

June 1976 Spec. Sess.
Assembly Bill 7

Date published: August 4, 1976

CHAPTER 430, Laws of 1975
(Vetoed in Part)

AN ACT to repeal 51.23, 51.235, 51.27, 51.42 (3) (e), 51.434, 51.437 (10) (a) and (b) and 51.45 (2) (a) and (15); to renumber 51.225, 51.24, 51.25, 51.37, 51.40, 51.42 (1), 51.435, 51.436, 51.437 (1), (3) to (9) and (11), 51.44, 51.45 (2) (b) to (h) and 51.50; to renumber and amend 51.437 (2) and (10) (c); to amend 20.435 (2) (d), (4) (b) and (9) (km), 45.30, 46.10 (2), 48.14 (3), 48.24, 48.52 (2) (a); 51.42 (2) (b) and (c), (3) (a), (4) (a) and (b), (7) (a) and (9) (a) and (c), 51.437 (title), (2) (a) (intro.) as renumbered, (3) (title) as renumbered, (4) (intro.) as renumbered, (7) (b) as renumbered, (9) (a) as renumbered, and (12) (a) as renumbered, 51.82 (title), 54.17 (2), 55.01 (7) (b) as renumbered, and (2), 55.06 (1) (intro.), (2) (b), (4), (8) (intro.), (10) (c), (11) (b), ~~113~~ and (14), 56.07 (1), 140.85 (3), 157.06 (1), 257.23 (5) (a) and (6), 880.01 (2) and 971.17 (2); to repeal and recreate 46.106, 51.001 to 51.22, 51.30 to 51.35, 51.39, 51.42 (3) (d), 51.45 (14) and (16) (d) and 51.77 (5); and to create 46.011 (2), 46.044, 51.37, 51.38, 51.42 (1) (b), 51.437 (1), (6) to (12) (titles) and (15), 51.61 to 51.67, 51.90 and 55.04 (4) of the statutes, relating to recodification of the mental health act and related provisions, and making appropriations.

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

SECTION 1. 20.435 (2) (d) and (4) (b) of the statutes, as affected by chapter 39, laws of 1975, are amended to read:

20.435 (2) (d) *Aids to county institutions.* A sum sufficient for the cost of care as provided in s. 51.22 (3), for state aid to county institutions as provided in ss. 48.58 (1) (b) (2), 1971 stats., 49.173, 51.08 (Stats. 1971), 51.09, 51.12, 51.26 (Stats. 1971) and 51.27 (2), and 51.22, for the purposes of remitting collections made by the department under s. 46.10 to s. 51.42 and s. 51.437 community boards made by the department in accordance with s. under ss. 51.42 and 51.437 as provided in ss. 46.10 (2) as well as, 51.42 and 51.437 and for transmitting credit balances in accordance with ss. 51.42 (9) (b) and 51.437 (9) (12) (c).

(4) (b) *Foster care.* The amounts in the schedule for foster care and institutional child care and subsidized adoptions under ss. 48.48 (4), (12) and (14), 48.52 and 48.58 (2), and for family care and related expenses provided prior to July 1, 1975, under s. 51.18 (1), 1973 stats.

SECTION 2. 20.435 (9) (km) of the statutes is amended to read:

20.435 (9) (km) *County institutions intercounty payments.* All moneys collected under s. 46.106 as special charges on account of patients in county infirmaries, hospitals or facilities for the mentally infirm or county residential care institutions under ss. 49.173, 51.08 [Stats. 1971], 51.09, 51.12, 51.24, 51.27 (2) and 51.45 and 49.175, to be apportioned and paid to the respective counties under s. 46.106 by the department of administration.

SECTION 3. 45.30 of the statutes is amended to read:

45.30 (title) Assignment of mentally ill, alcoholic and drug dependent persons. (1)

(a) Whenever it appears that any person, other than a prisoner, is eligible for treatment in a U.S. veterans facility and ~~commitment~~ inpatient admission is necessary for the proper care and treatment of such person, ~~any court of record of the county court in~~ the county in which the person is found may, upon request of such person and upon receipt of a certificate of eligibility from the veterans administration, after adjudging the person ~~insane~~ mentally ill, an alcoholic or drug dependent in accordance with law, direct such person's ~~commitment~~ assignment to the veterans administration for hospitalization in a U. S. veterans facility. Upon admission to any such facility, the person shall be subject to the rules and regulations of the veterans administration. The chief officer of such facility is vested with the same powers exercised by ~~superintendents~~ directors of state hospitals for mental diseases ~~institutes~~ within this state with reference to the retention, transfer or ~~parole~~ discharge of the person ~~committed~~ assigned.

(b) ~~Notice of pending commitment proceedings shall be furnished the person to be committed and his right to appear and defend shall not be denied. Any commitment of a veteran under this section shall be in accordance with s. 51.20. The commitment of a person to a veterans facility within this state by a judge of or a court of record of another state under a similar provision of law has the same force as if such commitment were made by a court of this state. After a person has been legally committed to any hospital or asylum for the insane the department of health and social services or to a community board under s. 51.42 in this state the superintendent of such hospital or asylum in any county having a population of 500,000 or more or the department of health and social services when the commitment admission has been made to any other such hospital or asylum, treatment facility, upon request of such person and~~ upon receipt of a certificate of eligibility from the veterans administration evidencing the right of such person to be admitted to a veterans facility, may transfer such person to such facility and the cost of the person's transportation, together with that of any necessary attendant, shall be a proper charge against such person's care in such institution. After such transfer the powers granted by this section to the ~~superintendent~~ chief officer of such veterans facility shall be applicable. Any person transferred as provided in this subsection ~~shall be~~ is deemed committed to the veterans administration pursuant to the original commitment.

(2) ~~Before adjudging such person insane in accordance with law, the court, upon the receipt of a certificate of eligibility from the veterans administration, may commit such person to a veterans administration facility to be detained for a reasonable length of time, to be fixed by the court, for the purpose of observation. Whenever an application to determine insanity mental illness, alcoholism or drug dependence is made as prescribed by s. 51.04 51.20, the court shall make such inquiry as may be necessary and proper to ascertain whether the alleged insane mentally ill, alcoholic or drug dependent person is eligible for treatment in a veterans administration facility, and shall notify the department of veterans affairs of the pendency of such action and of the any commitment.~~

SECTION 4. 46.011 (2) of the statutes is created to read:

46.011 (2) "Prisoner" means any person who is either arrested, incarcerated, imprisoned or otherwise detained in excess of 12 hours by any law enforcement agency of this state, except when detention is pursuant to s. 51.15, 51.20, 51.45 (11) (b) or 55.06 (11) (a).

SECTION 5. 46.044 of the statutes is created to read:

46.044 State psychiatric institute. There is established the state psychiatric institute to be maintained as a department of the university of Wisconsin. The statutes relating to admission, commitment, placement, transfer, custody and discharge of mentally ill persons are applicable to the psychiatric institute.

SECTION 6. 46.10 (2) of the statutes, as affected by chapters 39 and 199, laws of 1975, is amended to read:

46.10 (2) Any person, including but not limited to a person admitted or committed under ss. ~~51.05, 51.065, 51.10, 51.15, 51.20, 51.45 (10), (12) and (13), 55.05, 55.06, 971.14 (2) and (5), 971.17 (1), 975.01, 975.02 and 975.06~~, receiving care, maintenance, services and supplies provided by any institution in this state including Wisconsin general hospital, in which the state is chargeable with all or part of the person's care, maintenance, services and supplies except tuberculosis patients under ch. 50 and ss. 51.27 and 58.96 (2), and any person receiving care and services under boards or facilities established under ss. 49.175, 51.42 and 51.437, and the person's property and estate, including the homestead, and the spouse of such person, and the spouse's property and estate, including the homestead, and, in the case of a minor child, the parents of such person, and their property and estates, including their homestead, shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18). The department may bring action for the enforcement of such liability. If a spouse, widow or minor, or an incapacitated person may be lawfully dependent upon such property for their support, the court shall release all or such part of the property and estate from such charges that may be necessary to provide for such persons. The department shall make every reasonable effort to notify the relatives liable as soon as possible after the beginning of the maintenance, but such notice or the receipt thereof is not a condition of liability of the relative.

SECTION 7. 46.106 of the statutes, as affected by chapter 413, laws of 1975, is repealed and recreated to read:

46.106 Maintenance; state and county liability; legal settlement. (1) DETERMINATION AND NOTICE. Legal settlement shall be determined pursuant to s. 49.10 for persons receiving care in facilities established under ss. 49.171 and 49.175 or any other charitable or curative facility in this state for which liability to the state and counties for care and maintenance is based on the person's legal settlement. Nothing in this section prevents a recovery of liability under s. 46.10 or any other statute creating liability upon the person receiving the care or any other designated responsible party.

(a) The committing or admitting judge shall make the determination of legal settlement for entries made through the courts. The judge of the county in which the providing facility is located shall make the determination of legal settlement for all other admissions to the facility. In such cases, the officer in charge of the facility shall immediately forward all pertinent information obtainable to the judge for determination. If so designated by the county, legal settlement may be determined by a unit within the county specialized in making such determinations in lieu of the judge.

(b) Certification of the determination shall be made both to the officer in charge of the facility and to the county clerk of the county of legal settlement. A transcript of the testimony taken with respect to legal settlement and data used by a unit described

in par. (a) shall be submitted to the department if it is found that the person does not have a legal settlement in the state.

(2) STATEMENT OF COUNTY CLAIMS. This subsection applies only in situations where no other procedure is specified by statute.

(a) On July 1 in each year, the officer in charge of each facility specified in sub. (1) shall prepare a statement of the amount due from the state to the county for the care and maintenance of persons at public charge on forms supplied by the department.

(b) Such statement shall cover the preceding fiscal year and shall give the name of each person whose support is partly or wholly chargeable to the state, the person's legal settlement, the number of weeks for which support is charged, and the amount due the county from the state.

(c) Such statement shall be verified by the officer making it and certified by the trustees of the facility to the department and a duplicate thereof shall be forwarded to the county clerk no later than September 1 in each year.

(d) The department shall credit the county with the amount due the county for any recovery under s. 46.10 and shall certify such statement to the department of administration, which shall pay the aggregate amount found due each county on the first Monday in November of each year.

(3) STATEMENT OF COUNTY LIABILITY. This subsection applies only in situations where no other procedure is specified by statute.

(a) On October 1 in each year, the department shall prepare a statement of the amounts due from the counties to the state for care and maintenance of persons at public charge in each facility specified in sub. (1).

(b) Such statement shall cover the preceding fiscal year and shall give the name of each person whose support is partly chargeable to a county or wholly chargeable in the first instance to the state and partly chargeable over to a county, the legal settlement of each person, the number of weeks for which support is charged, the amount due a county for maintenance, and the amount due to the state from the county charged.

(c) The department shall file such statement with the department of administration, and mail a duplicate to the clerk of each county charged. Thereupon, the secretary of administration shall certify to the counties the amounts so due, which amounts shall be levied, collected, and paid into the state treasury as a special charge at the same time as the state taxes are apportioned.

(d) The amount so paid into the state treasury on account for care provided in nonstate-operated facilities shall be apportioned and paid to the counties to which it is due. The department of administration shall make the payment on April 1 in each year.

(4) RELIEF FROM ERRONEOUS CHARGES TO COUNTY OR STATE. When the state or a county believes that the cost of the care of a person is improperly charged to it, the matter may be determined by the department after a hearing. The department may on its own motion order a hearing if the charge is against the state. If it is against a county, the district attorney for the county may apply in writing to the department for a hearing. The application shall designate the county to which the person is chargeable, or if it is claimed that he or she is chargeable to the state, it shall so state. The department shall give reasonable notice to the parties interested of the time and place they may be heard. The application may be supported by affidavits and other proper evidence. At the hearing and in the determination of the matter, evidence of a court determination of legal settlement (or of no settlement) of the person shall be

regarded as an administrative determination, of such legal settlement status, by the judge and not by the court. If upon the hearing the department grants the relief asked for, it shall order a proper charge against the county chargeable, or against the state; and the person's support shall be charged accordingly by the department of administration by a proper charge or credit or both on the next apportionment under s. 70.60.

(5) ADMINISTRATIVE REVIEW. The order of the department is subject to review as provided in ch. 227. Upon entry of final judgment the department shall make the proper charge or credit or both and certify the same to the department of administration.

(6) CORRECTION OF ERRONEOUS CHARGES. Any error in the accounts between the state and a county for the support of any person in any such institution, or in the amount certified to a county as due and to be assessed upon it on account of such support, when certified by the department of health and social services, shall be corrected by the department of administration by a proper charge or credit or both on the next apportionment under s. 70.60.

(7) LIMITATIONS ON ACTIONS. No relief from erroneous charges under sub. (6) may be granted unless the county charged applies to the department for relief from such charges within 10 years from the date the county receives the statement of charges from the department as specified in sub. (3). The department is bound by the same 10-year limitation in notifying the county to be charged.

SECTION 8. 48.14 (3) of the statutes is amended to read:

48.14 (3) The transfer of legal custody of ~~mentally deficient~~ developmentally disabled and mentally ill children living or found in the county, pursuant to ch. 51. If a child is before the court, is alleged to be delinquent, neglected or dependent, and if it appears that the child may be ~~mentally deficient~~ developmentally disabled or mentally ill, the court may order a hearing to determine whether the child is ~~mentally deficient~~ developmentally disabled or mentally ill according to ch. 51, except that the order for hearing shall serve in lieu of the ~~application~~ petition required by ~~ch. 51 s. 51.20 (1)~~.

SECTION 9. 48.24 of the statutes is amended to read:

48.24 Physical and mental examination. Upon a finding by the court that reasonable cause exists to warrant such examination, the court may order any person coming within its jurisdiction to be examined as an outpatient by a clinical licensed psychologist, ~~having the qualifications required by s. 51.23,~~ a psychiatrist or a physician, appointed by the court, in order that the condition of such person may be given due consideration in the disposition of the case. The expenses of such examination, when approved by the court, shall be paid by the county. In counties maintaining an examination service by one or more physicians, psychiatrists or clinical licensed psychologists such county service shall be used for the purposes of this examination.

SECTION 10. 48.52 (2) (a) of the statutes is amended to read:

48.52 (2) (a) In addition to the facilities and services described in sub. (1), the department may use other facilities and services under its jurisdiction. The department may also use other public facilities or contract for the use of private facilities for the care and treatment of children in its legal custody; but placement of children in private or public facilities not under its jurisdiction does not terminate the legal custody of the department. Removals to institutions for the mentally ill or ~~mentally deficient~~ developmentally disabled shall be made in accordance with ch. 51.

SECTION 11. 51.001 to 51.22 of the statutes, as affected by chapters 39, 94, 189, 198, 199, 218, 224 and 393, laws of 1975 and supreme court order dated February 17, 1975 and effective January 1, 1976, are repealed and recreated to read:

51.001 Legislative policy. (1) It is the policy of the state to assure the provision of a full range of treatment and rehabilitation services in the state for all mental disorders and developmental disabilities and for mental illness, alcoholism and other drug abuse. There shall be a unified system of prevention of such conditions and provision of services which will assure all people in need of care access to the least restrictive treatment alternative appropriate to their needs, and movement through all treatment components to assure continuity of care.

(2) To protect personal liberties, no person who can be treated adequately outside of a hospital, institution or other inpatient facility may be involuntarily treated in such a facility.

51.01 Definitions. As used in this chapter, except where otherwise expressly provided:

(1) "Alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages and uses alcoholic beverages to the extent that his or her health is substantially impaired or by reason of such use is deprived of his or her ability to support or care for himself or herself, or such person's family. This definition does not apply to s. 51.45 (10).

(2) "Approved treatment facility" means any publicly or privately operated facility or unit thereof approved by the department for treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons.

(3) "Center for the developmentally disabled" means any facility which is operated by the department and which provides services including, but not limited to, 24-hour treatment, consultation, training and education for developmentally disabled persons.

(4) "Conditional transfer" means a transfer of a patient or resident to a less restrictive environment for treatment which is made subject to conditions imposed for the benefit of the patient or resident.

(5) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mental retardation, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include senility which is primarily caused by the process of aging or the infirmities of aging.

(6) "Director" means the person in charge of a state treatment facility, state or local treatment center, or approved private facility.

(7) "Discharge" of a patient who is under involuntary commitment orders means a termination of custody and treatment obligations of the patient to the authority to which the patient was committed by court action. The "discharge" of a patient who is voluntarily admitted to a treatment program or facility means a termination of treatment obligations between the patient and the treatment program or facility.

(8) "Drug dependent" means a person who uses one or more drugs to the extent that the person's health is substantially impaired or his or her social or economic functioning is substantially disrupted.

(9) "Hospital" has the meaning given under s. 140.24.

(10) "Inpatient facility" means a hospital which is operated by an organization having as its primary concern the diagnosis, treatment and rehabilitation of persons and which provides 24-hour care.

(11) "Mental health institute" means any institution operated by the department for specialized psychiatric services, research, education, and which is responsible for consultation with community programs for education and quality of care.

(12) (a) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community.

(b) "Mental illness", for purposes of involuntary commitment, means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

(13) "Residence", "legal residency" or "county of residence" has the meaning given under s. 49.10 (12) (c).

(14) "State treatment facility" means any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes.

(15) "Transfer" means the movement of a patient or resident between approved treatment facilities or to or from an approved treatment facility and the community.

(16) "Treatment" means those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person.

(17) "Treatment director" means the person who has primary responsibility for the treatment provided by a treatment facility. The term includes the medical director of a facility.

51.03 Authority of department. The department through its authorized agents may visit or investigate any treatment facility to which persons are admitted or committed under this chapter.

~~**51.04 Limitation on rule-making authority.** Prior to the adoption or revision of any rule under this chapter, the department shall submit the rules to the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof for further proceedings. A public hearing shall be held before the committees to review any such proposed rule. Within 45 days after receiving the proposed rule, the committees shall either approve or reject. In the event no action is taken by the committees within 45 days the rule shall be approved.~~

Vetoed
in Part

51.05 Mental health institutes. (1) The mental health institute located at Mendota is known as the "Mental Health Institute-Mendota" and the mental health institute located at Winnebago is known as the "Mental Health Institute-Winnebago". The department shall divide the state by counties into 2 districts, and may change the boundaries of these districts, arranging them with reference to the number of patients residing in them at a given time, the capacity of the institutes and the convenience of access to them.

(2) The department may not accept for admission to a mental health institute any resident person, except in an emergency, unless the board established under s. 51.42 in the county where the person has legal residency authorizes such care, as provided in s. 51.42 (9). Patients who are committed to the department under ss. 971.14, 971.17, 975.01, 975.02 and 975.06 or are admitted by the department under s. 975.17 are not subject to this section.

(3) Any person who is without a county responsible for his or her care and any person entering this state through the compact established under s. 51.75 may be accepted by the department and temporarily admitted to an institute. Such person

shall be transferred to the community board established under s. 51.42 for the community where the best interests of the person can best be served, as soon as practicable.

(4) The transfer or discharge of any person who is placed in a mental health institute shall be made subject to s. 51.35.

51.06 Centers for the developmentally disabled. (1) **PURPOSE.** The purpose of the northern center for developmentally disabled, central center for developmentally disabled and southern center for developmentally disabled is to provide services needed by developmentally disabled citizens of this state which are otherwise unavailable to them, and to return such persons to the community when their needs can be met at the local level. Services to be provided by the department at such centers shall include:

1. Education, training, habilitative and rehabilitative services to those persons placed in its custody.

2. Development-evaluation services to citizens through community boards established under ss. 51.42 and 51.437.

3. Assistance to such community boards in meeting the needs of developmentally disabled citizens.

4. Conduct of biological and behavioral research with respect to developmental disabilities.

(2) **SCHOOL ACTIVITIES.** Each center shall maintain a school department and shall have enrolled all those children who are eligible for schooling under state law. The school program shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency. If the welfare of the residents so requires, the department shall endeavor to make outside school facilities which are approved by the department of public instruction available for instructional purposes.

(3) **TRANSFER OR DISCHARGE.** The transfer or discharge of any person who is placed in a center for the developmentally disabled shall be made subject to s. 51.35.

51.10 Voluntary admission. (1) **APPLICATION PROCEDURE.** (a) With the approval of the treatment director of the facility, or in the case of a center for the developmentally disabled, the director of the center, and the approval of the director of the appropriate community board established under ss. 51.42 and 51.437, a person desiring admission to an approved inpatient treatment facility may be admitted upon application.

(b) With the approval of the director of the treatment facility and the director of the appropriate community board established under s. 51.42 or 51.437, a person may be voluntarily admitted to a state inpatient treatment facility.

(c) Voluntary admission of alcoholics shall be in accordance with s. 51.45 (10).

(d) 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 of dangerousness as established in s. 51.20 (1) (a) to be eligible for the benefits of voluntary treatment programs. An applicant may be admitted for the purpose of making a diagnostic evaluation.

(e) 1. At the time of admission to an inpatient treatment facility the individual being admitted shall be informed orally and in writing of his or her right to leave no later than 48 hours after submission of a written request to the staff of the facility except when the director or such person's designee notifies the individual within 48 hours that an affidavit of emergency detention pursuant to s. 51.15 will be filed and

such affidavit is filed with the court by the end of the next day in which the court transacts business.

2. Writing materials for use in requesting discharge shall be available at all times to any voluntarily admitted individual, and shall be given to the individual upon request. A copy of the patient's and resident's rights shall be given to the individual at the time of admission.

3. Whenever a patient or resident who is voluntarily admitted to an inpatient facility under this section requests discharge, the patient or resident shall be discharged within 48 hours as provided in subd. 1, unless the treatment director has reason to believe that the patient or resident is dangerous pursuant to the standards provided under s. 51.20 (1) (a) 2. Where the treatment director has reason to believe that the patient or resident is dangerous, an affidavit shall be executed by the treatment director pursuant to s. 51.15 (7).

(f) A person against whom a petition for involuntary commitment has been filed under s. 51.15 or 51.20 may agree to be admitted under this section. The court may permit the person to become a voluntary patient or resident pursuant to this section upon signing an application for voluntary admission, and the judge shall then dismiss the proceedings under s. 51.20.

(g) The treatment director of a facility may temporarily admit an individual to an inpatient facility when there is reason to question the competency of such individual. The treatment director shall then apply to the court for appointment of a guardian within 48 hours of the time of admission, exclusive of Saturdays, Sundays and legal holidays. The individual may remain at the facility pending appointment of a guardian.

(h) An adult for whom a guardian of the person has been appointed under ch. 880 because of the subject's incompetency may be voluntarily admitted to an inpatient treatment facility under this section only if the guardian and the ward consent to such admission.

(2) ADMISSION OF MINORS. (a) The application for voluntary admission of a minor who is under 14 years of age to an inpatient facility shall be executed by a minor's parent or guardian.

(b) The application for voluntary admission of a minor who is 14 years of age or over to an inpatient facility shall be executed by the minor and the minor's parent or guardian.

(c) A minor may be admitted immediately upon the filing of an application under this section. The procedures for admission specified in sub. (1) shall apply in treatment of an application for admission under this subsection.

(d) Within 3 days of the filing of an application under par. (a) or (b), the director of the facility shall file a petition for review in the juvenile court in the county in which the facility is located. If hardship would otherwise occur and if the best interests of the minor would not be harmed thereby, the court may on its own motion remove the petition to the juvenile court in the county of residence of the parent or guardian. A copy of the petition shall be served on any minor over 13 years of age and his or her parents, guardian or person in loco parentis. Within 5 days, exclusive of Saturdays, Sundays and holidays, of the application for admission, the juvenile court shall determine whether the minor is mentally ill, developmentally disabled or drug dependent, whether the admission is to the least restrictive appropriate treatment facility and, in the case of a minor 14 years of age or over, whether the application is voluntary. The court may base its findings on information provided by the application and the medical admission report. If the court determines that there is reason to believe additional information is necessary, the juvenile court may order a hearing, or

order such additional information as it deems necessary. The juvenile court may appoint legal counsel or a guardian ad litem for the child and shall order a hearing to review the application if requested by the child, the appointed counsel or guardian ad litem, parent or guardian. After conclusion of the review or hearing held under this paragraph, the court may:

1. Permit voluntary admission;
2. Order the petition to be treated as a petition for involuntary commitment and refer it to the court in the subject individual's county of legal residence for a hearing under s. 51.20;
3. If the subject individual is aged 14 years or more and is found to be developmentally disabled, appoint a temporary guardian and proceed under s. 51.67 to determine whether the subject individual should receive protective placement;
4. Dismiss the application;
5. If the child is neglected or dependent, provide for disposition under s. 48.35; or
6. Order less restrictive alternative care.

(e) A minor may be admitted to an inpatient treatment facility without review of the application under par. (d) for diagnosis and evaluation, or for dental, medical and psychiatric services for a period not to exceed 12 days. If admission is made of a minor aged 14 or more for psychiatric services, the application shall be approved by the minor and his or her parent or guardian. The application shall be reviewed by the treatment director of the facility to determine if the child is appropriate for admission under this paragraph. In the case of a center for the developmentally disabled, the application shall be reviewed by the director of the center.

(f) If a minor is admitted while he or she is under 14 years of age and if upon reaching age 14 is in need of further care and treatment, the director shall request the minor and the minor's parent or guardian to apply for voluntary admission, which shall be referred to the court for review in accordance with par. (d) and (e).

(g) The parent of any minor who is not more than 13 years of age, or a minor who is at least 14 years of age and his or her parent may request discharge in accordance with sub. (1) (e) 3. Any minor who is at least 14 years of age and who is voluntarily admitted under this section may petition for discharge. Upon receipt of such petition, the director of the facility shall immediately notify the minor's parent or guardian. If neither the parent nor guardian nor the treatment director petitions for emergency detention or involuntary commitment within 48 hours of receipt of the petition made by the minor, the minor shall be discharged.

51.15 Emergency detention. (1) A law enforcement officer may take an individual into custody for up to 48 hours, exclusive of Saturdays, Sundays and legal holidays, if he or she has cause to believe that such individual is mentally ill, is a drug dependent, or is developmentally disabled, and the individual exhibits conduct which constitutes a substantial risk of physical harm to the individual or to others. The officer's belief shall be based on specific and recent acts, attempts or threats to act made by the subject individual as observed by the officer or by other persons.

(2) The law enforcement officer shall execute an affidavit of emergency detention which shall include identification of the person or persons who observed the dangerous conduct or behavior, and the specific and recent dangerous acts, attempts or threats to act made by the subject individual. Such affidavit of emergency detention shall be filed by the officer with the detention facility at the time of admission, and with the court immediately thereafter and shall be supplemented by an affidavit by ~~persons who observed the dangerous conduct or behavior.~~ If the affidavit requests that proceedings for involuntary commitment be commenced, the court shall accept such

affidavit of detention as a petition for commitment under s. 51.20 (1) and shall begin commitment proceedings. If the affidavit requests that proceedings for protective placement be commenced, the court shall accept such affidavit of detention as a petition for protective placement under s. 55.06 and shall proceed as under s. 55.06 (11) (b).

(3) An individual who is taken into custody under this section may be detained in the following places:

(a) In a hospital or approved public treatment facility.

(b) In a center for the developmentally disabled.

(c) In a state treatment facility.

(d) In an approved private treatment facility, if the facility agrees to detain the individual.

(4) When upon the advice of the treatment staff the director of a facility specified in sub. (3) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. No individual may be detained for more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, without a hearing to determine probable cause for commitment under s. 51.20 (8).

(5) When a individual is temporarily detained in a suitable approved treatment facility, the director of such facility may treat the individual during the detention period, if the individual consents. The individual has the right to refuse all medication and treatment except when there is a life threatening situation or when such medication or treatment is necessary to prevent serious physical harm to the individual or others. The individual may refuse medications and treatment in a life threatening situation if he or she is a member of a recognized religious organization and the religious tenets of such organization prohibit such medication and treatment. The individual shall be advised of such rights by the director of the facility. A report of all treatment provided shall be filed with the court.

(6) At the time of detention the individual shall be informed both orally and in writing of the right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at county expense if the individual is indigent, and shall be informed that he or she has the right to remain silent and that the examiner is required to make a report to the court even if the subject individual remains silent, and that his or her statements can be used as a basis for commitment. The individual shall also be provided with a copy of the petition under s. 51.20 (1) if a petition is filed or with a copy of the affidavit of emergency detention if such affidavit is accepted as a petition by the court.

(7) If a person has been voluntarily admitted to an approved treatment facility pursuant to s. 51.10, the treatment director may execute the affidavit required by sub. (2) and authorize the taking of the individual into custody. In such case, the treatment director shall undertake all responsibilities which are required of a law enforcement officer under this section.

51.20 Involuntary commitment for treatment. (1) PETITION FOR EXAMINATION.

(a) Every written petition for examination shall allege that the subject individual to be examined:

1. Is mentally ill, drug dependent, or developmentally disabled and is a proper subject for treatment; and either

2. Is dangerous because of:

a. A substantial risk of physical harm to the subject individual as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; or

b. A substantial risk of physical harm to other persons 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 them, as evidenced by a recent overt act, attempt or threat to do such physical harm; or

3. Evidences a very substantial risk of physical impairment or injury to the subject individual, as manifested by evidence that his or her judgment is so affected that he or she is unable to protect himself or herself in the community and that reasonable provision for his or her protection is not available in the community and the individual is not appropriate for placement under s. 55.06. The subject individual's status as a minor does not automatically establish dangerousness under this subparagraph.

(b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual.

(c) The petition shall contain the names and mailing addresses of the petitioners and their relation to the subject individual, and shall also contain the names and mailing addresses of the individual's spouse, adult children, parents or guardian, custodian, brothers, sisters, person in loco parentis and person with whom the individual resides or lives. If this information is unknown to the petitioners or inapplicable, the petition shall so state. The petition may be filed in the branch of the county court which handles probate matters in the county where the subject individual is present or the county of the individual's legal residence. If the judge of such county court or a court commissioner who handles probate matters is not available, the petition may be filed and the hearing under sub. (8) may be held before a judge of any court of record of the county. The petition shall contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the petition. The petition shall be sworn to be true. If a petitioner is not a petitioner having personal knowledge as provided in par. (b), the petition shall contain a statement providing the basis for his or her belief.

(2) NOTICE OF HEARING AND DETENTION. Upon filing of a petition for examination, the court shall review the petition to determine whether an order of detention should be issued. The subject individual shall be detained only if the individual presents a substantial risk of serious physical harm to himself or herself or to others based on information regarding recent overt acts, attempts, or threats to inflict such harm to the subject individual or to others; or if the individual presents a very substantial risk of physical impairment or injury to the person himself or herself, as manifested by evidence that his or her judgment is so affected that he or she is unable to protect himself or herself in the community and that reasonable provision for his or her protection is not available in the community and the individual is not appropriate for placement under s. 55.06. The sheriff or any other person authorized by the court shall serve the subject individual with a notice of hearing, a copy of the petition and a written statement of the individual's right to an attorney, a jury trial, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, if detained. The person making service shall also orally inform the subject individual of these rights. The individual who is the subject of the petition and his or her counsel shall receive notice of all proceedings under this section. The court may also designate other persons to receive notice of hearings. The notice of time and place of a hearing shall be served personally on the subject of the petition, at least 12 hours in advance of the hearing to determine probable cause for commitment. If the sheriff has a detention order issued by a court, or if it appears to the sheriff that the subject individual presents a substantial risk of serious physical harm to himself or herself or to others, based on information regarding

recent overt acts, attempts or threats to inflict such harm; or the individual presents a very substantial risk of physical impairment or injury to the person himself or herself, as manifested by evidence that his or her judgment is so affected that he or she is unable to protect himself or herself in the community and that reasonable provision for his or her protection is not available in the community and the individual is not appropriate for placement under s. 55.06, the sheriff shall take the subject individual into custody. Placement shall be made in a hospital, approved public treatment facility, mental health institute, center for the developmentally disabled, state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

(4) **LEGAL COUNSEL.** At the time of the filing of the petition the court shall appoint adversary counsel unless the subject individual chooses to retain his or her own attorney. If the individual is indigent, the court shall provide counsel at county expense.

(5) **PUBLIC REPRESENTATION.** The district attorney or, if designated by the county board of supervisors, the corporation counsel or other counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

(6) **HEARING REQUIREMENTS.** The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (12). The parent or guardian of a minor who is the subject of a hearing shall have the right to participate in the hearing and to be represented by counsel. All proceedings under this chapter shall be reported as provided in s. 256.55. The court may determine to hold a hearing under this section at the institution at which the individual is detained unless the individual or his or her attorney objects.

(7) **JUVENILES.** For minors, the hearings held under this section shall be before the juvenile court.

(8) **PROBABLE-CAUSE HEARING.** (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section, within 48 hours of the detention, exclusive of Saturdays, Sundays and legal holidays, the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a). At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

(b) If the subject individual is not detained, the court shall hold a hearing within a reasonable time of the filing of the petition, to determine whether there is probable cause to believe the allegations made under sub. (1) (a).

(c) If the court determines that there is probable cause to believe such allegations, it shall schedule the matter for a hearing within 14 days from the time that the subject individual is taken into custody, except as provided in sub. (12) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time that the subject individual is taken into custody. If the subject individual is not detained under s. 51.15 or this section, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment.

(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 order emergency protective placement or services under ch. 55,

and shall proceed as if petition had been made for guardianship and protective placement or services.

(9) **DISPOSITION PENDING HEARING.** (a) If it is shown that there is probable cause to believe the allegations under sub. (1), the court may release the subject individual pending the full hearing and the individual has the right to receive treatment services, on a voluntary basis, from the community board established under s. 51.42 or 51.437, or from the department. The court may issue an order stating the conditions under which the subject individual may be released from detention pending the final hearing. If acceptance of treatment is made a condition of such release, the subject individual may elect to accept the conditions or choose detention pending the hearing. The court order may state the action to be taken upon information of breach of such conditions. A final hearing must be held within 30 days of such order, if the subject individual is released. Any detention under this paragraph invokes time limitations specified in sub. (8) (c), beginning with the time of such detention.

(b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (8) (c). Detention may be in a hospital, approved public treatment facility, mental health institute, center for the developmentally disabled, state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

(c) During detention a physician may administer such medications and therapies as are required to sustain life or to protect the person or others from serious physical harm unless the patient refuses treatment under s. 51.61 (1) (h). The subject individual may consent to other treatment but only after he or she has been informed of his or her right to refuse treatment and has signed a written consent to such treatment. A report of all treatment which is provided, along with any written consent, shall be filed with the court.

(10) **EXAMINATION.** (a) If the court finds after the hearing that there is probable cause to believe the allegations under sub. (1), it shall appoint 2 licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, to personally examine the subject individual. Such examiners shall have the specialized knowledge determined by the court to be appropriate to the needs of the subject individual. One of the examiners may be selected by the subject individual if such person makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment. The court may deny the subject individual's selection if the examiner does not meet the requirements of this paragraph or such person is not available. If requested by the subject individual, the individual's attorney or any other interested party with court permission, the individual has a right at his or her own expense or if indigent with approval of the court hearing the petition, at the reasonable expense of the individual's county of legal residence, to secure an additional medical or psychological examination, and to offer the evaluator's personal testimony, as evidence at the hearing. The examiners may not be related to the subject individual by blood or marriage, and may have no interest in his or her property. Prior to the examination the subject individual shall be informed that his or her statements can be used as a basis for commitment and that he or she has the right to remain silent, and that the examiner is required to make a report to the court even if the subject individual remains silent. A written report shall be made of all such examinations and filed with the court. The issuance of such a warning to the subject individual prior to each examination establishes a presumption that the individual understands that he or she need not speak to the examiner. The

examiners shall personally observe and examine the subject individual at any suitable place and satisfy themselves, if reasonably possible, as to the individual's mental condition, and shall make independent reports to the court. If the subject individual is not detained pending the hearing, the court may designate the time and place where the examination is to be held and may require the individual's appearance.

(b) If the examiner determines that the subject individual is a proper subject for treatment, the examiner shall make a recommendation concerning the appropriate level of treatment. Such recommendation shall include the level of inpatient facility which provides the least restrictive environment consistent with the needs of the individual, if any, and the name of the facility where the subject individual should be received into the mental health system. The court may, prior to disposition, order additional information concerning such recommended level of treatment to be provided by the staff of the appropriate community board under s. 51.42 or 51.437, or by the staff of a public treatment facility if the subject individual is detained there pending the final hearing.

(c) On motion of either party, all parties shall produce at a reasonable time and place designated by the court all physical evidence which each party intends to introduce in evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical evidence in the presence of a person designated by the court. The order shall specify the time, place and manner of making the inspection, copies, photographs, or transcriptions, and may prescribe such terms and conditions as are just. The court may, if the motion is made by the subject individual, delay the hearing for such period as may be necessary for completion of discovery.

(11) HEARING. (a) Within a reasonable time after the hearing to determine probable cause for commitment under sub. (8), the petitioner's counsel shall notify the subject individual and his or her attorney of persons who may testify in favor of his or her commitment, and of the time and place of final hearing.

(b) Counsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing.

(c) The court shall hold a final hearing to determine if the allegations specified in sub. (1) (a) are true. Except as otherwise provided in this chapter, the rules of evidence in civil actions shall apply to such hearing.

(12) JURY TRIAL. (a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel, the court shall direct that a jury of 6 people be drawn to determine if beyond a reasonable doubt the allegations specified in sub. (1) (a) are true. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand.

(b) No verdict shall be valid or received unless agreed to by at least 5 of the jurors.

(13) OPEN HEARINGS; EXCEPTION. Every hearing which is held under this section shall be open, unless the subject individual or the individual's attorney moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses may be present.

(14) DISPOSITION. (a) At the conclusion of the proceedings the court shall:

1. Dismiss the petition; or

2. If the subject individual is an adult, or is a minor aged 14 years or more who is developmentally disabled, appoint a temporary guardian and proceed under s. 51.67 to determine whether the subject individual should receive protective placement; or

3. If the allegations specified in sub. (1) (a) are proven, order commitment to the care and custody of the appropriate board under s. 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient treatment under care of such board; or

4. If the allegations specified in sub. (1) (a) are proven, order commitment to the department if the person was or is to be transferred from a prison or jail under s. 51.37; or

5. If the allegations specified in sub. (1) (a) are proven and the subject individual is a nonresident, order commitment to the department.

(b) If the petition has been dismissed under par. (a), the subject individual may agree to remain in any facility in which he or she was detained pending the hearing for the period of time necessary for alternative plans to be made for his or her care.

(c) If disposition is made under par. (a) 3:

1. The court shall designate the facility or service which is to receive the subject individual into the mental health system;

2. The community board under s. 51.42 or 51.437 shall arrange for treatment in the least restrictive manner consistent with the requirements of the subject individual in accordance with a court order designating the maximum level of inpatient facility, if any, which may be used for treatment; and

3. The community board under s. 51.42 or 51.437 shall report to the court as to the initial plan of treatment for the subject individual.

(d) A disposition under par. (a) 3, 4 or 5 may be modified as provided in s. 51.35.

(e) All findings of mental illness, need for treatment and dangerousness under this subsection shall be made based on evidence proven beyond a reasonable doubt.

(f) The board established pursuant to s. 51.42 or 51.437 which receives an individual who is committed by a court under this section is authorized to place such individual in an approved treatment facility subject to any limitations which are specified by the court under par. (c) 2. The board shall place the subject individual in the treatment program and treatment facility which is least restrictive of the individual's personal liberty, consistent with the treatment requirements of the individual. The board shall have ongoing responsibility to review the individual's needs, in accordance with sub. (18), and transfer the person to the least restrictive program consistent with the individual's needs.

(g) The first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of such individual may be for a period not to exceed one year. The board under s. 51.42 or 51.437 to whom the individual is committed may discharge the individual at any time, and shall place a committed individual in accordance with par. (f). Upon application for extension of a commitment by the department or the board having custody of the subject, the court shall proceed under subs. (11) to (14). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a), or there is a substantial likelihood, based on the individual's treatment record, that the individual would be a proper subject for commitment under sub. (1) (a) if treatment were withdrawn, it shall order judgment to that effect and continue the commitment. The burden of proof is upon the board or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

(15) **TRANSPORTATION; EXPENSES.** The sheriff or any law enforcement officer shall transport an individual who is the subject of a petition and execute the commitment, or any competent relative, friend or member of the staff of a treatment facility may assume responsibility for the individual and transport him or her to the inpatient facility. The director of the board established under s. 51.42 or 51.437 may request the sheriff to provide transportation for a subject individual or may arrange any other method of transportation which is feasible. The board may provide reimbursement for the transportation costs from its budgeted operating funds.

(16) **APPEAL.** (a) *To circuit court.* Within 10 days after disposition under sub. (14), an appeal may be taken from any final order or judgment to the circuit court for the county by the subject of the petition or such individual's guardian, by any petitioner or by the representative of the public. Such appeal is taken by filing with the clerk of the court rendering such order or judgment a notice of appeal, signed by the appellant or the appellant's attorney, a copy of which shall be served by appellant upon each person to whom notice of the proceeding was required to be given, upon the appropriate community board under s. 51.42 or 51.437, and upon the director of the treatment facility, if any.

(b) *Stay of order or judgment.* Application for stay of any final order or judgment pending appeal shall first be made to the court which rendered the order or judgment. If such application is denied, or is granted upon conditions, a transcript of the ruling, stating specific reasons therefor, shall be immediately prepared and delivered to the party requesting the stay. Application for stay may then be made to the circuit court, accompanied by such transcript. The circuit court may stay the order or judgment, either unconditionally or upon such conditions as may be imposed under sub. (10) (a).

(c) *Transcript and return.* As soon as possible, but in no event later than 30 days after final hearing, the appellant shall file with the clerk of court a transcript of the reporter's notes. The appellant shall pay the costs of preparing the transcript, except that the county shall pay the costs of preparing the transcript in any case where the U.S. or Wisconsin constitution so requires if the appellant is financially unable to pay the costs. Within 5 days after the transcript is filed, the clerk shall return the case file and transcript to the circuit court and shall notify the parties of such filing.

(d) *Motions in appellate court.* At any time after the filing of the case file and transcript in circuit court, any party authorized to appeal may, upon notice, move that the final order or judgment appealed from be affirmed, modified and affirmed as modified, or reversed, move that the appeal be dismissed, or move for a new hearing. The motion shall state concisely the grounds upon which it is made and shall be heard on the record.

(e) *Circuit court power on appeal.* On appeal, the circuit court has power to review and to affirm, reverse, or modify the final order or judgment appealed from, or to order a new hearing, in whole or in part, which shall be in the county court. The circuit court shall render a decision within 30 days after receipt of the case file and transcript.

(f) *Appeal to supreme court.* A final decision by the circuit court may be appealed to the supreme court under ch. 817, except that application for stay of execution shall first be made to the circuit court. If such application is denied, or is granted upon conditions, a transcript of the ruling, stating the specific reasons therefor, shall be immediately prepared and delivered to the party requesting the stay. Application may then be made to the supreme court or a justice thereof, accompanied by such transcript. Such application may be granted unconditionally, or upon such conditions as may be imposed pending final hearing under sub. (10) (a).

CHAPTER 430

1436

(17) REEXAMINATION OF PATIENTS. (a) Except in the case of alcoholic commitments under s. 51.45 (13), any patient who is involuntarily committed for treatment under this chapter, may on the patient's own verified petition, except in the case of a minor who is under 14 years of age, or on the verified petition of the patient's guardian, relative, friend, or any person providing treatment under the order of commitment, request a reexamination or request the court to modify or cancel an order of commitment.

**Vetoed
in Part** (b) A petition under this subsection may be filed with the branch of the county court which handles probate matters, either in the county from which the patient is committed or in the county in which the patient is detained. ~~The petition for reexamination shall be in the form provided in sub. (11).~~

(c) If a hearing has been held with respect to the subject individual's commitment within 30 days of the filing of a petition under this subsection, no hearing shall be held. If such a hearing has not been held within 30 days of the filing of a petition, but has been held within 120 days of the filing, the court shall within 24 hours of the filing order an examination to be completed within 96 hours, exclusive of Saturdays, Sundays and holidays, by the appropriate board under s. 51.42 or 51.437. A hearing may then be held in the court's discretion. If such a hearing has not been held within 120 days of the filing, a hearing shall be held on the petition within 30 days of receipt.

(d) Reexaminations under this subsection are subject to the standards prescribed in sub. (14) (g).

(e) If the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (10) (a). For the purposes of the examination and observation, the court may order the patient confined in any place designated in s. 51.15 (3).

(f) If a patient is involuntarily committed and placed in a hospital, a notice of the appointment of the examining physicians and a copy of their report shall be furnished to such hospital by the court.

(g) Upon the filing of a report the court shall fix a time and place of hearing and cause reasonable notice to be given to the petitioner, the treatment facility, the patient's legal counsel and the guardian of the patient, if any, and may notify any known relative of the patient. Subsections (11) to (14) shall govern the procedure to be used in the conduct of such hearing, insofar as applicable.

(h) All persons who render services in such proceedings shall receive compensation as provided in sub. (19) and all expenses of such proceedings shall be paid and adjusted as provided in sub. (19).

(i) Subsequent reexaminations may be had at any time in the discretion of the court but may be compelled after 120 days of the preceding examination in accordance with this subsection. All petitions for reexamination must be heard within 30 days of their receipt by the court.

(j) This subsection applies to petitions for reexamination which are filed pursuant to chs. 971 and 975.

(k) Any order of a board established pursuant to s. 51.42 or 51.437 is subject to review by the branch of the county court which handles probate matters upon petition pursuant to this subsection.

(18) RIGHT TO REEVALUATION. With the exception of alcoholic commitments under s. 51.45 (13), every patient committed involuntarily to a board under this chapter shall be reevaluated by the treatment staff or visiting physician within 30 days after the commitment, and within 3 months after the initial reevaluation, and again thereafter at least once each 6 months for the purpose of determining whether such

patient has made sufficient progress to be entitled to transfer to a less restrictive facility or discharge. The findings of such reevaluation shall be written and placed with the patient's treatment record, and a copy shall be sent to the board which has responsibility for the patient and to the committing court.

(19) FEES OF EXAMINERS, WITNESSES; EXPENSES OF PROCEEDINGS. (a) Unless previously fixed by the county board of supervisors in the county in which the examination is held, the examiners shall receive a fee as fixed by the court for participation in commitment proceedings, and reasonable reimbursement for travel expenses.

(b) Witnesses subpoenaed before the court shall be entitled to the same fees as witnesses subpoenaed before the court in other cases.

(c) Expenses of the proceedings, from the presentation of the application to the conclusion of the proceeding, including reasonable actual attorney's fees for court appointed attorneys in the case of indigents, shall be allowed by the court and paid by the county from which the subject individual is committed or released, in the manner that the expenses of a criminal prosecution are paid, as provided in s. 59.77.

(d) If the subject individual has a legal residence in a county other than the county from which he or she is committed or discharged, that county shall reimburse the county from which the individual was committed or discharged for all expenses under pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments of all such proceedings on nonresident payments to the department, which shall certify such expenses for reimbursement in the form of giving credits to the committing or discharging county and assessing such costs against the county of legal residence or against the state at the time of the next apportionment of charges and credits under s. 70.60.

51.22 Care and custody of persons. (1) Unless otherwise specified in this section, any person committed under this chapter shall be committed to the board established under s. 51.42 or 51.437 serving the person's county of residence, and such board shall authorize placement of the person in an appropriate facility for care, custody and treatment according to s. 51.42 (9) (a) or 51.437 (12) (a). If such person is a nonresident of this state, the commitment shall be to the department.

(2) Voluntary admissions under ss. 51.10 and 51.45 (10) shall be through the board established under s. 51.42 or 51.437 serving the person's county of residence or through the department if such person is a nonresident of this state. Admissions through a community board shall be made in accordance with s. 51.42 (9) (a) or 51.437 (12) (a). Admissions through the department shall be made in accordance with sub. (3).

(3) For any admission to be made through the department, the need for inpatient care shall be determined by the department prior to the admission of the patient to a facility. Unless a state-operated facility is used, the department for the purpose intended by this section may only authorize care in an inpatient facility which is operated by or under a purchase of service contract with a board established under s. 51.42 or 51.437 or an inpatient facility which is under a contractual agreement with the department. Except in the case of state treatment facilities, the department shall reimburse the facility for the actual cost of all authorized care and services from the appropriation under s. 20.435 (2) (d). For collections made under the authority of s. 46.10 (16), moneys shall be credited or remitted to the department no later than 60 days after the month in which collections are made. Such collections are also subject to s. 46.036 or special agreement. Collections made by the department under ss. 46.03 (18) and 46.10 shall be deposited in the general fund.

(4) If a patient is placed in a facility authorized by a community board and such placement is outside the jurisdiction of such board, the placement does not transfer the patient's legal residence to the county of the facility's location while such patient is under commitment.

(5) The board to which a patient is committed shall provide the least restrictive treatment alternative appropriate to the patient's needs, and movement through all appropriate and necessary treatment components to assure continuity of care.

SECTION 12. 51.225 of the statutes is renumbered 51.23.

SECTION 13. 51.23 of the statutes, as affected by chapter 189, laws of 1975, is repealed.

SECTION 14. 51.235 of the statutes is repealed.

SECTION 15. 51.24 of the statutes is renumbered 51.08.

SECTION 16. 51.25 of the statutes is renumbered 51.09.

SECTION 17. 51.27 of the statutes, as affected by chapter 413, laws of 1975, is repealed.

SECTION 18. 51.30 to 51.35 of the statutes are repealed and recreated to read:

51.30 Records. (1) **ACCESS TO COURT RECORDS.** The files and records of the court proceedings under this chapter shall be closed but shall remain accessible to any individual against whom a petition is filed and such individual's attorney.

(2) **ACCESS TO TREATMENT RECORDS.** (a) An individual's counsel shall have access to all treatment records concerning the individual at any time.

(b) Except as otherwise provided in this section and ss. 905.03 and 905.04 the registration and all other records of treatment facilities shall remain confidential and are privileged to the patient. Access to treatment records by the patient during treatment may be restricted by the director of a treatment facility.

(c) The patient shall have a right, following discharge under s. 51.35 (3), to a record of all medications and somatic treatments prescribed and to a copy of the discharge summary which was prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(d) In addition to the information provided under par. (c), the patient shall following discharge, if the patient so requests, have access to all of his or her treatment records. Such right of access applies to the parent or guardian of a minor or person in loco parentis, and to a minor himself or herself only after reaching the age of 18. A minor who is aged 14 or more may give a valid medical release to the minor's attorney or guardian ad litem without consent of the minor's parent, guardian, or person in loco parentis. A reasonable and uniform charge for reproduction may be assessed. The director of the treatment facility or such person's designee and the treating physician may be present during inspection of any patient records. Notice of inspection of treatment records shall be provided to the director of the treatment facility and the treating physician at least 24 hours before inspection of the records is made. Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any person referred to in the record who gave information subject to the condition that his or her identity remain confidential.

(e) Nothing in this section shall be construed so as to prohibit the department, the community boards under s. 51.42 or 51.437 or the legislative audit bureau from collecting names and data of persons as is necessary for, and only to be used for, billing, collection and auditing purposes. Such information shall remain confidential. The department and the community boards shall develop procedures to assure the confidentiality of such information.

(f) Nothing in this section prohibits the release of information pursuant to the lawful order of a court of record.

(g) Except as otherwise specifically provided, this subsection applies to commitments under chs. 971 and 975.

(h) The program director of the community board under s. 51.42 or 51.437 which has custody of any person shall have access to such records as are necessary to determine progress and adequacy of treatment, and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. Such records shall remain confidential and are privileged to the patient.

(3) PRIVILEGES. Sections 905.03 and 905.04 supersede this section with respect to communications between physicians and patients, and between attorneys and clients.

51.35 Transfers and discharges. (1) TRANSFER OF PATIENTS AND RESIDENTS. (a) The department or the board established under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a facility under its supervision or operating under an agreement with it, between treatment facilities or from a facility into the community if such transfer is consistent with reasonable medical and clinical judgment and consistent with s. 51.22 (5). The transfer shall be made in accordance with par. (e). Terms and conditions which will benefit the patient or resident may be imposed as part of a transfer to a less restrictive treatment alternative. The patient or resident shall be informed at the time of transfer of the consequences of violating such terms and conditions, including possible transfer back to a facility which imposes a greater restriction on personal freedom of the patient or resident.

(b) In addition to the requirements in par. (a), a transfer of a patient in a mental health institute or center for the developmentally disabled by the department is subject to the approval of the appropriate board established under s. 51.42 and 51.437 to which the patient was committed or through which the patient was admitted to the facility, if any.

(c) The department may, without approval of the board established under s. 51.42 or 51.437 and notwithstanding par. (d) 3, transfer any patient from a treatment facility to another treatment facility when the condition of the patient requires such transfer without delay. The department shall notify the appropriate board established under s. 51.42 or 51.437 that the transfer has been made. Any patient so transferred may be returned to the treatment facility from which the transfer was made, upon orders from the department or the board established under s. 51.42 or 51.437, when such return would be in the best interests of the patient.

(d) 1. The department may, without approval of the appropriate board under s. 51.42 or 51.437, transfer any patient from a state treatment facility or other inpatient facility to an approved treatment facility which is less restrictive of the patient's personal freedom.

2. Transfer under this subsection may be made only if the transfer is consistent with the requirements of par. (a), and the department finds that the appropriate board established under s. 51.42 or 51.437 is unable to locate an approved treatment facility in the community, or that such board has acted in an arbitrary or capricious manner to prevent the transfer of the patient out of the state treatment facility or other inpatient facility contrary to medical and clinical judgment.

3. A transfer of a patient, made under authority of this subsection, may be made only after the department has notified the board established under s. 51.42 or 51.437 of its intent to transfer a patient in accordance with this subsection. The patient's guardian, if any, or if a minor his or her parent or person in loco parentis shall be notified.

(e) Whenever any transfer between different facilities results in a greater restriction of personal freedom for the patient and whenever the patient is transferred from outpatient to inpatient status, such patient shall be informed both orally and in writing of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at county expense if the patient is indigent and the right to petition a court where the patient is located or the committing court for a review of the transfer.

(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 patient is mentally ill and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2 to himself or herself to others in the treatment facility where he or she is present. The department shall file an affidavit of emergency detention with the committing court within 24 hours after receiving such person for emergency detention. Such affidavit shall conform to the requirements specified in s. 51.15 (2).

(3) TRANSFER OF CERTAIN CHILDREN FROM ETHAN ALLEN SCHOOL. (a) When a licensed physician or licensed psychologist of the Ethan Allen school, or a licensed physician or licensed psychologist of the department, reports in writing to the superintendent of the school that any individual confined therein is, in his or her opinion, mentally ill, drug dependent, or developmentally disabled, and is dangerous as defined in s. 51.20 (1) (a) 2, or is an alcoholic and is dangerous as specified in s. 51.45 (13) (a); or that the individual is mentally ill, drug dependent, alcoholic or developmentally disabled and is in need of psychiatric treatment; and that voluntary consent has been obtained to a transfer for treatment, the superintendent shall make a written report to the department. In the case of a minor between the ages of 14 and 17, the minor and the minor's parent or guardian shall consent, and in the case of a minor under the age of 14, only the minor's parent or guardian need consent. Thereupon the department may transfer the individual to a state treatment facility. The court which ordered confinement to the school shall be notified by the department. The department may order the return of the person to the school before the expiration of the order of confinement if it is satisfied that he or she can be conditionally transferred.

(b) Within a reasonable time before the expiration of such individual's confinement, if he or she is still in the facility, the director shall make an application under s. 51.20 or 51.45 (13) to the court of the county in which the hospital is located for an inquiry into the individual's mental condition, and thereafter the proceedings shall be as in other applications under that section. Notwithstanding s. 51.20 (1) (b), the application of the director of the state treatment facility alone is sufficient.

(c) The department may authorize emergency transfer of an individual from the Ethan Allen school to a state treatment facility if there is cause to believe that such individual is mentally ill, drug dependent, alcoholic or a minor who is developmentally disabled and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2 to the individual or to others. The department shall file an affidavit of emergency detention under s. 51.15 (2) or 51.45 (12) (b) with the court within 24 hours after such person is received for detention. 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 may return the individual to the institution from which the transfer was made.

(4) DISCHARGE. (a) The board established under s. 51.42 or 51.437 shall grant a conditional transfer or discharge from an order of commitment or protective placement when it determines that the patient no longer meets the standard for recommitment under s. 51.20 (14) (g) or placement under s. 55.06 (2). The board shall grant a discharge to a patient who is voluntarily admitted to a treatment facility if the

treatment director determines that treatment is no longer necessary or if the individual requests such discharge. Discharge or retention of a patient who is voluntarily admitted is subject to the procedures prescribed in s. 51.10 (1) (e).

(b) The department shall grant a discharge from commitment, protective placement or from voluntary admission for patients committed, placed or voluntarily admitted to a facility under control of the department. The procedure shall be the same as provided in par. (a).

(c) The director of an approved treatment facility may grant a discharge or may terminate services to any patient voluntarily admitted under s. 51.10 when, on the advice of the treatment staff, such discharge or termination is in the best interests of the patient.

(d) The director of an approved treatment facility may grant a discharge or may terminate services to any patient voluntarily admitted under s. 51.10 when such patient requests a discharge. Such discharge shall conform to s. 51.10 (1) (e) 3.

(e) A discharge may be issued to a patient who participates in outpatient, after-care, or follow-up treatment programs. The discharge may permit the patient to receive necessary medication, outpatient treatment, consultation and guidance from the issuing facility at the request of the patient. Such discharge is not subject to withdrawal by the issuing agency.

(f) Notice of discharge shall be filed with the committing court or the court which ordered protective placement by the department or the board which granted the discharge. After such discharge, if it becomes necessary for the individual who is discharged to have further care and treatment, and such individual cannot be voluntarily admitted, a new commitment or placement must be obtained, following the procedure for the original commitment or placement.

(5) RESIDENTIAL LIVING ARRANGEMENTS; TRANSITIONARY SERVICES. The department and any person, director or board authorized to discharge or transfer patients pursuant to this section shall ensure that a proper residential living arrangement and the necessary transitional services are available and provided for the patient being discharged or transferred.

(6) VETERANS. (a) When the department has notice that any person other than a prisoner is entitled to receive care and treatment in a veterans' administration facility, the person may petition the department for a transfer to such facility, and the department shall in cooperation with the department of veterans affairs procure his or her admission to such facility in accordance with s. 45.30.

(b) If an individual who is committed under s. 51.37 is entitled to receive care and treatment in a veterans' administration facility, the person may petition the department for a transfer to such facility. If the department declines to grant the request, it shall give the person a written reply, stating the reasons for its position. The decision of the department is subject to review by the court which passed sentence or ordered commitment of the person.

(c) The department shall advise the department of veterans affairs of the transfer or discharge of a veteran.

(7) GUARDIANSHIP AND PROTECTIVE SERVICES. Prior to discharge from any state treatment facility, the department shall review the possible need of a developmentally disabled, aged infirm or person with other like incapacities for protective services or placement under ch. 55 after discharge, including the necessity for appointment of a guardian or limited guardian. The department shall petition for limited or full guardianship, or for protective services or placement for the person if needed. When the department makes a petition for guardianship under this subsection, it shall not be appointed as guardian.

SECTION 19. 51.37 of the statutes is renumbered 51.07.

SECTION 20. 51.37 of the statutes is created to read:

51.37 Criminal commitments; state hospital. (1) All commitments under ss. 971.14 (5), 971.17, 975.01, 975.02 and 975.06 shall be to the department.

(2) The state hospital at Waupun is known as the "central state hospital", and except as provided in s. 53.05 may be used for the custody, care and treatment of adult male persons committed or transferred thereto pursuant to this section and chs. 971 and 975. Whenever the director is not a psychiatrist, all psychiatric reports, testimony or recommendations regarding the mental condition of a patient or prisoner shall be made by a staff psychiatrist of the hospital or the department.

(3) The Mendota and Winnebago mental health institutes may be used for the custody, care and treatment of persons committed or transferred thereto pursuant to this section and chs. 971 and 975.

(4) The department may, with the approval of the committing court and the community board established under s. 51.42 or 51.437, and subject to s. 51.35, transfer to the care and custody of a community board established under s. 51.42 or 51.437 any person in an institution of the department committed under s. 971.14 or 971.17, if in its opinion, the mental condition of the person is such that further care is required and can be properly provided under the direction of the community board established under s. 51.42 or 51.437.

(5) (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department 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 dangerous as defined in s. 51.20 (1), or is an alcoholic and is dangerous as specified in s. 51.45 (13) (a); 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 which may transfer the petitioner if a voluntary application is made, and if not file a petition for involuntary commitment under s. 51.20 (1). Any time spent by a prisoner in an institution designated under sub. (2) or (3) shall be included as part of such individual's sentence. ~~Central state hospital shall be regarded as a prison for the purpose of crediting sentence time in accordance with the procedures specified in ss. 53.11 and 53.12.~~

Vetoed
in Part

(b) The department 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 such individual is mentally ill and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2 of physical harm to himself or herself or to others. The department shall file an affidavit of emergency detention with the court within 24 hours after receiving such individual for detention. Such affidavit shall conform to s. 51.15 (2).

(6) After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1).

(7) Section 51.20 (19) applies to witness fees, attorney fees and other court fees incurred under this section.

(8) (a) Rights to reexamination under s. 51.20 (17) apply to a prisoner who is found to be mentally ill or drug dependent except that the petition shall be made to the court which made the finding or, if the prisoner is detained by transfer, to the county court of the county in which he or she is detained. If upon rehearing it is found that the standards for recommitment under s. 51.20 (14) (f) no longer apply to the prisoner or that he or she is not in need of psychiatric or psychological treatment, the

prisoner shall be returned to the prison unless his or her term has expired, in which case he or she shall be discharged.

(b) If the prisoner's condition will require psychiatric or psychological treatment after his or her sentence expires, the director shall, within a reasonable time before the prisoner's sentence expires, make a written application to the court which committed the prisoner under sub. (5) (a). Thereupon the proceeding shall be upon application made under s. 51.20, but no physician or psychologist who is connected with a state prison, Winnebago or Mendota mental health institute, central state hospital or any county jail may be appointed as an examiner. If the court does not commit the prisoner, it may dismiss the application and order the prisoner returned to the institution from which he or she was transferred until expiration of the prisoner's sentence. If the court commits the prisoner for the period commencing upon expiration of his or her sentence, such commitment shall be to the care and custody of the board established under s. 51.42 or 51.437. Any retransfer by the board to central state hospital is subject to s. 51.35 (1) (a).

(9) If in the judgment of the director of central state hospital, Mendota mental health institute, Winnebago mental health institute or the Milwaukee county mental health center, any person who is committed under s. 971.14 or 971.17 is not in such condition as warrants his or her return to the court but is in a condition to receive a conditional transfer or discharge under supervision, the director shall report to the department and the committing court his or her reasons for such judgment. If the court does not file objection to the conditional transfer or discharge within 60 days of the date of the report, the director may, with the approval of the department, conditionally transfer any person to a legal guardian or other person, subject to the rules of the department.

SECTION 21. 51.38 of the statutes is created to read:

51.38 Nonresident patients on unauthorized absence. The county court may order the detention of any nonresident individual who is on unauthorized absence from a mental institution of another state. Detention shall be for the period necessary to complete the deportation of that individual.

SECTION 22. 51.39 of the statutes is repealed and recreated to read:

51.39 Resident patients on unauthorized absence. If any patient admitted under s. 51.15 or 51.20 is on unauthorized absence from a treatment facility, the sheriff of the county in which the patient is found, upon the request of the director, shall take charge of and return the patient to the facility. The costs incident to the return shall be paid out of the facility's operating funds and be charged back to the patient's county of residence.

SECTION 23. 51.40 of the statutes is renumbered 51.91.

SECTION 24. 51.42 (1) of the statutes is renumbered 51.42 (1) (a).

SECTION 25. 51.42 (1) (b) of the statutes is created to read:

51.42 (1) (b) *Responsibility of county government.* The county boards of supervisors have the primary responsibility for the well-being, treatment and care of the mentally ill, developmentally disabled, alcoholic and other drug dependent citizens residing within their respective counties and for ensuring that those individuals in need of such emergency services found within their respective counties receive immediate emergency services. County liability for care and services purchased through or provided by a board established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency" services means those services provided under the authority of s. 51.15 (1), 51.45 (11) (b) and (12), 55.05 (4) or 55.06 (11) (a); and

s. 51.45 (11) (a) for not more than 24 hours. Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party.

SECTION 26. 51.42 (2) (b) and (c) and (3) (a) of the statutes are amended to read:

51.42 (2) (b) "Board" means the community ~~mental health, mental retardation, alcoholism and drug abuse governing and policy-making~~ board of directors established under this section.

(c) "Director" means the director appointed by the community ~~mental health, mental retardation, and alcoholism and drug abuse~~ board.

(3) (a) The county board of supervisors of ~~any every~~ county, or the county boards of supervisors of any combination of counties, ~~may shall~~ establish a community mental health, mental retardation, alcoholism and drug abuse program, make appropriations to operate the program and authorize the board of directors of the program to apply for grants-in-aid pursuant to this section.

SECTION 27. 51.42 (3) (d) of the statutes is repealed and recreated to read:

51.42 (3) (d) The county board of supervisors of any county may designate the board established under this section as the governing board of any other county health care program or institution, but the operation of such program or institution shall not be reimburseable under sub. (8).

SECTION 28. 51.42 (3) (e) of the statutes is repealed.

SECTION 29. 51.42 (4) (a) and (b) of the statutes are amended to read:

51.42 (4) (a) The county board or boards of supervisors of ~~any every~~ county or ~~any every~~ combination of counties ~~establishing or~~ administering a program shall, before it qualifies under this section, appoint a governing and policy-making board of directors to be known as the community ~~mental health, mental retardation, alcoholism and drug abuse~~ board. ~~In Notwithstanding par. (b) in~~ counties having a population of 500,000 or more, the board of public welfare established under s. 46.21 ~~shall may~~ constitute the ~~governing and policy-making~~ community board of directors under this section.

(b) ~~Except in counties having a population of 500,000 or more, in~~ In any county which does not combine with another county the board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the mentally ill, ~~mentally retarded~~ developmentally disabled, alcoholic or drug ~~abuser~~ dependent persons. The board shall have representation from each of the aforementioned mental disability interest groups. No more than 5 members may be appointed from the county board of supervisors.

SECTION 30. 51.42 (7) (a) and (9) (a) of the statutes, as affected by chapter 39, laws of 1975, are amended to read:

51.42 (7) (a) The first step in the establishment of a program shall be the preparation of a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of the mentally ill, developmentally disabled, alcoholic, drug abuser and other psychiatric disabilities for citizens residing within the jurisdiction of the board and for persons in need of emergency services found within the jurisdiction of the board. The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

(9) (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the

facility, unless the board governs such facility. The need for inpatient care shall be determined by the clinical director of the program prior to the admission of ~~the a~~ patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the patient is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections, according to s. 46.036, unless the department determines that a charge is administratively infeasible, such as transfers from state correctional institutions and interstate compact clients, ~~unless the patient has been committed to the department under s. 971.14, 971.17, 975.01, 975.02 or 975.06 and is in a state institution or unless the department, after individual review, determines that the charge is not attributable to the cost of basic care and services. However, boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (2) (a), commitments under s. 971.14, 971.17, 975.01, 975.02, 975.06 or admissions under s. 975.17, or children placed in the guardianship or legal custody of the department under s. 48.34, 48.35 or 48.43.~~ The exclusionary provisions of s. 46.03 (18) ~~shall do~~ not apply to direct and indirect costs which are attributable to care and treatment of the client.

SECTION 31. 51.42 (9) (c) of the statutes, as created by chapter 39, laws of 1975, and as affected by chapter 199, laws of 1975, is amended to read:

51.42 (9) (c) Care, services and supplies provided after December 31, 1973, to any person who, on December 31, 1973, was in or under the supervision of a mental health institute, or was receiving mental health services in a facility authorized by s. ~~51.24 or 51.25~~ 51.08 or 51.09, but was not admitted ~~under s. 51.155 to a mental health institute by the department,~~ shall be charged to the board established under this section which was responsible for such care and services at the place where the ~~person~~ patient resided when admitted to the institution. The department shall bill boards established under this section for care provided at the mental health institutes which reflects the estimated per diem cost of specific levels of care, to be adjusted annually by the department.

SECTION 32. 51.434 of the statutes is repealed.

SECTION 33. 51.435 of the statutes is renumbered 51.437 (2), and 51.437 (2) (a) (intro.), as renumbered, is amended to read:

51.437 (2) (a) (intro.) The council on developmental disabilities shall:

SECTION 34. 51.436 of the statutes is renumbered 51.437 (3), and 51.437 (3) (title), as renumbered, is amended to read:

51.437 (3) (title) DUTIES OF THE SECRETARY.

SECTION 35. 51.437 (title) of the statutes is amended to read:

51.437 (title) Developmental disabilities services.

SECTION 36. 51.437 (1) of the statutes is renumbered 51.437 (4), and 51.437 (4) (intro.), as renumbered, is amended to read:

51.437 (4) (title) RESPONSIBILITY OF COUNTY GOVERNMENT. (intro.) The county boards of supervisors have the primary governmental responsibility for the well-being of those developmentally disabled citizens residing within their respective counties and the families of the mentally retarded insofar as the usual resultant family stresses bear on the well-being of the developmentally disabled citizen. County liability for care and services purchased through or provided by a board established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency" services means

those services provided under the authority of s. 51.15 (1), 55.05 (4) or 55.06 (11) (a). Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party. Adjacent counties, lacking the financial resources and professional personnel needed to provide or secure such services on a single-county basis, may and shall be encouraged to combine their energies and financial resources to provide these joint services and facilities with the approval of the council on developmental disabilities. This responsibility includes:

SECTION 37. 51.437 (1) of the statutes is created to read:

51.437 (1) DEFINITION. In this section, "services" mean specialized services or special adaptations of generic services directed toward the prevention and alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with such a disability, and includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with a developmental disability and his or her family, protective and other social and socio-legal services, information and referral services, follow-along services and transportation services necessary to assure delivery of services to individuals with developmental disabilities.

SECTION 38. 51.437 (2) of the statutes is renumbered 51.437 (5) and amended to read:

51.437 (5) (title) FURNISHING OF SERVICES. The county board of supervisors shall establish community developmental disabilities services boards to furnish services within the counties. ~~If the community developmental disabilities services board cannot furnish these services, the boards shall secure such services elsewhere~~ Such services shall be provided either directly or by contract.

SECTION 39. 51.437 (3) of the statutes is renumbered 51.437 (6).

SECTION 40. 51.437 (4) of the statutes is renumbered 51.437 (7), and 51.437 (7) (b), as renumbered, is amended to read:

51.437 (7) (b) In counties having a population of less than 500,000, ~~a county boards~~ board of supervisors may designate the community ~~mental health, mental retardation, alcoholism and drug abuse~~ board established under s. 51.42 as the community developmental disabilities board. The combined board shall plan for and establish a community developmental disabilities program as provided in sub. (9).

