

# State of Wisconsin



1995 Senate Bill 119

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## 1995 WISCONSIN ACT 268

AN ACT *to renumber and amend* 51.20 (7) (d), 51.61 (1) (g) 4., 51.67, 880.01 (7m), 971.14 (3) (dm) and 971.16 (3); *to amend* 975.06 (7); and *to create* 51.67 (1) and (2) of the statutes; **relating to:** modifying the standards for incompetency to refuse medication or treatment and to refuse psychotropic medication.

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

**SECTION 1.** 51.20 (7) (d) of the statutes is renumbered 51.20 (7) (d) (intro.) and amended to read:

51.20 (7) (d) (intro.) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 880.07 (1m) (c) and (cm) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of chronic mental illness, the

and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

1. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives to accepting the particular treatment offered, after,

2. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives have been explained to the individual to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

**SECTION 2.** 51.61 (1) (g) 4. of the statutes is renumbered 51.61 (1) (g) 4. (intro.) and amended to read:

51.61 (1) (g) 4. (intro.) For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, the and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment, and the alternatives to

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

accepting the particular medication or treatment offered, after.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives have been explained to the individual to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

**SECTION 3.** 51.67 of the statutes is renumbered 51.67 (intro.) and amended to read:

**51.67 Alternate procedure; protective services.** (intro.) If, after hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of chronic mental illness, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual. If the court orders temporary protective placement for an individual under the age of 22 years in a center for the developmentally disabled, this placement may be made only at the central center for the developmentally disabled unless the department authorizes the placement or transfer to the northern or southern center for the developmentally disabled. Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of chronic mental illness, and after the advantages and disadvantages of and alternatives to accepting the

particular psychotropic medication have been explained to the individual, one of the following is true:

**SECTION 4.** 51.67 (1) and (2) of the statutes are created to read:

51.67 (1) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(2) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

**SECTION 5.** 880.01 (7m) of the statutes is renumbered 880.01 (7m) (intro.) and amended to read:

880.01 (7m) (intro.) “Not competent to refuse psychotropic medication” means that, because of chronic mental illness, as defined in s. 51.01 (3g), a person and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(a) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives to accepting the particular treatment offered, after.

(b) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives have been explained to the person to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

**SECTION 6.** 971.14 (3) (dm) of the statutes is renumbered 971.14 (3) (dm) (intro.) and amended to read:

971.14 (3) (dm) (intro.) If sufficient information is available to the examiner to reach an opinion, the examiner’s opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment ~~for the defendant’s mental condition~~. The defendant is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, the and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

1. The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment, and the alternatives to accepting the particular medication or treatment offered, after.

2. The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives have been explained to the defendant to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed

choice as to whether to accept or refuse medication or treatment.

**SECTION 7.** 971.16 (3) of the statutes is renumbered 971.16 (3) (intro.) and amended to read:

971.16 (3) (intro.) Not less than 10 days before trial, or at any other time that the court directs, any physician or psychologist appointed under sub. (2) shall file a report of his or her examination of the defendant with the judge, who shall cause copies to be transmitted to the district attorney and to counsel for the defendant. The contents of the report shall be confidential until the physician or psychologist has testified or at the completion of the trial. The report shall contain an opinion regarding the ability of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct with the requirements of law at the time of the commission of the criminal offense charged and, if sufficient information is available to the physician or psychologist to reach an opinion, his or her opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment ~~for the defendant's mental condition.~~ The defendant is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, the and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

(a) The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment, and the alternatives to accepting the particular medication or treatment offered, after.

(b) The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives have been explained to the defendant to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

**SECTION 8.** 975.06 (7) of the statutes is amended to read:

975.06 (7) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the facility to which the defendant is conveyed under sub. (2) determines that the defendant should be subject to such a court order, the facility may file with the court with notice to the counsel for the defendant, the defendant and the district attorney, a motion for a hearing, under the standard specified in s. 51.61 (1) (g) 4., on whether the defendant is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this subsection, the court without a jury shall determine the defendant's competency to refuse medication or treatment ~~for the defendant's mental condition.~~ At the request of the defendant, the defendant's counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this subsection. If the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall determine without a jury the defendant's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Upon consent of all parties and approval by the court for good cause shown, testimony may be received into the record of the hearing by telephone or live audiovisual means. If the state proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in s. 51.61 (1) (g) 4., the court shall make a determination and issue as part of the defendant's commitment order an order that the defendant is not competent to refuse medication or treatment ~~for the defendant's mental condition~~ and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.