State of Wisconsin
1995 - 1996 LEGISLATURE

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1995 SENATE BILL 270

July 12, 1995 - Introduced by Senators ROSENZWEIG, PANZER, RUDE, BUETTNER, DARLING, FARROW and HUELSMAN, cosponsored by Representatives BOCK, PROSSER, MEYER, SCHNEIDERS, KRUG, FOTI, VRAKAS, RILEY, GOETSCH, URBAN, LA FAVE, DUFF, ZIEGELBAUER, HAHN, OWENS and KLUSMAN. Referred to Committee on Health, Human Services and Aging.

AN ACT ***to amend*** 51.10 (4), 51.10 (5) (c), 51.15 (1) (a) (intro.), 51.15 (1) (b) (intro.), 51.15 (1) (b) 2., 51.15 (2) (intro.), 51.15 (4), 51.15 (5), 51.20 (1) (a) 1., 51.20 (1) (am), 51.20 (7) (d), 51.20 (13) (dm), 51.35 (2), 51.35 (3) (c) and (e), 51.37 (5) (a) and (b) and 51.61 (1) (g) 3.; ***to repeal and recreate*** 51.15 (1) (a) (intro.), 51.15 (4) (a), 51.15 (5), 51.20 (1) (a) 1., 51.20 (1) (am), 51.20 (7) (d), 51.20 (13) (dm), 51.35 (3) (c) and (e), 51.37 (5) (b) and 51.61 (1) (g) 3.; and ***to create*** 51.03 (3), 51.15 (1) (a) 5., 51.15 (1) (c), 51.20 (1) (a) 2. e., 51.20 (1) (ad), 51.20 (13) (g) 2d., 51.61 (1) (g) 3m. and 165.017 of the statutes; **relating to:** creating a new standard of dangerousness for involuntary civil commitments and emergency detentions, requiring review by the attorney general or his or her designee of certain proposed emergency detentions, emergency detentions, proposed involuntary civil commitments and involuntary civil commitments and requiring preparation and submittal of certain reports.

Analysis by the Legislative Reference Bureau

Under current law, a person who is believed to be mentally ill, drug dependent or developmentally disabled and who evidences certain acts, omissions or other behavior that indicates that he or she satisfies at least one of 4 standards of dangerousness may be: 1) detained on an emergency basis by a law enforcement officer or, if a minor, by a person authorized to take a child into custody under the

children's code; 2) transported to, detained at and treated in a treatment facility, from which the person may be released if the facility director determines that grounds for detention do not exist; and 3) within 72 hours after detention in the facility, if a petition is filed with a court alleging that the person meets a standard for involuntary civil commitment, given a hearing to determine if there is probable cause to believe the allegations of the petition. (Emergency detention is not, however, required in order to bring a petition for involuntary commitment of a person; if 3 others sign a petition for commitment, the person is given the probable cause hearing.) If the court finds probable cause, a final hearing on commitment must be held within 30 days. A person who is found at the final hearing to be mentally ill, drug dependent or developmentally disabled, to be a proper subject for treatment and, again, to satisfy at least one of the 4 standards of dangerousness may be involuntarily committed to the care and custody of a county department of community programs or developmental disabilities services for appropriate treatment. In general, the first final order of commitment is for a period of up to 6 months and all subsequent orders of commitment are for a period of up to one year, although other commitment periods exist for inmates of a state prison, county jail or house of correction. The 4 "dangerousness" standards, at least one of which the person must evidence, are as follows:

1. A substantial probability of physical harm to the person, as shown by certain recent threats of or attempts at suicide or serious bodily harm.

2. A substantial probability of physical harm to other individuals, as shown by recent homicidal or other violent behavior, or evidence that others are in fear of the person's violent behavior or serious physical harm, as shown by a certain act, attempt or threat.

3. Such impaired judgment, shown by evidence of a pattern of the person's recent acts or omissions, that there is a substantial probability of physical impairment or injury to the person.

4. Behavior, as shown by the person's recent acts or omissions, that, due to mental illness, the person is unable to satisfy his or her basic needs and there is a substantial probability of the person's imminent death, serious physical injury, debilitation or disease unless treatment is received.

The 3rd and 4th standards of dangerousness do not apply to persons who are found to be appropriate for protective placement and no substantial probability of harm exists under these 2 standards if treatment and protection by a treatment facility are available for the person in the community and there is a reasonable probability that the person will avail himself or herself of these services.

