2013 DRAFTING REQUEST

Bill

Received:	**8/9/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	**-1213**
For:	**Legislative Council - JLC 608-266-0680**	By/Representing:	**Brian Larson / Rep. Ballweg**
May Contact:		Drafter:	**tdodge**
Subject:	**Mental Health - detent/commit**	Addl. Drafters:	
		Extra Copies:	

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

Pre Topic:

No specific pre topic given

Topic:

Emergency detention, involuntary commitment, and privileged communications and information

---

Instructions:

WLC: 0073/5. Companion to SB 127 (13-1213)

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	tdodge 8/9/2013	scalvin 8/14/2013	rschluet 8/14/2013	_____ _____	sbasford 8/14/2013	mbarman 8/23/2013	

FE Sent For:

→ Not Needed

<END>

2013 DRAFTING REQUEST

Bill

Received:	**8/9/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	**-1213**
For:	**Legislative Council - JLC 608-266-0680**	By/Representing:	**Brian Larson / Rep. Ballweg**
May Contact:		Drafter:	**tdodge**
Subject:	**Mental Health - detent/commit**	Addl. Drafters:	
		Extra Copies:	

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

Pre Topic:

No specific pre topic given

Topic:

Emergency detention, involuntary commitment, and privileged communications and information

---

Instructions:

WLC: 0073/5. Companion to SB 127 (13-1213)

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	tdodge 8/9/2013	scalvin 8/14/2013	rschluet 8/14/2013	_____ _____	sbasford 8/14/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received:	**8/9/2013**	Received By:	**tdodge**
Wanted:	**As time permits**	Same as LRB:	**-1213**
For:	**Legislative Council - JLC 608-266-0680**	By/Representing:	**Brian Larson / Rep. Ballweg**
May Contact:		Drafter:	**tdodge**
Subject:	**Mental Health - detent/commit**	Addl. Drafters:	
		Extra Copies:	

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

Pre Topic:

No specific pre topic given

Topic:

Emergency detention, involuntary commitment, and privileged communications and information ✓

Instructions:

WLC: 0073/5. Companion to SB 127 (13-1213)

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	tdodge	/1 sac 08/14/2013	8/14/13	_____			
				_____			

FE Sent For:

<END>

Dodge, Tamara

From: Larson, Brian
Sent: Saturday, August 03, 2013 3:58 PM
To: Dodge, Tamara
Cc: Mautz, Kelly
Subject: Assembly Companion to 2013 SB 127

Hi Tami,

I'm contacting you with a request - and this time it's an easy one!

We received a request for an Assembly companion to one of the bills from the Joint Legislative Council (ch. 51):
2013 SB 127 (https://docs.legis.wisconsin.gov/2013/related/proposals/sb127) 13-1213/1

The request comes from Rep. Ballweg's office, in her capacity as co-chair of JLC. The intent is for the Joint Legislative Council to serve as the author of the bill, just as with the Senate version. Text to read exactly as in the Senate version, with identical notes, etc.

If you have any questions for the Ballweg office, the person with whom we've been dealing is Vince.

I am out next week, returning on Aug 12. I am cc'ing Kelly Mautz on this e-mail, as she is the person in our office who coordinates JLC bills. If you have any questions before I return, please feel free to contact Kelly directly. Also, when the bill is ready for introduction, if LRB needs someone from LC to sign off on anything, Kelly should be the main point of contact.

My cell # is 608-216-4331. Feel free to call me next week as well.

Brian Larson
Staff Attorney
Wisconsin Legislative Council
(608) 266-0680

In: 8/9/2013

2898/1

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-1213/1
TJD:sac:jm

Companion redraft maker run

2013 SENATE BILL 127

Companion - no changes

April 3, 2013 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Health and Human Services.

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

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51.

The bill makes the following changes to Wisconsin laws dealing with emergency detention, involuntary commitment, and privileged communications and information:

1. Current law allows a law enforcement officer or other specified persons to take a person into custody on an emergency detention basis if certain criteria are met. The bill modifies this statute to require a determination "...that taking the person into custody is the least restrictive alternative appropriate to the person's needs." [SECTION 2.]

2. Current law provides standards for emergency detention and involuntary commitment. The 3rd standard of dangerousness allows for commitment if there is a substantial probability of physical impairment or injury to himself or herself due to impaired judgment. The bill modifies this language to also include a substantial probability of physical impairment or injury to others. [SECTIONS 2 and 11.]

3. Under current law, an emergency detention of an individual under the 4th standard of dangerousness must be due to the individual's mental illness or drug dependency, which results in the individual's inability to satisfy certain basic needs which will result in death or serious harm to the individual. The bill deletes the reference to drug dependency from the 4th standard of emergency detention, to make this standard consistent with the 4th standard for involuntary commitment. [SECTION 2.]

4. The bill creates a "purpose" statement for the emergency detention statute. The statement says that the purpose of emergency detention is to provide, on an emergency basis, treatment by the least restrictive means possible, to individuals who meet all of the following criteria: (a) are mentally ill, drug dependent, or developmentally disabled; (b) evidence one of the statutory standards of dangerousness; and (c) are reasonably believed to be unable or unwilling to cooperate with voluntary treatment. [SECTION 3.]

