2013 DRAFTING REQUEST

Bill

Received:	**7/10/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	
For:	**John Jagler (608) 266-9650**	By/Representing:	**Mark Florian/ Andrew Hanus/ AJ**
May Contact:	**Rep. Severson's office** **Andrew Hanus (Speaker's office)**	Drafter:	**tdodge**
		Addl. Drafters:	
Subject:	**Mental Health - detent/commit**	Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Jagler@legis.wisconsin.gov**
Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Mechanism for interested party to pursue an emergency stabilization

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Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tdodge 10/6/2013			_____ _____			
/P1	tdodge 10/13/2013	csicilia 10/14/2013	jfrantze 10/14/2013	_____ _____	sbasford 10/8/2013		State S&L
/1				_____ _____	lparisi 10/14/2013	lparisi 10/15/2013	State S&L

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
							Crime

FE Sent For:

<END>

@ intro.

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		Addl. Drafters:	
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Submit via email: **YES**
Requester's email: **Rep.Jagler@legis.wisconsin.gov**
Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Mechanism for interested party to pursue an emergency stabilization

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Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tdodge 10/6/2013			_____ _____			
/P1	tdodge	csicilia 10/8/2013	jmurphy 10/8/2013	_____ _____	sbasford 10/8/2013		State S&L

FE Sent For: /1 gjs 10/14/13 10/17

<END>

2013 DRAFTING REQUEST

Bill

Received:	**7/10/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	
For:	**Erik Severson (608) 267-2365**	By/Representing:	**AJ / Mark Florian**
May Contact:	**Rep. Jagler's office**	Drafter:	**tdodge**
		Addl. Drafters:	
Subject:	**Mental Health - detent/commit**	Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Severson@legis.wisconsin.gov**
Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Mechanism for interested party to pursue and emergency detention

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Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tdodge 10/6/2013			_____ _____			
/P1		csicilia 10/8/2013	jmurphy 10/8/2013	_____ _____	sbasford 10/8/2013		State S&L

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received:	**7/10/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	
For:	**Erik Severson (608) 267-2365**	By/Representing:	**AJ / Mark Florian**
May Contact:	**Rep. Jagler's office**	Drafter:	**tdodge**
		Addl. Drafters:	
Subject:	**Mental Health - detent/commit**	Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Severson@legis.wisconsin.gov**
Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Mechanism for interested party to pursue and emergency detention

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Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tdodge	pl gjs 10/8 13	10/8	10/8			

FE Sent For:

<END>

Dodge, Tamara

From: Florian, Mark
Sent: Wednesday, July 10, 2013 11:05 AM
To: Dodge, Tamara
Subject: Bill Draft Request: Mechanism for an Interested Party to Pursue an Emergency Detention
Attachments: BILL DRAFT REQUEST - Mechanism for an Interested Party to Pursue an Emergency Detention.docx

Hello Tamara,

Attached you will find a bill draft request from Rep. Jagler. Since mental health was listed as one of your subject areas I figured that that you would be the appropriate attorney to contact with this request. I will be sending along another draft request that involves mental health as well in a separate email. Please let me know if you have any questions or need any more information from us!

Thanks and all the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

BILL DRAFT REQUEST:
MECHANISM FOR AN INTERESTED PARTY TO PURSUE AN EMERGENCY DETENTION

FROM: MARK FLORIAN, OFFICE OF REP. JAGLER: (608) 266-9650
CONFIDENTIAL, NOT URGENT

Problem: If a family member or other interested party disagrees with a decision by law enforcement to not initiate an emergency detention or a decision by the county department to not approve an emergency detention, there is no clear ability for that family member or interested party to contest that decision or independently seek an emergency detention in a timely way.

Recommended Solution 1: To encourage better, more transparent, communication between family members and interested parties, Wisconsin should establish a standard third party emergency detention request and response form that families and interested parties may use to formally request that a county crisis agency begin to pursue an emergency detention.

Recommended Solution 2: Wisconsin should follow the lead of other states and have a statutory mechanism that gives any interested party the ability to petition a judge to order an emergency detention in a timely way.

Problem: Some county corporation counsels have interpreted Wisconsin law to mean that a probable cause hearing may only be scheduled by a county corporation counsel and that county corporation counsel must prepare any petition for commitment. This interpretation would mean that interested parties, including parties using the three party petition process, would be denied the ability to petition a court to initiate commitment proceedings if the county corporation counsel choose not to cooperate.

Recommended Solution 3: Wisconsin should explicitly permit any interested party to petition a court to pursue commitment proceedings and require corporation counsel to pursue a treatment director initiated detention to a probable cause hearing.

Key aspects of the Recommended Solutions

Does not change or reduce the standard for emergency detention/commitment. The recommended solutions do not modify the dangerousness standards or the proofs required to show dangerousness in order to initiate an emergency detention or proceed to a commitment. The recommended solutions do enable a family member or interested party to request a court act in a timely way if they disagree with how law enforcement, a county crisis agency, or corporation counsel applies the dangerousness standard.

Empowers families and others to advocate for an individual they believe is a danger to themselves or others. The recommended solutions provide a "last ditch" way for families and interested parties to attempt to protect through judicial intervention an individual with mental illness from harming themselves or from the consequences of harming another when they believe law enforcement, a county crisis agency, or a county corporation counsel are inappropriately applying the emergency detention/commitment standards.

Not a substitute for existing procedures. The new third party process cannot be a substitute for established responsibilities and procedures for emergency detention and commitment, but instead is a mechanism for empowering family or other interested parties to advocate for an individual that may be a danger to themselves or others if the family or other interested party does not believe that law enforcement, a county crisis agency, or corporation counsel is not responding appropriately.

"Loser" pays costs of the new judicial mechanism to dissuade misuse by third parties and county government. To dissuade overuse of the new third party mechanisms, government should not have to pay for court costs of a new third party petition that does not result in an emergency detention, finding of probable cause, or settlement agreement, as applicable. Thus, if a county crisis agency denies a family member or interested party's request to initiate and approve an emergency detention, and the party then petitions a court to initiate an emergency detention, the party would pay for all attorney fees and court costs if the court does not order an emergency detention. The principle would apply to initiation of commitment costs initiated without the cooperation of corporation counsel. But, neither should the county agency or corporation counsel be able to avoid responsibility by relying on third parties to initiate detentions/commitments. Thus, if the court does order an emergency detention, then the county agency that denied the request to initiate and approve the emergency detention would pay for the court costs and party's attorney fees incurred in petitioning the court. Similarly, if a court finds probable cause without the cooperation of the corporation counsel, the county would pay for the court costs and party's attorney fees incurred in preparation for the probable cause hearings.