For the period beginning 6 months after publication of this bill as an act and ending 5 years later, this bill creates a 5th involuntary commitment standard that requires a finding of dangerousness. Under this standard, a person may be involuntarily committed if he or she evidences all of the following:

1. Incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and of the alternatives to the particular medication or treatment offered, after the advantages, disadvantages and alternatives have been explained to the person. (This standard is identical to the

standard in current law for a finding that a person is not competent to refuse medication or treatment.)

2. A substantial probability, as demonstrated by both the person's treatment history and his or her recent acts or omissions, of all of the following:

a. The person needs care or treatment to prevent further disability or deterioration.

b. He or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional or physical harm that will result in the loss of the person's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial if reasonable provision for the person's care or treatment is available in the community and there is a reasonable probability that the person will avail himself or herself of these services or if the person is appropriate for protective placement.

The bill requires that the attorney general or his or her designee review and approve, prior to filing or within 12 hours after filing, a petition for involuntary commitment that is based on the standard created in the bill. If the attorney general or designee disapproves or fails to act with respect to the proposed petition, the petition may not be filed. If the attorney general or designee disapproves or fails to act with respect to the filed petition, the individual, if detained under the petition, must be released and the petition is void.

A person need not meet this standard in order to be voluntarily admitted to an inpatient mental health facility. The bill limits to 30 days the inpatient treatment of persons who are involuntarily committed under the new standard; if, however, the person is subsequently treated on an outpatient basis and he or she violates a condition of treatment that is established by the court or the county department of community programs, he or she may be transferred to an inpatient facility or to the inpatient treatment program of a treatment facility for up to an additional 30 days. Medication and treatment may be administered without the consent of the person if, at or after the hearing to determine probable cause for commitment, the court finds that there is probable cause to believe that the person meets the standard. Under this bill, this finding and the finding that the standard is met at the final hearing for commitment constitute findings that the individual is not competent to refuse medication or treatment. After the final commitment order is issued for the person, the court is required to issue an order permitting administration of medication or treatment without the person's consent.

The bill also creates a new standard for emergency detention of persons that is identical to the standard created for involuntary commitment, for the period beginning 6 months after publication of this bill as an act and ending 5 years later. Under this standard, a law enforcement officer or, for a minor, a person authorized to take a child into custody under the children's code could take a person into custody if the officer or authorized person has cause to believe that the person meets the involuntary commitment standard created in this bill. Prior to or within 12 hours after taking the person into custody, the attorney general or his or her designee must review and approve or disapprove the proposed emergency detention or emergency

detention. If the attorney general or designee disapproves or fails to act with respect to the proposed emergency detention, it may not be made on the basis of the standard created in the bill. If the attorney general or designee disapproves or fails to act with respect to the actual emergency detention, the person must be released. The person who is initially detained on an emergency basis has the right to refuse medication or treatment.

Lastly, the bill requires that the department of health and social services (DHSS) collect and analyze certain information on the commitments initiated or ordered, the costs of the commitments, voluntary admissions, and adjudications of incompetency that result in appointments of guardians, and other information. DHSS must report this information to the legislature at specified times over a period of 3.5 years. In addition, DHSS must prepare a report concerning the number of developmentally disabled patients, children and inmates of prisons, jails and other criminal detention facilities who are transferred to a state treatment facility.

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. 51.03 (3) of the statutes is created to read:

51.03 **(3)** (a) Beginning on the effective date of this paragraph .... [revisor inserts date], the department shall collect and analyze information in this state on each of the following:

1. The number of commitments initiated under s. 51.10 (5) (c), 51.15 or 51.20 (1).

2. The number of commitments ordered under s. 51.20 (13).

3. The number of, cost of and paying sources for days of inpatient mental health treatment that result from the commitments initiated under subd. 1. or ordered under subd. 2.

4. The number of voluntary hospital admissions approved under s. 51.10 (1) or 51.13 (1) and the number of, cost of and paying sources for days of inpatient mental health treatment that result from the admissions.

5. The number of persons who are receiving care and treatment under community support programs voluntarily or under commitments ordered under s. 51.20 (13).

