.14 (3) (a), (4) CURRENT LAW: Minor 14+ and p or g must consent (51.61 (6)); minor 14+ or p or g may petition mental health review officer for review of refusal to consent; **hearing** by mental health review officer; judicial review **(hearing)** of mh review officer decision

BILL: Minor 14+ and p or g consent; p or g can override minor's refusal; minor 14+ or p or g may petition mental health review officer for review **(hearing)** of refusal to consent, plus automatic petition for review **(hearing)** by mental health officer; judicial review **(hearing)** of mh review officer decision

TRANSFERS TO INPATIENT FACILITIES AND RETURNS TO JUVENILE FACILITIES

51.35 (3) (a), (b) CURRENT LAW: Minor 14+ w/mi or dd and p or g consent to transfer, except special minors; **paper review**. If transfer not voluntary or if hearing is otherwise requested, court must order **hearing**

BILL: Minor 14+ w/ mi or dd and p or g consent to transfer, except p or g can override; if minor refuses or if otherwise requested, ct. must order **hearing**

51.35 (3) (g) CURRENT LAW: Minor 14+ w/ mi or dd may request return and be returned within 48 hours.

BILL: Minor 14+ w/ mi or dd and p or g may request return; **no hearing**

(*) Add hearing? (No)

Kennedy, Debora

From: Kennedy, Debora
Sent: Thursday, April 21, 2005 2:41 PM
To: Rose, Laura
Subject: Mental health for minors bill

Laura, have you had a chance to look at questions 14. and 17. on the Drafter's Note for 05-1179/P2? As I look at it hard again, I don't think that my amendment to s. 51.47 (1) works, because that subsection has an exception to s. 51.47 (2) and (3)--s. 51.47 (2) (a) and (c), stats., each seem to be referring to inpatient treatment, so I've rendered the exception to sub. (2) meaningless. Back to the drawing board. Maybe it should just be left alone in that regard. However, it appears to be in conflict with s. 51.13 (1) (a) as to the age and consent factors; and it doesn't "work" with respect to s. 51.45 (10) (am). Confusing, no?

Debora A. Kennedy
Managing Attorney
Legislative Reference Bureau
(608) 266-0137
debora.kennedy@legis.state.wi.us

4/28/05: Laura Rose, in conference w/ DK:

(1) Take out amdt to s. 51.47 (1) — see above
(2) Add exception for s. 51.47 to 51.13 (1)(a)
(3) Add exception for s. 51.47 to 51.45 (10)(am).