Creates a Third Party Emergency Detention Request Form. We recommend creating in statute a standard county crisis request form that interested parties may use to request a county crisis agency to initiate and approve an emergency detention. The request form should ask the requester to provide the same type of information law enforcement would be required to provide when initiating an emergency detention.

The Request Form May Not Be a Substitute for a Law Enforcement Officer's Statement of Emergency Detention. While the information provided on a county crisis request form may be basis for the information in the law enforcement officer's statement of emergency detention under 51.15(4) or (5), we recommend that the information provided on a county crisis request form not be a substitute for a law enforcement officer's statement of emergency detention under 51.15(4) or (5).

Requires the County Crisis Agency to Respond in Writing to an Emergency Detention Request. We recommend that the county crisis department be required to respond to the family member or interested party's request within 24 hours of the request, unless the request relates to an individual in a hospital in which case the county crisis department be required to respond within 6 hours of the request.

Is different from a three party petition. This proposal is different from a three party petition in that it does not require the involvement of corporation counsel and it is not a petition for a full probable cause hearing. Instead, this is akin to a petition for a judicially ordered arrest warrant and uses the same standards that a county or law enforcement officer uses to initiate or approve an emergency detention. There would be no requirement that a hearing be held or that adversarial counsel be involved for a judge to order an emergency detention. The regular probable cause hearing and its standards would occur after the order that the individual be taken into custody under an emergency detention.

Proposed Language

SECTION 1. 51.155 of the statutes is created to read:

51.155 3rd party initiated emergency detention and evaluation

(1r) PURPOSE. The purpose of this section is not to modify or substitute statutory responsibilities of government under ch. 51, but instead to create a mechanism for providing transparency to families and interested parties on decisions made by county departments and law enforcement to not initiate or approve an emergency detention and to create a mechanism for families and interested parties to petition a court to initiate an emergency detention if they do not agree with a decision by a county department or law enforcement. Nothing herein shall be construed as creating an obligation on families or interested parties to utilize the mechanisms provided in this section.

(1) 3rd Party Request to County Department to Initiate an Emergency Detention.

(a) INITIAL CONTACT AND REQUEST. Any party may contact the county department of the individual's residence that is responsible for approving the need for an emergency detention under 51.15(2) and orally or in writing request that the county department work with law enforcement to initiate and that the county approve the need for an emergency detention under 51.15 for an individual. Upon such initial request, the county department shall advise the requesting party that they may formally make such request in writing in conformance with par. (b), and direct the requesting party to the form described in par. (b).

(b) FORMAL WRITTEN REQUEST. Any party may submit a formal written request to the county department of the individual's residence that is responsible for approving the need for an emergency detention under 51.15(2) that the county department work with law enforcement to initiate and that the county approve the need for an emergency detention under 51.15. Such formal request shall be provided on a form approved by the Department of Justice and the Department of Health Services that includes the following elements:

1. The requesting party's name, address, and contact information
2. The name and address of the individual whom the requesting party is recommending be emergently detained.
3. The requesting party's relationship to the individual whom the requester is recommending be emergently detained.
4. A statement that the requesting party has cause to believe that the individual whom the requester is recommending be emergently detained is mentally ill, drug dependent, or developmentally disabled.

5. A statement that the requesting party has cause to believe that the individual whom the requester is recommending be emergently detained evidences behavior which constitutes a substantial probability of physical harm to self or to others, or which otherwise meets the criteria set forth in s.51.15(1).
6. A statement describing specific recent dangerous behavior, including when and where the behavior occurred, if known by the requesting party, and an identification of persons who witnessed such behavior, if known by the requesting party.

(c) LIMITED CONFIDENTIALITY OF THE REQUESTER. If a formal request under par. (b) does not result in an emergency detention under s. 51.15 or a judicially ordered stabilization under this section, then any information on the completed form that would reasonably identify the requester may not be released by any recipient of the request form without the authorization of the requesting party.

(d) REQUIRED RESPONSE. The county department shall respond to formal request under sub. 2 within 24 hours of the request, unless the request relates to an individual in a hospital in which case the county department shall respond within 6 hours of the request. If following request under sub. 2, the county department does not agree to pursue or approve the need for an emergency detention under 51.15, or the applicable law enforcement agency does not agree to initiate an emergency detention under 51.15, then the county department's response to the requesting party shall be in writing on a form approved by the Department of Justice and Department of Health Services that includes the following:

1. A statement of the county department's or law enforcement agency's decision not to emergently detain the individual as requested.
2. A statement of the reasoning for not emergently detaining the individual.
3. Information to the requesting party about how to initiate a judicially ordered emergency stabilization under sub. (2) including directions to receive a copy of the petition for a judicially ordered emergency stabilization under s. 51.155(2)(c).

(e) REIMBURSEMENT OF COSTS. If a party that submits a formal request under par. (b) receives a response pursuant to par. (d) that the county department does not agree to pursue or approve an emergency detention and if such party files a petition for a judicially ordered emergency evaluation of the individual under sub. (2) and the petition ultimately results in finding of probable cause under s. 51.20(7)(c), then such party shall be entitled to a reimbursement of their attorneys fees incurred pursuing the actions under sub. (2) and s.51.20. The county department of the individual's residence shall be responsible for reimbursing the attorneys fees if the county department after receiving the request in par. (b) did not agree to pursue or approve the need for an emergency detention. The applicable law enforcement agency shall be responsible for reimbursing the attorneys fees if after the request in par. (b) the law enforcement agency did not agree to initiate an emergency detention.

(2) 3rd Party Request for a Judicially Ordered Emergency Stabilization

(a) PERSONS THAT MAY PETITION A COURT. Any person may petition a court with appropriate jurisdiction to order that an individual be taken into custody for an emergency stabilization under this sub (2).

(b) PETITION REQUIREMENTS. Such petition must contain the following:

1. A statement that the person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled.
2. A statement that the person has cause to believe that the individual is dangerous because the individual meets any of the criteria in s.51.10(1)(a)(2), s.51.10(1)(am), s.51.10(1m).
3. Detailed, specific information supporting the belief under subds. 1. and 2. and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission. The person is not required to designate in the statement whether the in individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. (Same as what is required in law enforcement ED report).
4. A statement describing current or past action that leads the person to believe that the individual will not consent to or will withdraw consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and imminently remove a substantial probability of harm to himself, herself or others or a substantial probability of physical impairment or injury to himself, herself, or others.