6. The number of persons for whom guardians are appointed under s. 880.33 (4m).

7. The amount of court costs that are incurred because of emergency detentions for which statements are filed under s. 51.15 (4) or (5) or because of petitions filed under s. 51.20 (1).

(b) By the first day of the 7th month beginning after the effective date of this paragraph .... [revisor inserts date], and annually by that date for 3 years thereafter, the department shall submit a report to the legislature under s. 13.172 (2) on the information collected under par. (a).

SECTION 2. 51.10 (4) of the statutes is amended to read:

51.10 **(4)** The criteria for voluntary admission to an inpatient treatment facility shall be based on an evaluation that the applicant is mentally ill or developmentally disabled, or is an alcoholic or drug dependent and that the person has the potential to benefit from inpatient care, treatment or therapy. An applicant is not required to meet ~~standards~~ a standard of dangerousness ~~as established in~~ under s. 51.20 (1) (a) 2. to be eligible for the benefits of voluntary treatment programs. An applicant may be admitted for the purpose of making a diagnostic evaluation.

SECTION 3. 51.10 (5) (c) of the statutes is amended to read:

51.10 **(5)** (c) Any patient or resident voluntarily admitted to an inpatient treatment facility shall be discharged on request, unless the treatment director or the treatment director's designee has reason to believe that the patient or resident is dangerous in accordance with ~~the standards provided~~ a standard under s. 51.20

(1) (a) 2. or (am) and files a statement of emergency detention under s. 51.15 with the court by the end of the next day in which the court transacts business. The patient or resident shall be notified immediately when such a statement is to be filed. Prior to the filing of a statement, the patient or resident may be detained only long enough for the staff of the facility to evaluate the individual's condition and to file the statement of emergency detention. This time period may not exceed the end of the next day in which the court transacts business. Once a statement is filed, a patient or resident may be detained as provided in s. 51.15 (1). The probable cause hearing required under s. 51.20 (7) shall be held within 72 hours after the request for discharge, excluding Saturdays, Sundays and legal holidays.

SECTION 4. 51.15 (1) (a) (intro.) of the statutes is amended to read:

51.15 **(1)** (a) (intro.) A law enforcement officer or other person authorized to take a child into custody under ch. 48 may take an individual into custody if the officer or person has cause to believe that such individual is mentally ill~~,~~ or, except as provided in subd. 5., is drug dependent or developmentally disabled, and that the individual evidences any of the following:

SECTION 5. 51.15 (1) (a) (intro.) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.15 **(1)** (a) (intro.) A law enforcement officer or other person authorized to take a child into custody under ch. 48 may take an individual into custody if the officer or person has cause to believe that such individual is mentally ill, drug dependent or developmentally disabled, and that the individual evidences any of the following:

SECTION 6. 51.15 (1) (a) 5. of the statutes is created to read:

51.15 **(1)** (a) 5. For an individual who is believed to be mentally ill, all of the following:

a. Incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and of the alternatives to the particular medication or treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual.

b. A substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffers severe mental, emotional or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial under this subd. 5. b. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. 55.06. Food, shelter or other care that is provided to an individual who is substantially incapable of obtaining food, shelter or other care for himself or herself by any person other than a treatment facility does not constitute provision for the individual's care or treatment in the community reasonable under this subd. 5. b. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional or physical harm under this subd. 5. b.

c. This subdivision does not apply after the last day of the 59th month commencing after the effective date of this subdivision .... [revisor inserts date].

SECTION 7. 51.15 (1) (b) (intro.) of the statutes is amended to read:

51.15 **(1)** (b) (intro.) The officer's or other person's belief shall be based on any of the following:

SECTION 8. 51.15 (1) (b) 2. of the statutes is amended to read:

51.15 **(1)** (b) 2. A specific recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the officer or person by any other person, including any probation and parole agent authorized by the department of corrections to exercise control and supervision over a probationer or parolee.

SECTION 9. 51.15 (1) (c) of the statutes is created to read:

51.15 **(1)** (c) 1. If proposed detention or detention of an individual under par. (a) is based on par. (a) 5., the proposed detention or detention shall be reviewed and approved or disapproved by the attorney general or by his or her designee prior to or within 12 hours after the detention.

2. If the attorney general or his or her designee disapproves or fails to act with respect to a proposed detention under subd. 1., the individual may not be detained based on par. (a) 5. If the attorney general or his or her designee disapproves or fails to act with respect to a detention under subd. 1., the individual shall be released.

