



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1995 SENATE BILL 119**

July 26, 1995 - Offered by COMMITTEE ON HEALTH, HUMAN SERVICES AND AGING.

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

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

7 51.20 (7) (d) (intro.) If the court determines after hearing that there is probable
8 cause to believe that the subject individual is a fit subject for guardianship and
9 protective placement or services, the court may, without further notice, appoint a
10 temporary guardian for the subject individual and order temporary protective
11 placement or services under ch. 55 for a period not to exceed 30 days, and shall
12 proceed as if petition had been made for guardianship and protective placement or
13 services. If the court orders only temporary protective services for a subject
14 individual under this paragraph, the individual shall be provided care only on an

1 outpatient basis. The court may order psychotropic medication as a temporary
2 protective service under this paragraph if it finds that there is probable cause to
3 believe that the allegations under s. 880.07 (1m) (c) and (cm) apply, that the
4 individual is not competent to refuse psychotropic medication and that the
5 medication ordered will have therapeutic value and will not unreasonably impair the
6 ability of the individual to prepare for and participate in subsequent legal
7 proceedings. An individual is not competent to refuse psychotropic medication if,
8 because of chronic mental illness, ~~the~~ and after the advantages and disadvantages
9 of and alternatives to accepting the particular psychotropic medication have been
10 explained to the individual, one of the following is true:

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

14 2. The individual is substantially incapable of applying an understanding of
15 the advantages, disadvantages and alternatives have been explained to the
16 individual in order to make an informed choice as to whether to accept or refuse
17 psychotropic medication.

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

20 51.61 (1) (g) 4. (intro.) For purposes of a determination under subd. 2. or 3., an
21 individual is not competent to refuse medication or treatment if, because of mental
22 illness, developmental disability, alcoholism or drug dependence, ~~the~~ and after the
23 advantages and disadvantages of and alternatives to accepting the particular
24 medication or treatment have been explained to the individual, one of the following
25 is true:

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

4 b. The individual is substantially incapable of applying an understanding of
5 the advantages, disadvantages and alternatives have been explained to the
6 individual in order to make an informed choice as to whether to accept or refuse
7 medication or treatment.

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

10 **51.67 Alternate procedure; protective services.** (intro.) If, after hearing
11 under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not
12 warranted and that the subject individual is a fit subject for guardianship and
13 protective placement or services, the court may, without further notice, appoint a
14 temporary guardian for the subject individual and order temporary protective
15 placement or services under ch. 55 for a period not to exceed 30 days. The court may
16 ~~order psychotropic medication as a temporary protective service under this section~~
17 ~~if it finds that there is probable cause to believe the individual is not competent to~~
18 ~~refuse psychotropic medication and that the medication ordered will have~~
19 ~~therapeutic value and will not unreasonably impair the ability of the individual to~~
20 ~~prepare for and participate in subsequent legal proceedings. An individual is not~~
21 ~~competent to refuse psychotropic medication if, because of chronic mental illness, the~~
22 ~~individual is incapable of expressing an understanding of the advantages and~~
23 ~~disadvantages of accepting treatment, and the alternatives to accepting the~~
24 ~~particular treatment offered, after the advantages, disadvantages and alternatives~~
25 ~~have been explained to the individual. If the court orders temporary protective~~

1 placement for an individual under the age of 22 years in a center for the
2 developmentally disabled, this placement may be made only at the central center for
3 the developmentally disabled unless the department authorizes the placement or
4 transfer to the northern or southern center for the developmentally disabled. Any
5 interested party may then file a petition for permanent guardianship or protective
6 placement or services, including medication, under ch. 55. If the individual is in a
7 treatment facility, the individual may remain in the facility during the period of
8 temporary protective placement if no other appropriate facility is available. The
9 court may order psychotropic medication as a temporary protective service under
10 this section if it finds that there is probable cause to believe the individual is not
11 competent to refuse psychotropic medication and that the medication ordered will
12 have therapeutic value and will not unreasonably impair the ability of the individual
13 to prepare for and participate in subsequent legal proceedings. An individual is not
14 competent to refuse psychotropic medication if, because of chronic mental illness,
15 and after the advantages and disadvantages of and alternatives to accepting the
16 particular psychotropic medication have been explained to the individual, one of the
17 following is true:

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

19 51.67 (1) The individual is incapable of expressing an understanding of the
20 advantages, disadvantages and alternatives.