(c) COMMON FORM. The Department of Justice and Department of Health Services shall develop a petition form for a judicially ordered emergency stabilization under this sub. (2) that will meet the requirements under par. (b).

(d) REVIEW, ORDER AND NOTICES. Within 24 hours of the filing of the petition for an emergency stabilization, excluding Saturdays, Sundays, or legal holidays, the court shall either deny the person's petition or order that an individual be taken into custody for an emergency stabilization. The subject individual shall be detained for emergency stabilization only if the court finds cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and the individual is eligible for commitment under s.51.20(1) (a) or (am) based upon specific recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual. The order shall be carried out and notices provided in accordance with s. 51.20(2).

(e) RELEASE. When, upon the advice of the treatment staff, the director of the detention facility where the individual is placed pursuant to s.51.20(2)(d) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained pursuant to the court order in par. (d).

(f) EVALUATION, DIAGNOSIS AND TREATMENT. When an individual is detained under this section, the director and staff of the treatment facility may evaluate, diagnose and treat the individual during detention, if the individual consents. The individual has a right to

refuse medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be advised of that right by the director of the facility or his or her designee, and a report of any evaluation and diagnosis and of all treatment provided shall be filed by that person with the court.

(g) SCHEDULING OF A PROBABLE CAUSE HEARING. If the court orders that an individual be taken into custody for an emergency stabilization pursuant to par. (d), the court shall schedule a probable cause hearing as provided in s. 51.20(7) to take place no later than 72 hours following the order, excluding Saturdays, Sundays and legal holidays, except the court may order the probable cause hearing to take place at a later time if the court finds that a holding a probable cause hearing within 72 hours following the order, excluding Saturdays, Sundays and legal holidays would be unreasonable and that the time scheduled by the court for the due process hearing would be reasonable and would not violate the individual's rights to due process.

(h) PUBLIC REPRESENTATION. The corporation counsel may represent the interests of the public in the conduct of the proceedings under this section, including the drafting of papers related to the action.

(i) COSTS. If the court denies the person's petition that the individual be taken into custody for an emergency stabilization, the petitioning person shall be responsible for all court costs. If the court orders that an individual be taken into custody for an emergency stabilization and the petition followed a response under 51.155(a)4. that the county department did not agree to pursue or approve an emergency detention, then the county department shall pay for all court costs related to the petition hearing and the attorneys fees of the petitioner incurred pursuing the actions under sub. (2). If the court orders that an individual be taken into custody for an emergency stabilization and the petition followed a response under 51.155(a)4. that the applicable law enforcement agency did not agree to initiate an emergency detention, then the applicable law enforcement agency shall pay for all court costs related to the petition hearing and the attorneys fees of the petitioner incurred pursuing the actions under sub. (2).

NOTES: Question: Under the current 3- party petition provision, is a hearing required before a court issues an order for detention under 51.20(2) prior to a probable cause? If so, does 51.20(5) apply to such hearing? If so, would 51.20(5) apply to 51.155? If so, should 51.155(2) have an explicit provision clarifying that the hearing requirements of 51.20(5) do not apply.

(3) LIABILITY. Any individual who acts in accordance with this section, including making a statement or determination that an individual has or does not have mental illness or evidences or does not evidence a substantial probability of harm is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that the individual who acts in accordance with this section has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory and convincing. No individual has any obligation to make a request to initiate an emergency detention pursuant to sub. (1) or to petition a court pursuant to sub. (2).

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

(b) If the subject individual is to be detained pursuant to an order under par. (a) or an order under s. 51.155(2), a law enforcement officer shall present the subject individual with a notice of probable cause hearing, a copy of the petition under sub. (1), if applicable, and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. The officer shall orally inform the individual that he or she is being taken into custody as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition under sub. (1) or s. 51.155(2), his or her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. Any such notice may be given by telephone. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.

SECTION 3. 51.20(3) of the statutes is amended to read:

(3) LEGAL COUNSEL. At the time of the filing of the petition in sub. (1) or immediately following the filing of an order for emergency stabilization under s. 51.155(2), the court shall assure that the subject individual is represented by adversary counsel by referring the individual to the state public defender, who shall appoint counsel for the individual without a determination of indigency, as provided in s. 51.60.

SECTION 4. 51.20(7)(a) of the statutes is renumbered 51.20(7)(a)1. and 51.20(7)(a)2. is created to read:

2. After the filing of an order for emergency stabilization under s. 51.155(2), the court shall hold a hearing at the time scheduled in 51.155(2)(g) to determine whether there is probable cause to believe the individual meets the criteria for involuntary commitment under sub. (1) or (1m). The petition for emergency stabilization under s. 51.155(2) may serve as the petition for commitment under this section. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

SECTION 5. 51.20(4) of the statutes is amended to read:

(4) ~~PUBLIC REPRESENTATION~~CORPORATION COUNSEL. (a) Except as provided in ss. 51.42 (3) (ar) 1., ~~and~~ 51.437 (4m) (f), 51.155(2)(h), and pars. (b) and (c), the corporation counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

(b) If a probable cause hearing is ordered by a court pursuant to 51.155(2)(g)., all of the following shall apply:

1. The petitioner in s. 155.155(2), corporation counsel, or both may participate in the probable cause proceedings under this chapter, and either may draft and file any necessary papers related to the action.

2. If the court determines that there is probable cause to believe the individual meets the criteria for involuntary commitment under sub. (1) or (1m) and the corporation counsel did not actively advocate for a finding of probable cause, then the court shall order that the corporation counsel's county shall pay for all court costs related to the probable cause hearing and the attorney fees of the petitioner incurred pursuing the determination of probable cause and shall appoint a special counsel to serve in the role that would otherwise be served by corporation counsel for the remainder of proceedings pertaining to the individual under this section. All costs incurred by the special counsel shall be reimbursed by the county of the replaced corporation counsel.

3. If the court determines that there is not probable cause to believe the individual meets the criteria for involuntary commitment under sub. (1) or (1m), and the corporation counsel did not actively advocate for a finding of probable cause, then the petitioner in s. 155.155(2) shall be responsible for the court costs of the probable cause hearing.

(c) If a statement of emergency detention filed under s. 51.15(10), county corporation counsel shall draft and file all papers and petitions necessary to support finding of probable cause that the individual meets the criteria for involuntary commitment under sub. (1) or (1m).

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-2669/P1
TJD:.....

In: 10/6/13

Due Tues 10/8 end of day if possible

RMR

cjs

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Gen Cat

gov review

AN ACT ...; **relating to:** creating a mechanism for an interested person to request an emergency detention.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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. 51.15 (5g) of the statutes is created to read:

51.15 **(5g)** THIRD-PERSON REQUEST TO INITIATE EMERGENCY DETENTION. (a) Any person may contact the county department that is responsible for approving the need for an emergency detention in the individual's county of residence, request orally or in writing that the county department work with law enforcement to initiate an emergency detention of an individual, and request that the county approve the need

for an emergency detention under this section for that individual. Upon receiving that request, the county department shall notify the requesting person that they may formally make a request in writing that conforms with par. (b) and notify the requesting person where to obtain the form described in par. (b).

(b) Any person may submit a formal written request to the county department that is responsible for approving the need for an emergency detention in the individual's county of residence that the county department work with law enforcement to initiate, and that the county department approve the need for, an emergency detention under this section for an individual. The person shall make the formal request on a form approved by the department of justice and the department of health services that includes all of the following elements:

****NOTE: Which department should be required to create the form?

1. The requesting person's name, address, and contact information.

2. The name and address of the individual whom the requesting person is recommending for emergency detention.

3. The requesting person's relationship to the individual whom the requesting person is recommending for emergency detention.

4. A statement that the requesting person has cause to believe that the individual whom the requesting person is recommending for emergency detention is mentally ill, drug dependent, or developmentally disabled.

5. A statement that the requesting person has cause to believe that the individual whom the requesting person is recommending for emergency detention evidences behavior which manifests a substantial probability of physical harm to himself or herself or to others, or which otherwise meets the criteria under s. 51.15 (1) (a).

sub.

6. A statement describing specific recent dangerous behavior, including when and where the behavior occurred and an identification of persons who witnessed such behavior, if known by the requesting person.

****NOTE: The requested language included the phrase "if known by the requesting person" referring to the description of dangerous behavior. Presumably, an interested person would either have witnessed this behavior directly or know the witnesses who did, so I eliminated this language. Otherwise, a person who does not even know an individual may request that he or she be detained.

****NOTE: A statement of dangerous behavior would provide evidence of the criteria under s. 51.15 (1) (a) 1. to 3. for emergency detention but not under s. 51.15 (1) (a) 4. Is an interested person not allowed to seek emergency detention using s. 51.15 (1) (a) 4. as a basis?

(c) The county department shall respond to a formal request made under par. (b) within 24 hours of receiving the request, except that if the request relates to an individual in a hospital, the county department shall respond within 6 hours of receiving the request.

(d) If, in response to a formal request made under par. (b), the county department does not agree to pursue or approve the need for an emergency detention under this section, or if the applicable law enforcement agency does not agree to initiate an emergency detention under this section, the county department shall respond in writing to the requesting person on a form approved by the department of justice and the department of health services and include all of the following in the response:

initiate an emergency detention of

****NOTE: Which department should be required to create the form?

1. A statement of the county department's decision or law enforcement agency's decision not to emergently detain the individual as requested under par. (b).

2. A statement of the reasoning for not emergently detaining the individual.

reason for the decision not to initiate an emergency detention of

3. Information to the requesting party about how to initiate a judicially ordered emergency detention under sub. (5j) and directions on how to receive a copy of a form to petition for a judicially ordered emergency detention under sub. (5j) (c).

****NOTE: The description of the purpose of the request maintained the term "emergency detention" for what is judicially ordered under this new procedure. There is no evidence in the description or the requested language of how a stabilization is different from a detention, and in fact, the evaluation, diagnosis, and treatment provision is identical. Therefore, to eliminate confusion, I have incorporated this new procedure to request an emergency detention in the emergency detention section and have retained the term "emergency detention."

(e) If a formal request under par. (b) does not result in an emergency detention under this subsection or if the petition for a judicially ordered emergency detention is not granted under sub. (5j), then any information on the completed form under par. (b) that would reasonably identify the requesting person may not be released by any recipient of the request form without the consent of the requesting person.

(f) No individual person has any obligation to make a request to initiate an emergency detention under sub. (5g) or petition a court under sub. (5j).

****NOTE: I did not include the liability provision as it is already incorporated in s. 51.15. Is the remaining sentence intended to prevent someone who is harmed by an individual whose family members did not request an emergency detention from suing those family members? If so, I believe that needs to be stated explicitly.

SECTION 2. 51.15 (5r) 5j of the statutes is created to read:

51.15 **(5j)** JUDICIALLY ORDERED EMERGENCY DETENTION (a) Any person may petition a court with appropriate jurisdiction to order that an individual be taken into custody for an emergency detention under this subsection.

(b) A person submitting a petition under par. (a) shall include in the petition all of the following:

1. A statement that the person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled. The person is not required to designate in the statement whether the individual is mentally ill or drug

1 dependent or developmentally disabled. The person shall allege that he or she has
2 cause to believe that the individual evidences on or more of those conditions.

3 2. A statement that the person has cause to believe that the individual is
4 dangerous because the individual meets any of the criteria in s. 51.15 (1) (a) 1. to 4.
sub.

****NOTE: The request language included a cross–reference to the section pertaining to voluntary commitment, but I assume the intention was to reference the criteria for involuntary commitment. Since the description of the draft stated that the standards for emergency detention remain the same under this procedure, I am using the criteria for emergency detention as the standard for the judicially ordered emergency detention.

5 3. Detailed, specific information supporting the belief under subds. 1. and 2.
6 and the names of persons observing or reporting the recent overt act, attempt, or
7 threat to act or omission.

8 4. A statement describing current or past action that leads the person to believe
9 that the individual will not consent to or will withdraw consent to evaluation,
10 diagnosis, and treatment necessary to stabilize the individual and imminently
11 remove a substantial probability of harm to himself, herself, or others or a
12 substantial probability of physical impairment or injury to himself, herself, or
13 others.

****NOTE: Does the petition need to include the formal request document submitted by the requester and the response from the county agency? The information required for the formal request under sub. (5g) is different from the information required in the petition. Please note this may be a problem for the cost–shifting provisions.

****NOTE: There is a provision in s. 51.15 that makes it a felony to sign a statement of detention knowing that the information in the statement is false. Do you want a similar penalty for people submitting a formal request or filing a petition knowing that the information is false.

14 (c) The department of justice and the department of health services shall
15 develop a petition form for a person to use to request a judicially ordered emergency
16 detention under this subsection that meets the requirements of par. (b).

department

****NOTE: It may be more efficient to require only one agency to develop the form and require that agency to consult with, or obtain approval from, the other department. STET: leave as typed

department

Also, do you want one of the departments to make the form available on its Internet site or by another method of distribution.

(d) Within 24 hours of the filing of a petition for an emergency detention, excluding Saturdays, Sundays, or legal holidays, the court shall either deny the petition or order that an individual be taken into custody for an emergency detention. The court shall order that an individual be taken into custody for an emergency detention only if the court finds cause to believe that the individual is mentally ill, drug dependent, or developmentally disabled, and the individual is eligible for commitment under s. 51.15 (1) (a) 1. to 4. based upon specific recent overt acts, attempts, or threats to act or on a pattern of recent acts or omissions made by the individual. The court shall specify these findings in its order.

****NOTE: I am confused by what standard the court is using to detain the individuals under this paragraph. According to this subsection, the court is making a determination based solely on what the petitioner says. There is no hearing, correct? Is the court evaluating only the facts in the petition? Is the court also able to read the reasons by the county for not initiating an emergency detention? What if the petitioners are lying for criminal purposes or are mentally ill themselves? How will a court be able to determine that? Will an individual who is being sought to be emergently detained in this way have notice of this and be able to challenge the detention?

(e) An order by the court under par. (d) is a statement of detention and has the same effect as a petition for commitment under s. 51.20. Notwithstanding the emergency detention procedures under subs. (4) and (5), if the court orders that an individual be taken into custody for an emergency detention under par. (d), the court shall schedule a probable cause hearing as provided in s. 51.20 (7) to take place no later than 72 hours following the order, excluding Saturdays, Sundays, and legal holidays, except the court may order the probable cause hearing to take place at a later time as provided in s. 51.20 (7).

****NOTE: As far as I can understand what the requested language is designed to do, once the individual is detained under the judicially ordered emergency detention, then the procedures occur as they normally would following an emergency detention. That seems to be what the description of the draft anticipates. I have eliminated some requested language that, I believe, is unnecessary or confusing.

under in

(f) The corporation counsel may represent the interests of the public in the conduct of the proceedings under this subsection, sub. (5g) and the probable cause hearing following an emergency detention initiated or ordered under this subsection or sub. (5g), including the drafting of papers related to the action.

(g) If the court denies the person's petition that the individual be taken into custody for an emergency detention under this subsection, the petitioning person shall be responsible for all court costs. If the court orders that an individual be taken into custody for an emergency detention and the petition followed a response under sub. (5g) (d) that the county department did not agree to pursue or approve an emergency detention, then the county department shall pay for any court costs and any attorney fees of the petitioner incurred in filing and pursuing the petition under this subsection. If the court orders that an individual be taken into custody for an emergency detention and the petition followed a response under sub. (5g) (d) that the applicable law enforcement agency did not agree to initiate an emergency detention, then the applicable law enforcement agency shall pay for any court costs and any attorney fees of the petitioner incurred in filing and pursuing the petition under this subsection.

the need for

****NOTE: I did not include in this draft the cost shifting provision for the probable cause hearing. The standard for the emergency detention and involuntary commitment are not identical so shifting costs to the "loser" may be unfair. Furthermore, an individual may receive sufficient treatment during the emergency detention to negate the need for involuntary commitment.

SECTION 3. 51.15 (7) of the statutes is amended to read:

51.15 **(7)** INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of

1 detention for all reasonable direct and auxiliary costs of commitment proceedings
2 conducted under this section and s. 51.20 by the county of detention concerning
3 individuals taken into custody in the other county and shall include provisions to
4 cover the cost of any voluntary or involuntary services provided under this chapter
5 to the subject individual as a result of proceedings or conditional suspension of
6 proceedings resulting from the notification of detention. Where there is such a
7 contract binding the county where the individual is taken into custody and the
8 county where the individual is detained, the statements of detention specified in
9 subs. (4) ~~and~~, (5), and (5j) and the notification specified in sub. (4) shall be filed with
10 the court having probate jurisdiction in the county of detention, unless the subject
11 individual requests that the proceedings be held in the county in which the
12 individual is taken into custody.

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283; 2001 a. 16 ss. 1966d to 1966h, 4034zb to 4034zd, 4041d to 4041g; 2001 a 109; 2005 a. 264; 2007 a. 20; 2009 a. 28.

13 **SECTION 4.** 51.15 (9) of the statutes is amended to read:

14 51.15 **(9)** NOTICE OF RIGHTS. At the time of detention the individual shall be
15 informed by the director of the facility or such person's designee, both orally and in
16 writing, of his or her right to contact an attorney and a member of his or her
17 immediate family, the right to have an attorney provided at public expense, as
18 provided under s. 51.60, and the right to remain silent and that the individual's
19 statements may be used as a basis for commitment. The individual shall also be
20 provided with a copy of the statement of emergency detention or a copy of the court's
21 order under sub. (5j).

Insert 8-22

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283; 2001 a. 16 ss. 1966d to 1966h, 4034zb to 4034zd, 4041d to 4041g; 2001 a 109; 2005 a. 264; 2007 a. 20; 2009 a. 28.

22 **SECTION 5.** 51.20 (7) (am) of the statutes is created to read:

9

51.20 **(7)** (am) For a probable cause hearing under this subsection after an emergency detention is is ordered by a court under s. 51.15 (5j), all of the following apply:

1. The petitioner, corporation counsel, or both may participate in the probable cause proceedings under this subsection and may draft and file and necessary papers related to the action.

2. If the court determines that there is probable cause to believe the individual meets the criteria for involuntary commitment under sub. (1) or (1m) and the corporation counsel did not actively advocate for a finding of probable cause, then the court shall order that the corporation counsel's county shall pay for all court costs related to the probable cause hearing and the attorney fees of the petitioner incurred pursuing the determination of probable cause. The court shall appoint a special counsel to serve in the role that would otherwise be served by corporation counsel for the remainder of proceedings pertaining to the individual under this section. All costs incurred by the special counsel shall be reimbursed by the county of the replaced corporation counsel.