3. Subdivisions 1. and 2. do not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of par. (a) 5. or of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of par. (a) 5. or s. 51.20 (1) (a) 2. e.

4. This paragraph does not apply after the last day of the 59th month commencing after the effective date of this paragraph .... [revisor inserts date].

SECTION 10. 51.15 (2) (intro.) of the statutes is amended to read:

51.15 **(2)** FACILITIES FOR DETENTION. (intro.) The law enforcement officer or other person authorized to take a child into custody under ch. 48 shall transport the individual, or cause him or her to be transported, for detention and for treatment if permitted under sub. (8) to any of the following facilities:

SECTION 11. 51.15 (4) of the statutes is amended to read:

51.15 **(4)** DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 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 if sub. (1) (a) 1., 2., 3. or 4. is believed or mental illness, if sub. (1) (a) 5. is believed. 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.

(b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained and treated, if treatment is 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, 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 12. 51.15 (4) (a) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.15 **(4)** (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 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 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.

SECTION 13. 51.15 (5) of the statutes is amended to read:

51.15 **(5)** DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 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 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 if sub. (1) (a) 1., 2., 3. or 4. is believed or mental illness, if sub. (1) (a) 5. is believed. 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 55.06 (11) (b), 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, exclusive of Saturdays, Sundays and legal holidays.

SECTION 14. 51.15 (5) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.15 **(5)** DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 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 persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer 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 55.06 (11) (b), the subject individual may not be detained by the law enforcement officer and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and legal holidays.

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

51.20 **(1)** (a) 1. The individual is mentally ill or, except as provided under subd. 2. e., drug dependent~~,~~ or developmentally disabled and is a proper subject for treatment.

SECTION 16. 51.20 (1) (a) 1. of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.20 **(1)** (a) 1. The individual is mentally ill, drug dependent or developmentally disabled and is a proper subject for treatment.

SECTION 17. 51.20 (1) (a) 2. e. of the statutes is created to read:

51.20 **(1)** (a) 2. e. For an individual who is alleged to be mentally ill, evidences incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and of the alternatives to the particular medication or treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. 55.06. Food, shelter or other care that is provided to an individual who is substantially incapable of obtaining food, shelter or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2. e. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional or physical harm under this subd.

2.e. This subd. 2. e. does not apply after the last day of the 59th month commencing after the effective date of this subd. 2. e. .... [revisor inserts date].

SECTION 18. 51.20 (1) (ad) of the statutes is created to read:

51.20 **(1)** (ad) 1. If a petition under par. (a) is based on par. (a) 2. e., the petition shall be reviewed and approved by the attorney general or by his or her designee prior to or within 12 hours after the time that it is filed. If the attorney general or his or her designee disapproves or fails to act with respect to the petition, the petition may not be filed. If the attorney general or his or her designee disapproves or fails to act with respect to a petition under this subdivision within 12 hours after the time that it is filed, the individual, if detained under the petition, shall be released and the petition is void.

2. Subdivision 1. does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of par. (a) 2. e. has been challenged, has upheld the constitutionality of par. (a) 2. e.

3. This paragraph does not apply after the last day of the 59th month commencing after the effective date of this paragraph .... [revisor inserts date].

SECTION 19. 51.20 (1) (am) of the statutes is amended to read:

51.20 **(1)** (am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section or s. 971.17 or ch. 975, the requirements of a recent overt act,

attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions under par. (a) 2. c. or e. or recent behavior under par. (a) 2. d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act or a pattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

SECTION 20. 51.20 (1) (am) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.20 **(1)** (am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court

under this section or s. 971.17 or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions under par. (a) 2. c. or recent behavior under par. (a) 2. d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act or a pattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

SECTION 21. 51.20 (7) (d) of the statutes is amended to read:

51.20 **(7)** (d) 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 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. A finding by the court that there is probable cause to believe that the subject individual meets the commitment standard under sub. (1) (a) 2. e. constitutes a finding that the individual is not competent to refuse medication or treatment under this paragraph.

SECTION 22. 51.20 (7) (d) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.20 **(7)** (d) 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 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.