5. The bill provides that the county department may approve an emergency detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others. [SECTION 4.]

6. Under current law, emergency detention may occur in a hospital approved by the department of health services as a detention facility or under contract with the county department, an approved public treatment facility, a center for the developmentally disabled, a state treatment facility, or an approved private treatment facility if the facility agrees to detain the individual. The bill consolidates the references to these facilities to provide that detention may occur in a treatment facility approved by the department or county department, if the facility agrees to detain the individual, or a state treatment facility. [SECTIONS 4, 13, and 14.]

7. Current law provides that upon arrival at an emergency detention facility, the custody of the individual who is the subject of an emergency detention is transferred to the facility. However, current law does not specify when custody begins prior to the individual's arrival at a facility. The bill provides that an individual is deemed to be in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child or juvenile into custody, for the purposes of emergency detention. [SECTION 6.]

8. Current law provides different procedures for emergency detention in counties with a population of 500,000 or more and those with a population of less than 500,000. The bill increases the population threshold to 750,000, so that those procedures will continue to apply only to Milwaukee County. [SECTIONS 7 and 10.]

9. Current law in counties with a population of 500,000 or more requires that the treatment director of the facility in which the person is detained, or his or her designee, must determine within 24 hours whether the person is to be detained. If the individual

is detained, the treatment director or designee may supplement in writing the statement filed by the law enforcement officer or other person undertaking the emergency detention. The bill modifies this statute to provide that when calculating the 24 hours, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non–psychiatric medical conditions of the individual shall be excluded from the calculation. [SECTIONS 8 and 9.]

10. Current law provides that an individual must be informed of his or her rights, by the director of the emergency detention facility, at the time of detention. The bill amends this provision to state that the individual must be informed of his or her rights at the time of the individual's arrival at the emergency detention facility. [SECTION 10.]

11. Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. This bill amends this provision to specify that the hearing must be held within 72 hours after the individual is taken into custody.

Also under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody. [SECTION 14.]

12. Generally, current law provides that the first order of involuntary commitment is for up to 6 months, and all subsequent consecutive orders of commitment are for up to one year. However, current law provides that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365–day period. The bill eliminates that provision with respect to persons committed under the 4th standard of dangerousness. [SECTION 16.]

13. Current law provides that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision. The bill repeals this provision. [SECTION 17.]

14. Current law provides that a patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, among the patient and various specified health care providers, including physicians, psychologists, social workers, marriage and family therapists, and professional counselors. Current law also provides that there is no privilege for communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness or various other types of proceedings. The bill modifies this exception to the privilege statute to substitute "commitment" for "hospitalization" and to refer to "probable cause or final proceedings" to commit the patient for mental illness under s. 51.20. [SECTION 19.]

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

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

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

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

NOTE: The amendment adds a criterion that must be considered when determining whether to take a person into custody for an emergency detention: that taking the person into custody is the least restrictive alternative appropriate to the person's needs.

3. A substantial probability of physical impairment or injury to himself or herself or other individuals due to impaired judgment, as manifested by evidence of a recent act or omission. The probability of physical impairment or injury is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community under this subdivision.

NOTE: This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial probability of an injury or impairment to others due to an individual's impaired judgment.

4. Behavior manifested by a recent act or omission that, due to mental illness ~~or drug dependency~~, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical

debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness ~~or drug dependency~~. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision. Food, shelter or other care provided to an individual who is substantially incapable of providing the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subdivision.

NOTE: This amendment deletes references to drug dependency from the 4th standard of dangerousness for emergency detentions which makes this 4th standard consistent with the 4th standard of dangerousness for commitment under s. 51.20 (1) (a) 2. d.

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

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

1. Are mentally ill, drug dependent, or developmentally disabled.

2. Evidence one of the standards set forth in par. (ar) 1. to 4.

3. Are reasonably believed to be unable or unwilling to cooperate with voluntary treatment.

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

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

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

NOTE: The amendment consolidates references to the types of facilities that may be used for emergency detention. Under the amendment, a person may be detained in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or in a state treatment facility. Section 51.01 (19), stats., defines a "treatment facility" as "any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs."

Section 51.01 (15), stats., defines "state treatment facility" as "any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes."

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

51.15 **(3)** CUSTODY. An individual is in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take

a child into custody under ch. 48 or to take a juvenile into custody under ch. 938, for the purposes of emergency detention. Upon arrival at the facility, under sub. (2), custody of the individual is ~~deemed to be in the custody of~~ transferred to the facility.

NOTE: Current law provides that an emergency detention facility has custody of an individual when the individual arrives at the facility. However, current law does not specify how it is determined who has custody of an individual before arrival at the facility. This amendment specifies that an individual is deemed to be "in custody" when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938, for the purposes of emergency detention. Upon arrival at the facility, custody of the individual is transferred to the facility.