SECTION 41. 51.437 (5) and (6) of the statutes are renumbered 51.437 (8) and (9), respectively, and 51.437 (9) (a), as renumbered, is amended to read:

51.437 (9) (a) Establish a community developmental disabilities services program, appoint the director of the program, establish salaries and personnel policies for the program and arrange and promote local financial support for the program. The first step in the establishment of a program shall be the preparation of a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1). The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

SECTION 42. 51.437 (6) (title) of the statutes is created to read:

51.437 (6) (title) EDUCATIONAL SERVICES.

SECTION 43. 51.437 (7) of the statutes is renumbered 51.437 (10).

SECTION 44. 51.437 (7) (title) of the statutes is created to read:

51.437 (7) (title) COMPOSITION; COMBINATION OF BOARDS.

SECTION 45. 51.437 (8) of the statutes, as affected by chapter 39, laws of 1975, is renumbered 51.437 (11).

SECTION 46. 51.437 (8) (title) of the statutes is created to read:

51.437 (8) (title) MILWAUKEE COUNTY.

SECTION 47. 51.437 (9) of the statutes, as affected by chapters 39 and 199, laws of 1975, is renumbered 51.437 (12), and 51.437 (12) (a), as renumbered, is amended to read:

51.437 (12) (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the facility, unless the board governs such facility. The need for inpatient care shall be determined by the clinical director of the program prior to the admission of ~~the a~~ patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the individual receiving care is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections, according to s. 46.036, unless the department determines that a charge is administratively infeasible, ~~such as transfers from state correctional institutions and interstate compact clients, unless the patient has been committed to the department under s. 971.14, 971.17, 975.01, 975.02 or 975.06 and is in a state institution or unless the department, after individual review, determines that the charge is not attributable to the cost of basic care and services. The exclusionary provisions of s. 46.03 (18) shall do~~ not apply to direct and indirect costs which are attributable to care and treatment of the client. Boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (2) (a), commitments under s. 971.14, 971.17, 975.01, 975.02, 975.06, admissions under s. 975.17, or children placed in the guardianship or legal custody of the department under s. 48.34, 48.35 or 48.43.

SECTION 48. 51.437 (10) (title) of the statutes is created to read:

51.437 (10) (title) DUTIES OF THE DIRECTOR.

SECTION 49. 51.437 (10) (a) and (b) of the statutes are repealed.

SECTION 50. 51.437 (10) (c) of the statutes is renumbered 51.437 (13) and amended to read:

51.437 (13) (title) DAY CARE SERVICES; MILWAUKEE. In counties having a population of 500,000 or more, the board of public welfare shall integrate day care programs for ~~the mentally~~ mentally retarded persons and those programs for persons with other developmental disabilities into the community developmental disabilities program and shall appoint a director to administer the overall ~~developmental disabilities~~ services program.

SECTION 51. 51.437 (11) of the statutes, as created by chapter 39, laws of 1975, is renumbered 51.437 (14).

SECTION 52. 51.437 (11) (title) and (12) (title) of the statutes are created to read:

51.437 (11) (title) PROGRAM BUDGETING.

(12) (title) COST OF SERVICES.

SECTION 53. 51.437 (15) of the statutes is created to read:

51.437 (15) SOURCE OF SERVICES. Nothing in this section shall be construed to mean that developmentally disabled persons are not eligible for services available from all sources.

SECTION 53m. 51.44 of the statutes, as created by chapter 224, laws of 1975, is renumbered 51.04.

SECTION 54. 51.45 (2) (a) of the statutes is repealed.

SECTION 55. 51.45 (2) (b) to (h) of the statutes are renumbered 51.45 (2) (a) to (g), respectively.

SECTION 56. 51.45 (14) of the statutes is repealed and recreated to read:

51.45 (14) RECORDS OF ALCOHOLICS AND INTOXICATED PERSONS. Access to court records and treatment records under this section shall be governed under s. 51.30.

SECTION 57. 51.45 (15) of the statutes is repealed.

SECTION 58. 51.45 (16) (d) of the statutes is repealed and recreated to read:

51.45 (16) Community boards under s. 51.42 shall be liable for maintenance and treatment performed under this section in accordance with legal residence.

SECTION 59. 51.50 of the statutes is renumbered 51.95.

SECTION 60. 51.61 to 51.67 of the statutes are created to read:

51.61 Patients rights. (1) Except as provided in subs. (2) and (3), each patient admitted or committed under this chapter shall:

(a) Upon admission or commitment be informed orally and in writing of his or her rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

(b) Receive wages or an allowance for work performed which is of financial benefit to the facility in accordance with the regulations established for compliance with the minimum wage and hour laws by the U.S. department of labor.

(c) Have an unrestricted right to send sealed mail and receive sealed mail, and have reasonable access to letter writing materials including postage stamps.

(d) Except in the case of a person who is committed for alcoholism, have the right to petition the court for review of the commitment order or for withdrawal of the order or release from commitment as provided in s. 51.20 (17).

(e) Have the right to the least restrictive conditions necessary to achieve the purposes of admission or commitment.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition.

(g) Prior to the final commitment hearing and court commitment orders, have the right to refuse all medication and treatment except in a life threatening situation, or in a situation where such medication or treatment is necessary to prevent serious physical injury to the patient or others. Medications and treatment may be refused only as provided in par. (h).

(h) Have a right to be free from unnecessary or excessive medication. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. A patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

(i) Have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible. When a patient is placed in isolation or restraint, his or her status shall be reviewed once every 30 minutes. Each facility shall have a written policy covering the use of restraint or isolation which ensures that the dignity of the individual is protected, that the safety of the individual is ensured and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. In the instance where the treatment director is not a physician, the medical director shall make the designation. In the case of a center for the developmentally disabled, use shall be authorized by the director of the center. The authorization for emergency use of isolation or restraint shall be in writing, except that isolation or restraint may be authorized in emergencies for not more than an hour, after which time an appropriate order in writing shall be obtained from the physician or licensed psychologist designated by the director. Emergency isolation or restraint may not be continued for more than 24 hours without a new written order. Isolation may be used as part of a treatment program if it is part of a written treatment plan and the rights specified in this subsection are provided to the patient. Such treatment plan shall be evaluated at least once every 2 weeks.

(j) Have a right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian or next of kin after consultation with independent specialists and the patient's legal counsel. Such proposed research shall first be reviewed and approved by the institution's research and human rights committee created under sub. (4) and by the department before such consent may be sought. Prior to such approval, the committee and the department shall determine that research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. department of health, education and welfare for projects supported by that agency.

(k) Have a right not to be subjected to treatment procedures such as psychosurgery, or other drastic treatment procedures without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any. Express and informed consent of the patient after consultation with the patient's counsel and legal guardian, if any, is required for the use of electroconvulsive treatment.

(L) Have the right to religious worship within the facility if the patient desires such an opportunity and a clergyman of the patient's religious denomination or society is available to the facility. The provisions for such worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(m) Have a right to a humane psychological and physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(n) Be permitted to make and receive telephone calls within reasonable limits.

(o) Be permitted to use and wear his or her own clothing and personal articles, or be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

(p) Be provided access to a reasonable amount of individual secure storage space for his or her own private use.

(q) Have reasonable protection of privacy in such matters as toileting and bathing.

(r) Be permitted to see visitors each day.

(2) Except in the case of a person receiving treatment for alcoholism a patient's rights guaranteed under sub. (1) (n) to (r) may be denied for cause after review by the director of the facility, and may be denied when medically contraindicated as documented by the patient's physician in the patient's treatment record. The individual shall be informed of the grounds for withdrawal of the right and shall have the opportunity to refute the grounds. There shall be documentation of the grounds for withdrawal of rights in the patient's hospital record.

(3) The patient's rights guaranteed under sub. (1) (a) to (m) may be denied only after an administrative hearing. The decision shall be subject to court review, upon petition by the patient or such person's legal counsel at the request of the patient.

(4) (a) Each facility which conducts research upon human subjects shall establish a research and human rights committee consisting of not less than 5 persons with varying backgrounds to assure complete and adequate review of research activities commonly conducted by the facility. The committee shall be sufficiently qualified through the maturity, experience and expertise of its members and diversity of its membership to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of proposals in terms of commitments of the facility and federal regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(b) No member of a committee may be directly involved in the research activity or involved in either the initial or continuing review of an activity in which he or she has a conflicting interest, except to provide information requested by the committee.

(c) No committee may consist entirely of persons who are officers, employees or agents of or are otherwise associated with the facility, apart from their membership on the committee.

(d) No committee may consist entirely of members of a single professional group.

(e) A majority of the membership of the committee constitutes a quorum to do business.

(5) Any individual who believes that his or her rights under this section are being violated may petition the court for a review of the action in accordance with s. 51.20 (17), except that s. 51.20 (17) (e) and (f) may be applied at the discretion of the court.

(6) The department shall establish procedures to assure protection of parental rights, and to implement a grievance procedure to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by boards established under ss. 51.42 and 51.437.

(7) Subject to the rights of patients provided under this section, the department or community boards under s. 51.42 or 51.437, or any agency providing services under an agreement with the department or such boards has the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in

the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The permission of any patient who was voluntarily admitted shall first be obtained. In the case of a minor, the permission of the parent or guardian is required.

51.63 Private pay for patients. Any person may pay, in whole or in part, for the maintenance and clothing of any mentally ill, developmentally disabled, alcoholic or drug dependent person at any institution for the treatment of persons so afflicted, and his or her account shall be credited with the sums paid. The person may also be likewise provided with such special care in addition to those services usually provided by the institution as is agreed upon with the director, upon payment of the charges therefor.

51.65 Segregation of tuberculosis patients. The department shall make provision for the segregation of tuberculosis patients in the state-operated and community-operated facilities, and for that purpose may set apart facilities and equip facilities for the care and treatment of such patients.

51.67 Alternate procedure; protective services act. If, after hearing under s. 51.20 (11) or (12), 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 protective placement or services under ch. 55 for a period not to exceed 30 days. If, during such period, a guardian of the subject individual is appointed, the court may, without further petition or hearing, order protective placement or services under ch. 55. Appeal may be taken to the circuit court for the county as provided in s. 51.20 (16).

SECTION 61. 51.77 (5) of the statutes is repealed and recreated to read:

51.77 (5) The determination of mental illness or developmental disability in proceedings in this state requires a finding of a court in accordance with the procedure contained in s. 51.20.

SECTION 62. 51.82 (title) of the statutes is amended to read:

51.82 (title) Delivery of certain nonresidents.

SECTION 63. 51.90 of the statutes is created to read:

51.90 Antidiscrimination. No employe, prospective employe, patient or resident of an approved treatment facility, or consumer of services provided under this chapter may be discriminated against because of age, race, creed, color, sex or handicap.

SECTION 64. 54.17 (2) of the statutes, as created by chapter 39, laws of 1975, is amended to read:

54.17 (2) In addition to the facilities and services described in sub. (1), the department may use other facilities and services under its jurisdiction. The department may enter into agreements with appropriate public or private officials for separate care and special treatment in existing institutions of youthful offenders. Placement of youthful offenders in facilities not under the control of the department does not terminate the control of the department over those persons. Removal to institutions for the mentally ill or mentally retarded facilities for mentally ill, developmentally disabled, drug dependent and alcoholic persons shall be as provided in ch. 51.

SECTION 65. 55.01 (2) of the statutes is amended to read:

55.01 (2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely and, substantially impairs the individual from

adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

SECTION 66. 55.04 (4) of the statutes is created to read:

55.04 (4) Where any responsibility or authority is created under this chapter upon or in relation to a guardian, such responsibility or authority is deemed to apply to a parent or person in loco parentis in the case of a minor who is or who is alleged to be developmentally disabled.

SECTION 67. 55.06 (1) (intro.) of the statutes, as affected by chapter 393, laws of 1975, is amended to read:

55.06 (1) (intro.) A protective placement under this section is a placement of a ward age 18 or over for the primary purpose of providing care and custody. To be eligible for placement, an individual shall have attained the age of 18, but an individual who is alleged to be developmentally disabled may receive placement upon attaining the age of 14. No protective placement may be ordered unless there is a determination of incompetency in accordance with ch. 880, except in the case of a minor who is alleged to be developmentally disabled, and there is a finding of a need for protective placement in accordance with sub. (2) except as provided in subs. (11) and (12). A procedure for adult protective placement may be initiated 6 months prior to an individual's 18th birthday at which he or she first becomes eligible for placement.