SECTION 23. 51.20 (13) (dm) of the statutes is amended to read:

51.20 **(13)** (dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the county department under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician, subject to the individual's right to refuse medication under s. 51.61 (1) (g) and (h), and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. A finding by the court that the allegations under sub. (1) (a) 2. e. are proven constitutes a finding that the individual is not competent to refuse medication or treatment. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as

prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4).

SECTION 24. 51.20 (13) (dm) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.20 **(13)** (dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the county department under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician, subject to the individual's right to refuse medication under s. 51.61 (1) (g) and (h), and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1)

(g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4).

SECTION 25. 51.20 (13) (g) 2d. of the statutes is created to read:

51.20 **(13)** (g) 2d. a. Except as provided in subd. 2d. b., after the 30th day after an order of commitment under par. (a) 3. to 5. following proof of the allegations under sub. (1) (a) 2. e., the subject individual may, under the order, be treated only on an outpatient basis.

b. If a subject individual who is committed under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. e., and who is being treated on an outpatient basis violates a condition of treatment that is established by the court or a county department under s. 51.42, the county department or the department may transfer the subject individual under s. 51.35 (1) (e) to an inpatient facility or to an inpatient treatment program of a treatment facility for a period not to exceed 30 days.

c. This subdivision does not apply after the last day of the 59th month commencing after the effective date of this subdivision .... [revisor inserts date].

SECTION 26. 51.35 (2) of the statutes is amended to read:

51.35 **(2)** TRANSFER OF CERTAIN DEVELOPMENTALLY DISABLED PATIENTS. The department may authorize a transfer of a patient from a center for the developmentally disabled to a state treatment facility if ~~such~~ the patient is mentally ill and exhibits conduct which constitutes a danger as ~~defined~~ described in s. 51.20 (1) (a) 2. to himself or herself or to others in the treatment facility where he or she is present. The department shall file a statement of emergency detention with the committing court within 24 hours after receiving ~~such~~ the person for emergency detention. The statement shall conform to the requirements specified in s. 51.15 (4).

SECTION 27. 51.35 (3) (c) and (e) of the statutes are amended to read:

51.35 **(3)** (c) A licensed psychologist of a juvenile correctional facility or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the facility ~~is~~, in his or her opinion, is mentally ill, drug dependent or developmentally disabled~~,~~ and is dangerous as ~~defined~~ described in s. 51.20 (1) (a) 2.~~,~~ a., b., c. or d., is mentally ill, is dangerous and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as ~~defined~~ described in s. 51.45 (13) (a) 1. and 2., shall file a written report with the superintendent of the facility, stating the nature and basis of the belief. If the superintendent, upon review of the allegations in the report, determines that transfer is appropriate, he or she shall file a petition according to s. 51.20 or 51.45 in the court assigned to exercise jurisdiction under ch. 48 of the county where the correctional facility is located. The court shall hold a hearing according to procedures provided in s. 51.20 or 51.45 (13).

(e) The department may authorize emergency transfer of an individual from a juvenile correctional facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as ~~defined in~~ described under s. 51.20 (1) (a) 2. a., b., c. or d. to the individual or to others, is mentally ill, is dangerous and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department shall file the statement or petition with the court within 24 hours after the subject individual is received for detention or commitment. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a

petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the procedure provided in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the correctional facility.

SECTION 28. 51.35 (3) (c) and (e) of the statutes, as affected by 1995 Wisconsin Act .... (this act), are repealed and recreated to read:

51.35 **(3)** (c) A licensed psychologist of a juvenile correctional facility or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the facility, in his or her opinion, is mentally ill, drug dependent or developmentally disabled and is dangerous as described in s. 51.20 (1) (a) 2., or is an alcoholic and is dangerous as described in s. 51.45 (13) (a) 1. and 2., shall file a written report with the superintendent of the facility, stating the nature and basis of the belief. If the superintendent, upon review of the allegations in the report, determines that transfer is appropriate, he or she shall file a petition according to s. 51.20 or 51.45 in the court assigned to exercise jurisdiction under ch. 48 of the county where the correctional facility is located. The court shall hold a hearing according to procedures provided in s. 51.20 or 51.45 (13).

(e) The department may authorize emergency transfer of an individual from a juvenile correctional facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as described under s. 51.20 (1) (a) 2. to the individual or to others, or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the

individual and deliver it to the receiving state treatment facility. The department shall file the statement or petition with the court within 24 hours after the subject individual is received for detention or commitment. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the procedure provided in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the correctional facility.