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

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

NOTE: Emergency detention procedures for Milwaukee County differ from the procedures in the rest of the state. This amendment raises the Milwaukee County population threshold from 500,000 to 750,000, to ensure that Dane County, the only other Wisconsin county whose population is approaching 500,000, is not made subject to these special procedures.

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

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

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

51.15 **(4)** (c) When calculating the 24 hours under par. (b) in which a treatment director determines whether an individual should be detained, any period delaying that determination that is directly attributable to evaluation or stabilizing

treatment of non–psychiatric medical conditions of the individual is excluded from the calculation.

NOTE: The amendment to s. 51.15 (4) (b) and creation of s. 51.15 (4) (c) tolls the 24–hour time period for the treatment director's determination as to whether the individual should be detained, if the subject individual must be evaluated and treated for non–psychiatric medical conditions.

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

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

is taken into custody for the purposes of emergency detention, exclusive of Saturdays, Sundays, and legal holidays.

NOTE: This amendment provides that this emergency detention procedure applies in counties with a population less than 750,000.

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

NOTE: Under current law, an individual must be informed at the time of emergency detention regarding the individual's rights as a person under an emergency detention. This amendment specifies that the individual must be informed of these rights at the time the individual in custody arrives at the facility.

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

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

shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2. c.

NOTE: This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial probability of injury or impairment to others due to an individual's impaired judgment.

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

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

hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.

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

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

NOTE: The amendments to this statute reflect the changes in SECTION 4 of the draft.

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

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

NOTE: Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. This amendment specifies that the hearing must be held within 72 hours after the individual is taken into custody.

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

NOTE: See the NOTE to SECTION 4.

(8) (bm) If, within 90 days from the date of the waiver under par. (bg), the subject individual fails to comply with the settlement agreement approved by the court under par. (bg), the counsel designated under sub. (4) may file with the court a statement of the facts which constitute the basis for the belief that the subject individual is not in compliance. The statement shall be sworn to be true and may be based on the information and belief of the person filing the statement. Upon receipt of the statement of noncompliance, the court may issue an order to detain the subject individual pending the final disposition. If the subject individual is detained under this paragraph, the court shall hold a probable cause hearing within 72 hours from the time ~~of detention~~ that the person is taken into custody under s. 51.15 for this paragraph, excluding Saturdays, Sundays and legal holidays or, if the probable cause hearing was held prior to the approval of the settlement agreement under par. (bg), the court shall hold a final hearing within 14 days from the time of detention. If a jury trial is requested later than 5 days after the time of detention under this

paragraph, but not less than 48 hours before the time of the final hearing, the final hearing shall be held within 21 days from the time of detention. The facts alleged as the basis for commitment prior to the waiver of the time periods for hearings under par. (bg) may be the basis for a finding of probable cause or a final disposition at a hearing under this paragraph.

NOTE: Under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody.

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

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

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

NOTE: Section 51.20 (13) (g) 2. applies to persons involuntarily committed based on the 4th standard of dangerousness and states as follows:

"51.20 (13) (g) 2. Any commitment ordered under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. d., may not continue longer than 45 days in any 365–day period."

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

NOTE: Section 51.20 (13) (g) 2m. states as follows:

"51.20 (13) (g) 2m. In addition to the provisions under subds. 1. and 2., no commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date of release on parole or extended supervision, as determined under s. 302.11 or 302.113, whichever is applicable."

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

51.20 **(13)** (g) 2r. Twenty–one days prior to expiration of the period of commitment under subd. 1., ~~2., or 2m.,~~ the department, if the individual is committed to the department, or the county department to which an individual is committed

shall file an evaluation of the individual and the recommendation of the department or county department regarding the individual's recommitment with the committing court and provide a copy of the evaluation and recommendation to the individual's counsel and the counsel designated under sub. (4). If the date for filing an evaluation and recommendation under this subdivision falls on a Saturday, Sunday or legal holiday, the date which is not a Saturday, Sunday or legal holiday and which most closely precedes the evaluation and recommendation filing date shall be the filing date. A failure of the department or the county department to which an individual is committed to file an evaluation and recommendation under this subdivision does not affect the jurisdiction of the court over a petition for recommitment.

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

905.04 **(4)** (a) *Proceedings for ~~hospitalization~~ commitment, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in probable cause or final proceedings to ~~hospitalize~~ commit the patient for mental illness under s. 51.20, to appoint a guardian in this state, for court–ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of ~~hospitalization~~ commitment, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

NOTE: This amendment changes a reference from "hospitalization" to "commitment," in the statute that provides that there is no evidentiary privilege as to communications and information relevant to an issue in probable cause or final proceedings in a commitment proceeding under s. 51.20, stats.

(END)

Barman, Mike

From: Dodge, Tamara
Sent: Friday, August 23, 2013 8:34 AM
To: Barman, Mike
Subject: Jacketing

Mike,

Could you jacket 13-2898/1 for the Assembly. It should be sent to Legislative Council. (That's already on the request sheet.)

Thanks,
Tami

Tamara J. Dodge
Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov