



2013 ASSEMBLY BILL 488

November 4, 2013 - Introduced by Representatives JAGLER and SEVERSON,
cosponsored by Senator FARROW. Referred to Committee on Health.

1 **AN ACT** *to renumber and amend* 51.20 (4); *to amend* 51.20 (2) (a), 51.20 (4)
2 (title) and 51.20 (7) (a); and *to create* 51.20 (4) (b) and (c) of the statutes;
3 **relating to:** involuntary commitment proceedings and limited appearance by
4 corporation counsel.

Analysis by the Legislative Reference Bureau

Under current law, a person may petition for involuntary commitment of an individual if the petition for examination (three-person petition) is signed by three adult persons, at least one of whom has personal knowledge of the conduct of the individual, except in certain situations where a court finds a juvenile not responsible for an offense by reason of mental disease or defect or not competent to proceed with the criminal proceedings. The three-person petition must allege that the individual is mentally ill, drug dependent, or developmentally disabled, is a proper subject for treatment, and is dangerous. For purposes of involuntary commitment, an individual is dangerous, under current law, because the individual evidences any of the following: 1) a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; 2) a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to themselves; 3) impaired judgment manifested by evidence of a pattern of recent acts or omissions such that there is substantial probability of physical impairment or injury to himself or herself; 4) an inability to satisfy certain basic

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needs, due to mental illness, so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue without prompt and adequate treatment for mental illness; or 5) for an individual who is not alleged to be drug dependent or developmentally disabled, incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying that understanding to his or her mental illness and a substantial probability that the individual needs care or treatment to prevent further disability or deterioration and that he or she will, if left untreated, lack services necessary for health and safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently or the loss of cognitive or volitional control over thoughts and actions (grounds for involuntary commitment). Current law provides an additional procedure if a three-person petition is filed based on the fifth ground for involuntary commitment. Current law also sets forth certain exceptions and requirements if the subject of the three-person petition is an inmate of a prison, jail, or other criminal detention facility or if the subject has been in inpatient treatment for mental illness, developmental disability, or drug dependency immediately before commencement of involuntary commitment proceedings. Current law also provides alternate grounds for commitment.

In addition to one of the grounds for involuntary commitment, the three-person petition must contain the names and addresses of the petitioners and their relationship to the subject individual and the names and addresses of individuals with a certain relationship to that individual. Current law requires that the petition contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the three-person petition. Current law requires the petition to be sworn to be true. Under current law, if the petitioner does not have personal knowledge of the conduct of the subject individual, the petition must contain a statement providing the basis for the petitioner's belief.

Under current law, upon filing of the three-person petition, the court must review the petition to determine whether to issue an order of detention. The individual who is the subject of the petition must be detained only if there is cause to believe that the individual is mentally ill, drug dependent, or developmentally disabled and that the individual demonstrates one of the grounds for involuntary commitment or an alternate ground for commitment based on specific recent overt acts, attempts or threats to act, or a pattern of recent acts or omissions made by the individual.

Under current law, if an individual is detained based on the three-person petition or if the person had been detained on an emergency detention, the court must hold a hearing to determine whether there is probable cause to believe the allegations made in the three-person petition or in the petition originating from the emergency detention within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays, and legal holidays, unless the subject individual or his or her counsel requests a postponement. If, at the probable cause hearing, the court determines there is probable cause to believe the allegations in the petition, the

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court must schedule a final hearing on involuntary commitment within 14 days of the time of detention at the facility, with certain exceptions. Under current law, the corporation counsel must represent the interests of the public in the conduct of these hearings and all other mental health proceedings in the statutes, with certain exceptions, including the drafting of all necessary papers related to the action.

This bill provides a procedure for the corporation counsel to make a limited appearance in certain involuntary commitment proceedings. If corporation counsel does not believe that involuntary commitment is appropriate for the subject individual, he or she shall inform the person seeking the three-person petition that the person may discontinue pursuing the involuntary commitment or request that corporation counsel file the petition under a limited appearance. If the person seeking the three-person petition requests a limited appearance by corporation counsel, corporation counsel shall notify the person of the scope of what he or she will do as corporation counsel under the limited appearance and file the three-person petition in a timely manner, except that corporation counsel may state that the person seeking the three-person petition believes the facts constitute probable cause instead of affirming that himself or herself. Under a limited appearance under the bill, corporation counsel must also include with the petition a certification to the court that he or she is not supporting the petition but is making a limited appearance and that he or she has notified the person seeking the three-person petition of the scope of this limited appearance. The limited appearance procedure under the bill does not apply to petitions that originate from an emergency detention.

The bill also requires that the court review the three-person petition for examination within 24 hours after the petition is filed, excluding Saturdays, Sundays, and legal holidays, to determine whether an order of detention should be issued. The bill also requires that if an individual is detained based on the three-person petition or if the person had been detained on an emergency detention, the court must schedule the hearing in addition to holding the probable cause hearing within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays, and legal holidays, unless postponed as allowed by law.

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:

- 1 **SECTION 1.** 51.20 (2) (a) of the statutes is amended to read:
- 2 51.20 (2) (a) Upon the filing of a petition for examination, the court shall review
- 3 the petition within 24 hours after the petition is filed, excluding Saturdays, Sundays,
- 4 and legal holidays, to determine whether an order of detention should be issued. The
- 5 subject individual shall be detained only if there is cause to believe that the

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1 individual is mentally ill, drug dependent or developmentally disabled and the
2 individual is eligible for commitment under sub. (1) (a) or (am) based upon specific
3 recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions
4 made by the individual.

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

6 51.20 (4) (title) PUBLIC REPRESENTATION; LIMITED APPEARANCE.

7 **SECTION 3.** 51.20 (4) of the statutes is renumbered 51.20 (4) (a) and amended
8 to read:

9 51.20 (4) (a) Except as provided in ss. 51.42 (3) (ar) 1. and 51.437 (4m) (f) and
10 subject to par. (b), the corporation counsel shall represent the interests of the public
11 in the conduct of all proceedings under this chapter, including the drafting of all
12 necessary papers related to the action.

13 **SECTION 4.** 51.20 (4) (b) and (c) of the statutes are created to read:

14 51.20 (4) (b) If corporation counsel does not believe that involuntary
15 commitment under this section is appropriate for the subject individual, corporation
16 counsel shall inform the person seeking the petition under sub. (1) that the person
17 may discontinue pursuing the involuntary commitment or may request that
18 corporation counsel file the petition under sub. (1) under a limited appearance. If the
19 person seeking the petition requests a limited appearance by corporation counsel for
20 the purpose of filing a petition under sub. (1), corporation counsel shall do all of the
21 following:

22 1. Notify the person seeking the petition of the scope of what corporation
23 counsel will do under the limited appearance.

24 2. File, in a timely manner, the petition as described in sub. (1), except that the
25 corporation counsel does not need to affirm that the facts in the petition constitute

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1 probable cause but may state that the person seeking the petition believes those facts
2 constitute probable cause.

3 3. Include with the petition, at the time of filing, a certification to the court that
4 corporation counsel is not supporting the petition but is making a limited appearance
5 and that he or she has notified the person seeking the petition of the scope of this
6 limited appearance.

7 (c) Paragraph (b) does not apply to a petition originating under s. 51.15 (4), (5),
8 or (10).

9 **SECTION 5.** 51.20 (7) (a) of the statutes is amended to read:

10 51.20 (7) (a) After the filing of the petition under sub. (1), if the subject
11 individual is detained under s. 51.15 or this section the court shall schedule and hold
12 a hearing to determine whether there is probable cause to believe the allegations
13 made under sub. (1) (a) within 72 hours after the individual arrives at the facility,
14 excluding Saturdays, Sundays and legal holidays. At the request of the subject
15 individual or his or her counsel the hearing may be postponed, but in no case may
16 the postponement exceed 7 days from the date of detention.

17 (END)