(END)

Insert 8-22

-2669

Section #. 51.20 (4) of the statutes is amended to read:

51.20 **(4)** PUBLIC REPRESENTATION. Except as provided in ss. 51.15 (5j)(f), 51.42 (3) (ar) 1. and 51.437 (4m) (f), the corporation counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1–1–80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; 2007 a. 20, 45, 116; 2009 a. 137, 258, 260; 2013 a. 20.

Dodge, Tamara

From: Hanus, Andrew
Sent: Tuesday, October 08, 2013 7:30 PM
To: Rep.Jagler; Florian, Mark; Dodge, Tamara
Cc: Scholz, AJ
Subject: Draft: Allowing Interested Persons to Request Emergency Detentions
Attachments: 13-2669_P1.pdf

Rep. Jagler,

Attached please find the bill draft that sets up a system for interested persons to request emergency detentions, as discussed by the Mental Health Task Force. In order to ensure we can get this bill on the floor in November, a co-sponsorship (with a /1 draft) would need to go out by Monday, October 14, and close on Friday, October 18. As you can see by the drafter's notes, this bill still requires some work before it is circulated. However, I think it is understood by everybody involved that some of the mental health task force bills may require modification in committee.

Tami,

Please give Rep. Jagler and his staff control over the attached bill draft.

Contact me with any questions.

Thanks,

Andrew

Andrew Hanus
Office of Assembly Speaker Vos
211 West, State Capitol
Phone: (608) 266-9171

Telephone conference with AJ: Rep Severson gives permission to return draft to Rep. Jagler.

Dodge, Tamara

From: Hanus, Andrew
Sent: Friday, October 11, 2013 1:47 PM
To: Dodge, Tamara
Cc: Rep.Jagler; Florian, Mark
Subject: Bill Draft: 2669/P1 - Response to drafters notes
Attachments: 13-2669_P1 - response to drafters notes.doc

Hi Tami,

As we discussed on the phone, attached please find Rep. Jagler's answers to your drafters notes on LRB-2669/P1. The answers are highlighted. If at all possible, we'd greatly appreciate getting a /1 of this on Monday so that Rep. Jagler can circulate it for co-sponsors then.

If any issues arise over the weekend, feel free to email me. I will be checking on this and other drafts.

Thank you so much for your work on these bills.

Andrew

Andrew Hanus
Office of Assembly Speaker Vos
211 West, State Capitol
Phone: (608) 266-9171

LRB-2669/P1
TJD:cjs:jm

2013 - 2014 LEGISLATURE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ***to amend*** 51.15 (7), 51.15 (9) and 51.20 (4); and ***to create*** 51.15 (5g),
2 51.15 (5j) and 51.20 (7) (ag) of the statutes; **relating to:** creating a mechanism
3 for an interested person to request an emergency detention.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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:

4 **SECTION 1.** 51.15 (5g) of the statutes is created to read:

5 51.15 **(5g)** THIRD-PERSON REQUEST TO INITIATE EMERGENCY DETENTION. (a) Any
6 person may contact the county department that is responsible for approving the need
7 for an emergency detention in the individual's county of residence, request orally or
8 in writing that the county department work with law enforcement to initiate an

1

2 emergency detention of an individual, and request that the county approve the need
3 for an emergency detention under this section for that individual. Upon receiving
4 that request, the county department shall notify the requesting person that they may
5 formally make a request in writing that conforms with par. (b) and notify the
6 requesting person where to obtain the form described in par. (b).
7 (b) Any person may submit a formal written request to the county department
8 that is responsible for approving the need for an emergency detention in the
9 individual's county of residence that the county department work with law
10 enforcement to initiate, and that the county department approve the need for, an
11 emergency detention under this section for an individual. The person shall make the
12 formal request on a form approved by the department of justice and the department
13 of health services that includes all of the following elements:

****NOTE: Which department should be required to create the form? [Response: DHS should create the form but both DOJ and DHS should approve the form.]

14 1. The requesting person's name, address, and contact information.
15 2. The name and address of the individual whom the requesting person is
16 recommending for emergency detention.
17 3. The requesting person's relationship to the individual whom the requesting
18 person is recommending for emergency detention.
19 4. A statement that the requesting person has cause to believe that the
20 individual whom the requesting person is recommending for emergency detention
21 is mentally ill, drug dependent, or developmentally disabled.
22 5. A statement that the requesting person has cause to believe that the
23 individual whom the requesting person is recommending for emergency detention
24 evidences behavior which manifests a substantial probability of physical harm to

1

2 himself or herself or to others, or which otherwise meets the criteria under sub. (1)

3 (a).

4 6. A statement describing specific recent dangerous behavior, including when

5 and where the behavior occurred and an identification of persons who witnessed

6 such behavior, if known by the requesting person.

****NOTE: The requested language included the phrase "if known by the requesting person" referring to the description of dangerous behavior. Presumably, an interested person would either have witnessed this behavior directly or know the witnesses who did, so I eliminated this language. Otherwise, a person who does not even know an individual may request that he or she be detained. [Response: Drafter's rationale and language makes sense.]

****NOTE: A statement of dangerous behavior would provide evidence of the criteria under s. 51.15 (1) (a) 1. to 3. for emergency detention but not under s. 51.15 (1) (a) 4. Is an interested person not allowed to seek emergency detention using s. 51.15 (1) (a) 4. as a basis? [Response: The desire is for 51.15(1)(a)4. to be included. That said, per the note on page 5, please revise the requirements in this sub (b) to better align with the required statements in 5j(b) per your recommendation.]

7 (c) The county department shall respond to a formal request made under par.

8 (b) within 24 hours of receiving the request, except that if the request relates to an

9 individual in a hospital, the county department shall respond within 6 hours of

10 receiving the request.

11 (d) If, in response to a formal request made under par. (b), the county

12 department does not agree to pursue or approve the need for an emergency detention

13 under this section, or if the applicable law enforcement agency does not agree to

14 initiate an emergency detention under this section, the county department shall

15 respond in writing to the requesting person on a form approved by the department

16 of justice and the department of health services and include all of the following in the

17 response:

****NOTE: Which department should be required to create the form? [Response: DHS should create the form but both DOJ and DHS should approve the form.]

18 1. A statement of the county department's decision or law enforcement agency's

19 decision not to initiate an emergency detention of the individual as requested under

20 par. (b).

1

2 2. A statement of the reason for the decision not to initiate an emergency

3 detention of the individual.