SECTION 29. 51.37 (5) (a) and (b) of the statutes are amended to read:

51.37 **(5)** (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department of corrections reports in writing to the officer in charge of a jail or institution that any prisoner is, in his or her opinion, mentally ill, drug dependent, or developmentally disabled and is appropriate for treatment as ~~provided~~ described in s. 51.20 (1), or is an alcoholic and is dangerous as ~~provided~~ described in s. 51.45 (13) (a) 1. and 2.; or that the prisoner is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in need of psychiatric or psychological treatment, and that the prisoner voluntarily consents to a transfer for treatment, the officer shall make a written report to the department of corrections which may transfer the prisoner if a voluntary application is made and the department of health and social services consents. If voluntary application is not made, the department of corrections may file a petition for involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent by a prisoner in an institution

designated under sub. (3) or s. 51.37 (2), 1983 stats., shall be included as part of the individual's sentence.

(b) The department of corrections may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as ~~defined~~ described in s. 51.20 (1) (a) 2. a., b., c. or d. of physical harm to himself or herself or to others, or is mentally ill and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health and social services shall file the statement or petition with the court within 24 hours after receiving the subject individual for detention. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the institution.

SECTION 30. 51.37 (5) (b) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.37 **(5)** (b) The department of corrections may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a

state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as described in s. 51.20 (1) (a) 2. of physical harm to himself or herself or to others, or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health and social services shall file the statement or petition with the court within 24 hours after receiving the subject individual for detention. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the institution.

SECTION 31. 51.61 (1) (g) 3. of the statutes is amended to read:

51.61 **(1)** (g) 3. Following a final commitment order <u>for a subject individual who is determined to meet the commitment standards under s. 51.20 (1) (a) 1. a., b., c. or d.</u>, have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or

unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, 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 subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

SECTION 32. 51.61 (1) (g) 3. of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

51.61 **(1)** (g) 3. Following a final commitment order, have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, 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 subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an

examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

SECTION 33. 51.61 (1) (g) 3m. of the statutes is created to read:

51.61 **(1)** (g) 3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. This subdivision does not apply after the last day of the 59th month commencing after the effective date of this subdivision .... [revisor inserts date].

SECTION 34. 165.017 of the statutes is created to read:

165.017 Review of certain detentions or petitions for commitment. (1) The attorney general or his or her designee shall review and approve or disapprove all proposed emergency detentions or emergency detentions of individuals as specified under s. 51.15 (1) (c) 1.

(2) The attorney general or his or her designee shall review and approve or disapprove all proposed petitions or petitions for commitment of individuals as specified under s. 51.20 (1) (ad) 1.

(3) Subsection (1) does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of s. 51.15 (1) (a) 5. or of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of s. 51.15 (1) (a) 5. or s. 51.20 (1) (a) 2. e.

(4) Subsection (2) does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of s. 51.20 (1) (a) 2. e.

(5) This section does not apply after the last day of the 59th month commencing after the effective date of this subsection .... [revisor inserts date].

SECTION 35. Nonstatutory provisions.

(1) The department of health and social services shall prepare a report summarizing the number of individuals transferred to a state treatment facility under sections 51.35 (2) and (3) (e) and 51.37 (5) (b) of the statutes, and submit the report to the legislature in the manner provided under section 13.172 (2) of the statutes by the first day of the 28th month beginning after the effective date of this subsection.

SECTION 36. Initial applicability.

(1) This act first applies to the taking of a child or adult into custody under section 51.15 (1) of the statutes on the effective date of this subsection, to proceedings in which a petition is filed under section 51.20 (1) of the statutes on the effective date of this subsection and to proceedings in which an application for extension of a commitment has been made under section 51.20 (13) (g) 3. of the statutes on the effective date of this subsection.

SECTION 37. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The repeal and recreation of sections 51.15 (1) (a) (intro.), (4) (a) and (5), 51.20 (1) (a) 1. and (am), (7) (d) and (13) (dm), 51.35 (3) (c) and (e), 51.37 (5) (b) and

51.61 (1) (g) 3. of the statutes takes effect on the first day of the 67th month beginning after publication.

(2) The treatment of section 51.03 (3) of the statutes takes effect on the first day of the 4th month beginning after publication.

(END)