SECTION 68. 55.06 (2) (b) of the statutes is amended to read:

55.06 (2) (b) Has Except in the case of a minor who is alleged to be developmentally disabled, has either been determined to be incompetent by a county court or has had submitted on his behalf a petition for a guardianship;

SECTION 69. 55.06 (4) and (8) (intro.) of the statutes, as affected by chapter 393, laws of 1975, are amended to read:

55.06 (4) A petition for guardianship if required under sub. (2) (b) must be heard prior to placement under this section. If incompetency has been determined under s. 880.33 more than one year preceding the filing of an application for protective placement, the court shall review the finding of incompetency.

(8) (intro.) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under s. 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal ~~settlement~~ or residence of the individual as provided in s. 49.10 (12) (c) shall make a recommendation for placement. A copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or his attorney at least 96 hours in advance of the hearing to determine placement. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

SECTION 70. 55.06 (10) (c) of the statutes, as created by chapter 393, laws of 1975, is amended to read:

55.06 (10) (c) ~~Termination~~ Except in the case of a minor who is developmentally disabled and who has a parent or person in loco parentis, termination of guardianship automatically revokes any placement made or services provided under this chapter unless the placement or services are continued on a voluntary bases. Notice to this effect shall be given to the ward by the provider of services at the time of termination.

If placement is made or services are provided under this chapter to a minor who is developmentally disabled, the attainment of the age of majority by such individual automatically revokes any such placement made or services provided unless the placement or services are continued on a voluntary basis, or there is a finding of incompetency and appointment of a guardian pursuant to ch. 880.

SECTION 71. 55.06 (11) (b), (13) and (14) of the statutes, as affected by chapter 393, laws of 1975, are amended to read:

55.06 (11) (b) Upon detention, a petition shall be filed under sub. (2) by the person making such emergency placement and a preliminary hearing shall be held within 72 hours to establish probable cause to believe the grounds for protective placement under sub. (2). If the detainee is not under guardianship, a petition for guardianship shall accompany the placement petition, except in the case of a minor who is alleged to be developmentally disabled. In the event that protective placement is not appropriate, the court may elect to treat a petition for placement as a petition for commitment under s. ~~51.01, 51.09~~ 51.20 or 51.45 (13).

(13) Reasonable expenses for the evaluations required by sub. (8) shall be assumed by the appropriate board ~~under s. 51.42 or 51.43~~ making recommendations for placement subject to any reimbursement which may be available from federal or other sources. The boards shall seek appropriate reimbursement for such evaluations. Payment and collections for protective placement or services provided in public facilities specified in s. 46.10 shall be governed in accordance with that section. The appropriate board ~~under s. 51.42 or 51.43~~ shall be charged for the cost of care and custody resulting from placement under this section. The department may require reimbursement for services based on the ability of the person to be protected to pay for such costs.

Vetoed
in Part

(14) Prior to discharge from a protective placement the appropriate board ~~under s. 51.42 or 51.43~~ which is responsible for placement shall review the need for provision of continuing protective services or for continuation of full or limited guardianship or provision for such guardianship if the individual has no guardian. Recommendation shall be made to the court if the recommendation includes a course of action for which court approval would be required. Prior to discharge from any state institute or colony, the department shall make such review under ss. ~~51.12 (9) and 51.22 (5)~~ s. 51.35.

Vetoed
in Part

SECTION 72. 56.07 (1) of the statutes is amended to read:

56.07 (1) Any county may by ordinance designate any county forest project under s. 28.11 to be a county reforestation camp and provide facilities therein for keeping and maintaining prisoners ~~committed under s. 51.09~~ and giving them employment not exceeding 8 hours each day, without compensation unless otherwise determined by the county board, in charge of a superintendent who shall have the powers and duties of a jailer.

SECTION 73. 140.85 (3) of the statutes is amended to read:

140.85 (3) EXEMPTIONS. ~~Health~~ The central state hospital and health care facilities under ss. 45.365, 48.62, 50.06, ~~51.15, 51.21, 51.22~~ 51.05 and 51.06, and s. 51.36, 1971 stats., and ch. 142 are exempt from this section.

SECTION 74. 157.06 (1) of the statutes, as affected by chapters 39, 106 and 189, laws of 1975, is amended to read:

157.06 (1) No cemetery shall be laid out or used for burial purposes, except such as are now in use, and except those which are hereafter organized, maintained and operated by towns, villages and cities, by churches, by fraternal and benevolent societies, by incorporated colleges of religious orders and by cemetery associations

incorporated under this chapter. No such cemetery shall be established or located a) within recorded plat of a city or village, or recorded addition thereto, and within a mile of a building in any such plat, b) outside such a plat and within 200 rods of an inhabited dwelling in such a plat, without the consent of the municipal authorities, c) within 15 rods of a habitable dwelling, public building, watering place, or schoolhouse, but this clause shall not apply to the use for cemetery purposes of lands already owned for an extension to an existing cemetery and included within the same description, nor d) within 200 rods of the institutions for the deaf or hard of hearing persons, for the blind, the hospitals for the insane, the ~~Wisconsin school for boys~~ Ethan Allen school, the centers for the developmentally disabled ~~for the feeble-minded~~ or the state reformatory, without the consent of the state agency having jurisdiction over such institutions; except that a) an existing cemetery in a village may be extended or enlarged within or beyond the village limits with the consent of the village board and the owners of any building within 15 rods of the addition; b) an existing cemetery in a city of the 3rd or 4th class may be extended and enlarged with the consent of the department of health and social services and of the council; provided, that damages may also be allowed to owners of land adjoining that taken for cemetery purposes; c) an incorporated college of a religious order in a city of the 4th class may, with the consent of the council, establish a private cemetery on land owned by the college for the interment of members of the order in such city, but not within 50 rods of a private dwelling or building without the consent of the owner; d) a cemetery established within an incorporated village before April 30, 1887, within 100 feet of the outer lines of the plat of such village, may be extended to the outer boundary of such plat with the consent of the village board, and e) a cemetery established before said date may be enlarged subject only to the conditions of s. 157.05. Violation of this section creates a nuisance which may be enjoined at the suit of anyone.

SECTION 75. 257.23 (5) (a) and (6) of the statutes are amended to read:

257.23 (5) (a) To determine the indigency subject to court review, of any person convicted of a felony or a gross misdemeanor, or of any person confined to central state hospital or an institution designated by the department of health and social services including any person subject to civil commitment or involuntary protective placement for alcoholism, drug dependence, mental illness, developmental disabilities or other like incapacities if any such person petitions either the supreme court or the state public defender requesting relief from his conviction, imprisonment or confinement.

(6) SUPREME COURT MAY APPOINT. Nothing in sub. (5) ~~shall prevent~~ prevents the supreme court from appointing counsel for indigent persons convicted of crime, confined to central state hospital ~~for the insane~~ or subject to civil commitment or involuntary protective placement for alcoholism, drug dependence, mental illness, developmental disabilities or other like incapacities in those situations where the state public defender deems the application of such persons is without arguable merit or in other situations where the court determines it advisable that the state public defender not act. The court shall also be empowered to continue the appointment of counsel, who represented any such convicted indigent criminal defendant in the trial court, to prosecute a writ of error, appeal, writ of habeas corpus or other post-conviction remedy.

SECTION 76. 880.01 (2) of the statutes is amended to read:

880.01 (2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely ~~and~~, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial

handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

SECTION 77. 971.17 (2) of the statutes is amended to read:

971.17 (2) A reexamination of a defendant's mental condition may be had as provided in s. ~~51.11~~ 51.20 (17), except that the reexamination shall be before the committing court and notice shall be given to the district attorney. The application may be made by the defendant or the department. ~~The burden shall be on the defendant to prove that he may safely be discharged or released without danger to himself or others.~~ If the court is so satisfied that the defendant may be safely discharged or released without danger to himself or herself or to others, it shall order the discharge of the defendant or order his or her release on such conditions as the court determines to be necessary. If it is not so satisfied, it shall recommit him or her to the custody of the department.

SECTION 78. **Term change.** Wherever in sections 46.048 of the statutes, as affected by chapter 189, laws of 1975, and 46.22 (5) (a) 2 of the statutes, as affected by chapter 189, laws of 1975, the term "centers" appears, the term "center" is substituted.

SECTION 79. **Program citations.** (1) Under the listing of program responsibilities specified for the department of public instruction in section 15.371 (intro.) of the statutes, the reference to section "51.06 (2)" is inserted.

(2) Under the listing of program responsibilities specified for the department of veterans affairs in section 15.491 of the statutes, the reference to sections "51.02 (1) (b)" and "51.12 (5)" are deleted and the reference to section "51.35 (6)" is inserted.

SECTION 80. **Cross reference changes.** In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

A	B	C
Statute Sections	Old Cross References	New Cross References
15.101 (intro.)	46.106 (2), (3) and (6)	46.106 (2) to (6)
20.435 (2) (e)	51.40	51.91
(9) (c)	51.11	51.20 (19)
36.25 (12) (a)	51.235	46.044
(b)	51.235	46.044
46.10 (2)	51.27	51.67
(14)	51.24	51.08
46.175	51.24 or 51.25	51.08 or 51.09
48.27 (4)	46.106 (4), (5) and (6)	46.106 (4) to (7)
49.174	51.07	51.20 (19)
49.175 (4)	51.40	51.91
51.40 (11) (a), as renumbered (c) 1, as renumbered	51.437 (1) (a) and (7) (a)	51.437 (4) (a) and (10) (a)
51.42 (8) (h)	51.435 (1) (c)	51.437 (2) (a) 3
(13) (a) 1	51.437 (2)	51.437 (5)
(p)	51.45 (2) (h)	51.45 (2) (g)
53.38	51.45 (2) (a)	51.01 (1)
55.05 (15)	51.07	51.20 (19)
(16)	51.45 (2) (b) and (c)	51.45 (2) (a) and (b)
55.06 (9)	51.22 (4) and (5)	51.35
(14)	51.22 (4) and (5)	51.35
(15)	51.01 or 51.09	51.20 or 51.45 (13)
(16)	51.22 (4) and (5)	51.42 or 51.437
140.29 (2)	51.22 (4) and (5)	51.35 (4)
(3)	51.22 (4) and (5)	51.35 (4)
140.85 (1)	51.24 and 51.25	51.08 and 51.09
200.26 (6) (a) 2	51.24 and 51.25	51.08 and 51.09
256.68 (3) (c)	51.24	51.08
880.38	51.25	51.09
975.15 (3)	51.45 (2) (b) and (c)	51.45 (2) (a) and (b)
	51.01 and 51.04 (1)	51.20 (1)
	51.01, 51.09	51.20
	975.14	51.20 (17)

SECTION 81. Reconciliation. If June 1976 Special Session Assembly Bill 6 is enacted, such act supercedes this act to the extent provided in this section:

(1) In section 51.01 (1) of the statutes as created by this act, reference to section "51.45" is substituted for the reference to "51.45 (10)".

(2) In section 51.35 (3) (c) of the statutes as created by this act, reference to section "51.45 (12) (b)" of the statutes is deleted.

(3) The repeal of section 51.45 (2) (a) and (15) of the statutes, the renumbering of section 51.45 (2) (b) to (h) of the statutes and the repeal and recreation of section 51.45 (14) and (16) (d) of the statutes by this act is void.

(4) The renumbering of cross references to section 51.45 (2) (h) of the statutes in section 51.42 (8) (h) of the statutes, to section 51.45 (2) (a) of the statutes in section 51.42 (13) (a) 1 of the statutes, to 51.45 (2) (b) and (c) of the statutes in section 53.38 of the statutes, and to 51.45 (2) (b) and (c) of the statutes in section 200.26 (6) (a) 2, and the insertion of the reference to section 51.45 (13) of the statutes in section 55.06 (9) of the statutes is void.

SECTION 82. Effective date. This act shall take effect on the 31st day after publication.