4 3. Information to the requesting party about how to initiate a judicially ordered

5 emergency detention under sub. (5j) and directions on how to receive a copy of a form

6 to petition for a judicially ordered emergency detention under sub. (5j) (c).

****NOTE: The description of the purpose of the request maintained the term "emergency detention" for what is judicially ordered under this new procedure. There is no evidence in the description or the requested language of how a stabilization is different from a detention, and in fact, the evaluation, diagnosis, and treatment provision is identical. Therefore, to eliminate confusion, I have incorporated this new procedure to request an emergency detention in the emergency detention section and have retained the term "emergency detention." [Response: The drafter's rationale to keep the terms consistent makes sense. However, to make the 51.15 "emergency detention" process sound more clinical and less criminal, please replace the phrase "emergency detention" with the phrase "emergency stabilization" throughout this bill and throughout chapter 51. But, if the word "detention" or "detained" appears in the statute by itself, do not change that word.]

7 (e) If a formal request under par. (b) does not result in an emergency detention

8 under this subsection or if the petition for a judicially ordered emergency detention

9 is not granted under sub. (5j), then any information on the completed form under par.

10 (b) that would reasonably identify the requesting person may not be released by any

11 recipient of the request form without the consent of the requesting person.

12 (f) No person has any obligation to make a request to initiate an emergency

13 detention under sub. (5g) or petition a court under sub. (5j).

****NOTE: I did not include the liability provision as it is already incorporated in s. 51.15. Is the remaining sentence intended to prevent someone who is harmed by an individual whose family members did not request an emergency detention from suing those family members? If so, I believe that needs to be stated explicitly. [RESPONSE: The intention of the purpose statement in the requested language was to make it clear to counties that they still have their responsibility described in 51.42(1)(b) and elsewhere to "ensuring that those individuals in need of such emergency services found within its county receive immediate emergency services." Some are concerned that some counties will view the new mechanisms in this bill as letting them off the hook of that responsibility (and cost). In other words, there are concerns that some counties will use these new provisions to justify never pursuing an emergency detention unless an interested party submits a formal written request, or worse, will not pursue an emergency detention on their own and leave it up to an interested party to pursue the emergency detention under 51.15(5j). The desire of the purpose statement was to make it as clear as possible to the 72 counties that these new provisions do not change their obligations to pursue an emergency detention but rather simply creates a right for interested parties in those cases where the interested party does not believe the county is fulfilling its obligation. Thus, the intent of the sentence on lines 11-12, which originally accompanied that purpose statement, was to make it clear to both counties and individuals, that just because an individual now has a right to make the request or make the petition, they do not have an obligation to pursue those actions. The county still has the primary obligation to ensure an individual in need of emergency services receives immediate emergency services. Could the drafter suggest some language to make that intent clearer in the statute? That said, it does also make sense for the drafter to add explicit language to address the scenario identified by the drafter.]

14 **SECTION 2.** 51.15 (5j) of the statutes is created to read:

15 51.15 **(5j)** JUDICIALLY ORDERED EMERGENCY DETENTION (a) Any person may

16 petition a court with appropriate jurisdiction to order that an individual be taken

17 into custody for an emergency detention under this subsection.

18 (b) A person submitting a petition under par. (a) shall include in the petition

19 all of the following:

1

2 1. A statement that the person has cause to believe that the individual is
3 mentally ill, is drug dependent, or is developmentally disabled. The person is not
4 required to designate in the statement whether the individual is mentally ill or drug
5 dependent or developmentally disabled. The person shall allege that he or she has
6 cause to believe that the individual evidences one or more of those conditions.
7 2. A statement that the person has cause to believe that the individual is
8 dangerous because the individual meets any of the criteria in sub. (1) (a) 1. to 4.

****NOTE: The request language included a cross-reference to the section pertaining to voluntary commitment, but I assume the intention was to reference the criteria for involuntary commitment. Since the description of the draft stated that the standards for emergency detention remain the same under this procedure, I am using the criteria for emergency detention as the standard for the judicially ordered emergency detention. [Response: The drafter's rationale makes sense.]

9 3. Detailed, specific information supporting the beliefs under subds. 1. and 2.
10 and the names of persons observing or reporting the recent overt act, attempt, or
11 threat to act or omission.
12 4. A statement describing current or past action that leads the person to believe
13 that the individual will not consent to or will withdraw consent to evaluation,
14 diagnosis, and treatment necessary to stabilize the individual and imminently
15 remove a substantial probability of harm to himself, herself, or others or a
16 substantial probability of physical impairment or injury to himself, herself, or
17 others.

****NOTE: Does the petition need to include the formal request document submitted by the requester and the response from the county agency? [REPSONSE: Please add that requirement, but only make it a requirement if the request was submitted by the petitioner.] The information required for the formal request under sub. (5g) is different from the information required in the petition. Please note this may be a problem for the cost-shifting provisions. [RESPONSE: Please revise the requirements in (5g) (b) to better align with the required statements in 5j(b) per your recommendation.]

****NOTE: There is a provision in s. 51.15 that makes it a felony to sign a statement of detention knowing that the information in the statement is false. Do you want a similar penalty for people submitting a formal request or filing a petition knowing that the information is false. [RESPONSE: Yes.]

1 (c) The department of justice and the department of health services shall
2 develop a petition form for a person to use to request a judicially ordered emergency
3 detention under this subsection that meets the requirements of par. (b).

****NOTE: It may be more efficient to require only one department to develop the form and require that department to consult with, or obtain approval from, the other department. Also, do you want one of the departments to make the form available on its Internet site or by another method of distribution. [RESPONSE: Have DOJ create this form; but have it approved by DOJ and DHS. Have the document on DOJ's website, with a link to it on DHS's website.]

4 (d) Within 24 hours of the filing of a petition for an emergency detention,
5 excluding Saturdays, Sundays, and legal holidays, the court shall either deny the
6 petition or order that an individual be taken into custody for an emergency detention.
7 The court shall order that an individual be taken into custody for an emergency
8 detention only if the court finds cause to believe that the statements made in the petition are reliable, that the individual is mentally ill,
9 drug dependent, or developmentally disabled, and that the individual is eligible for
10 detention under sub. (1) (a) 1. to 4. based upon specific recent overt acts, attempts,
11 or threats to act or on a pattern of recent acts or omissions made by the individual.
12 The court shall specify these findings in its order.