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

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

1 880.01 **(7m)** (intro.) “Not competent to refuse psychotropic medication” means
2 that, because of chronic mental illness, as defined in s. 51.01 (3g), ~~a person~~ and after
3 the advantages and disadvantages of and alternatives to accepting the particular
4 psychotropic medication have been explained to an individual, one of the following
5 is true:

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

9 (b) The individual is substantially incapable of applying an understanding of
10 ~~the advantages, disadvantages and alternatives have been explained to the person~~
11 in order to make an informed choice as to whether to accept or refuse psychotropic
12 medication.

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

15 971.14 **(3)** (dm) (intro.) If sufficient information is available to the examiner to
16 reach an opinion, the examiner’s opinion on whether the defendant needs medication
17 or treatment and whether the defendant is not competent to refuse medication or
18 treatment ~~for the defendant’s mental condition.~~ The defendant is not competent to
19 refuse medication or treatment if, because of mental illness, developmental
20 disability, alcoholism or drug dependence, ~~the~~ and after the advantages and
21 disadvantages of and alternatives to accepting the particular medication or
22 treatment have been explained to the defendant, one of the following is true:

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

1 2. The defendant is substantially incapable of applying an understanding of the
2 advantages, disadvantages and alternatives have been explained to the defendant
3 in order to make an informed choice as to whether to accept or refuse medication or
4 treatment.

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

7 971.16 (3) (intro.) Not less than 10 days before trial, or at any other time that
8 the court directs, any physician or psychologist appointed under sub. (2) shall file a
9 report of his or her examination of the defendant with the judge, who shall cause
10 copies to be transmitted to the district attorney and to counsel for the defendant. The
11 contents of the report shall be confidential until the physician or psychologist has
12 testified or at the completion of the trial. The report shall contain an opinion
13 regarding the ability of the defendant to appreciate the wrongfulness of the
14 defendant's conduct or to conform the defendant's conduct with the requirements of
15 law at the time of the commission of the criminal offense charged and, if sufficient
16 information is available to the physician or psychologist to reach an opinion, his or
17 her opinion on whether the defendant needs medication or treatment and whether
18 the defendant is not competent to refuse medication or treatment ~~for the defendant's~~
19 ~~mental condition.~~ The defendant is not competent to refuse medication or treatment
20 if, because of mental illness, developmental disability, alcoholism or drug
21 dependence, ~~the~~ and after the advantages and disadvantages of and alternatives to
22 accepting the particular medication or treatment have been explained to the
23 defendant, one of the following is true:

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

4 (b) The defendant is substantially incapable of applying an understanding of
5 the advantages, disadvantages and alternatives have been explained to the
6 defendant in order to make an informed choice as to whether to accept or refuse
7 medication or treatment.

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

9 975.06 (7) If the defendant is not subject to a court order determining the
10 defendant to be not competent to refuse medication or treatment for the defendant's
11 mental condition and if the facility to which the defendant is conveyed under sub. (2)
12 determines that the defendant should be subject to such a court order, the facility
13 may file with the court with notice to the counsel for the defendant, the defendant
14 and the district attorney, a motion for a hearing, under the standard specified in s.
15 51.61 (1) (g) 4., on whether the defendant is not competent to refuse medication or
16 treatment. A report on which the motion is based shall accompany the motion and
17 notice of motion and shall include a statement signed by a licensed physician that
18 asserts that the defendant needs medication or treatment and that the defendant is
19 not competent to refuse medication or treatment, based on an examination of the
20 defendant by a licensed physician. Within 10 days after a motion is filed under this
21 subsection, the court without a jury shall determine the defendant's competency to
22 refuse medication or treatment ~~for the defendant's mental condition.~~ At the request
23 of the defendant, the defendant's counsel or the district attorney, the hearing may
24 be postponed, but in no case may the postponed hearing be held more than 20 days
25 after a motion is filed under this subsection. If the district attorney, the defendant

1 and defense counsel waive their respective opportunities to present other evidence
2 on the issue, the court shall determine without a jury the defendant's competency to
3 refuse medication or treatment on the basis of the report accompanying the motion.
4 In the absence of these waivers, the court shall hold an evidentiary hearing on the
5 issue. Upon consent of all parties and approval by the court for good cause shown,
6 testimony may be received into the record of the hearing by telephone or live
7 audiovisual means. If the state proves by evidence that is clear and convincing that
8 the defendant is not competent to refuse medication or treatment, under the
9 standard specified in s. 51.61 (1) (g) 4., the court shall make a determination and
10 issue as part of the defendant's commitment order an order that the defendant is not
11 competent to refuse medication or treatment ~~for the defendant's mental condition~~
12 and that whoever administers the medication or treatment to the defendant shall
13 observe appropriate medical standards.

14 (END)