****NOTE: I am confused by what standard the court is using to detain the individuals under this paragraph. According to this subsection, the court is making a determination based solely on what the petitioner says. There is no hearing, correct? [Correct, like a bench warrant] Is the court evaluating only the facts in the petition? [yes.] Is the court also able to read the reasons by the county for not initiating an emergency detention? [yes, if the petitioner made a formal request under (5g). See the response to the note on page 5.] What if the petitioners are lying for criminal purposes or are mentally ill themselves? How will a court be able to determine that? [These questions are just as relevant in a situation in which a law enforcement officer takes a person into custody under 51.15(1) when the acts are not viewed by the law enforcement officer. 51.15(1)(b)2. Allows a law enforcement officer's belief to be based on an act that is "reliably reported to the officer...by any other person." Consistent with s.51.15(1)(b)2., please add the additional language highlighted in lines 8 and 9 above.] Will an individual who is being sought to be emergently detained in this way have notice of this and be able to challenge the detention? [No, just as an individual does not have notice of a law enforcement officer gathering information and evaluating whether to take a person into custody under 51.15(1). Similarly, it is my understanding that an individual does not receive notice of a complaint and warrant process under s.968.04.] [Also, please re-review Section 3 of the requested language that amended 51.20(3) to make it clear that the "petition" discussed in that subsection is a petition for commitment and not the new petition for emergency detention. Section 2 of the requested language also made similar clarifications to 51.20(2)(b) Is there a reason why those clarifications should not be made?]

13 (e) An order by the court under par. (d) is a statement of emergency detention
14 and has the same effect as a petition for commitment under s. 51.20.
15 Notwithstanding the emergency detention procedures under subs. (4) and (5), if the
16 court orders that an individual be taken into custody for an emergency detention
17 under par. (d), the court shall schedule a probable cause hearing as provided in s.
18 51.20 (7) to take place no later than 72 hours following the order, excluding

1

2 Saturdays, Sundays, and legal holidays, except the court may order the probable

3 cause hearing to take place at a later time as provided in s. 51.20 (7) or if the court determines that holding the hearing within 72 hours, excluding Saturdays, Sundays, and legal holidays would be unreasonable.

****NOTE: As far as I can understand what the requested language is designed to do, once the individual is detained under the judicially ordered emergency detention, then the procedures occur as they normally would following an emergency detention. That seems to be what the description of the draft anticipates. [Yes] I have eliminated some requested language that, I believe, is unnecessary or confusing. [The simplification is appreciated. However, please add the underlined language.]

4 (f) The corporation counsel may represent the interests of the public in the

5 conduct of the proceedings under this subsection and in the probable cause hearing

6 following an emergency detention ordered under this subsection, including the

7 drafting of papers related to the action.

8 (g) If the court denies the person's petition that the individual be taken into

9 custody for an emergency detention under this subsection, the petitioning person

10 shall be responsible for all court costs. If the court orders that an individual be taken

11 into custody for an emergency detention and the petition followed a response under

12 sub. (5g) (d) that the county department did not agree to pursue or approve the need

13 for an emergency detention, then the county department shall pay for any court costs

14 and any attorney fees of the petitioner incurred in filing and pursuing the petition

15 under this subsection. If the court orders that an individual be taken into custody

16 for an emergency detention and the petition followed a response under sub. (5g) (d)

17 that the applicable law enforcement agency did not agree to initiate an emergency

18 detention, then the applicable law enforcement agency shall pay for any court costs

19 and any attorney fees of the petitioner incurred in filing and pursuing the petition

20 under this subsection.

****NOTE: I did not include in this draft the cost shifting provision for the probable cause hearing. The standard for the emergency detention and involuntary commitment are not identical so shifting costs to the "loser" may be unfair. Furthermore, an individual may receive sufficient treatment during the emergency detention to negate the need for involuntary commitment. [ok].

21 **SECTION 3.** 51.15 (7) of the statutes is amended to read:

51.15 **(7)** INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings conducted under this section and s. 51.20 by the county of detention concerning individuals taken into custody in the other county and shall include provisions to cover the cost of any voluntary or involuntary services provided under this chapter to the subject individual as a result of proceedings or conditional suspension of proceedings resulting from the notification of detention. Where there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention specified in subs. (4) and, (5), and (5j) and the notification specified in sub. (4) shall be filed with the court having probate jurisdiction in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody.

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

51.15 **(9)** NOTICE OF RIGHTS. At the time of detention the individual shall be informed by the director of the facility or such person's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, as provided under s. 51.60, and the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual shall also be provided with a copy of the statement of emergency detention or a copy of the court's order under sub. (5j).

1

2 **SECTION 5.** 51.20 (4) of the statutes is amended to read:

3 51.20 **(4)** PUBLIC REPRESENTATION. Except as provided in ss. 51.15 (5j) (f), 51.42

4 (3) (ar) 1., and 51.437 (4m) (f), the corporation counsel shall represent the interests

5 of the public in the conduct of all proceedings under this chapter, including the

6 drafting of all necessary papers related to the action. If a statement of emergency detention is filed under 51.15(10), the corporation counsel shall draft and file all papers and petitions necessary to support a finding of probable cause that the detained individual meets the criteria for involuntary commitment under sub. (1) or (1m).

[QUESTION: Does new 51.20(7)(ag) need to be excepted out as well?] [Also, please add the underlined language to line 5. This addresses a concern that some county corporation counsel will not schedule or advance a probable cause hearing for emergency detentions initiated by a psychiatrist under 51.15(10).]

7 **SECTION 6.** 51.20 (7) (ag) of the statutes is created to read:

8 51.20 **(7)** (ag) For a probable cause hearing under this subsection after an

9 emergency detention is ~~is~~ ordered by a court under s. 51.15 (5j), all of the following

10 apply:

11 1. The petitioner, corporation counsel, or both may participate in the probable

12 cause proceedings under this subsection and may draft and file any necessary papers

13 related to the action.

14 2. If the court determines that there is probable cause to believe the individual

15 meets the criteria for involuntary commitment under sub. (1) or (1m) and the

16 corporation counsel did not actively advocate for a finding of probable cause, then the

17 court shall order that the corporation counsel's county shall pay for all court costs

18 related to the probable cause hearing and the attorney fees of the petitioner incurred

19 pursuing the determination of probable cause. The court shall appoint a special

20 counsel to serve in the role that would otherwise be served by corporation counsel for

21 the remainder of proceedings pertaining to the individual under this section. All

22 costs incurred by the special counsel shall be reimbursed by the county of the

23 replaced corporation counsel.

24 **(END)**