

1979 Assembly Bill 913

Date published: **May 20, 1980**

CHAPTER 336, Laws of 1979

AN ACT to amend 51.10 (5) (c), 51.15 (1) (a) 2 and 3 and (b), (4) and (5), 51.20 (1) (a) 2. a, b and c and (am), (2), (7) (a), (10) (c), (13) (e) and (g) and (16) (d) and (j), 51.39 and 51.67; and to create 46.031 (2) (b) 6, 51.10 (4m) and (9), 51.15 (1) (a) 4 and 51.20 (1) (a) 2. d and (1m) and (13) (dm) of the statutes, relating to the mental health commitment laws.

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

SECTION 1. 46.031 (2) (b) 6 of the statutes is created to read:

46.031 (2) (b) 6. Prior to approval of a coordinated plan and budget, the department may direct that a board organized under s. 51.42 include in its coordinated plan and budget provision for crisis intervention services. If the department finds that the board's plan for these services as reflected in the coordinated plan and budget is not adequate, the board shall prepare and submit a supplemental plan and budget for these services in consultation with the department. If the department disapproves the supplemental plan and budget, the department may withhold approval of the entire coordinated plan and budget or may withhold a portion of the funds.

SECTION 2. 51.10 (4m) and (9) of the statutes are created to read:

51.10 (4m) (a) An adult who meets the criteria for voluntary admission under sub. (4) and whose admission is approved under sub. (1) or (2) may also be admitted to an inpatient treatment facility if:

1. A physician of the facility submits a signed request and certifies in writing, before not less than 2 witnesses, that the physician has advised the patient in the presence of the witnesses both orally and in writing of the person's rights under sub. (5) and of the benefits and risks of treatment, the patient's right to the least restrictive form of treatment appropriate to the patient's needs and the responsibility of the facility to provide the patient with this treatment; or

2. The person applies for admission in writing.

(b) Any person admitted under par. (a) 1 who fails to indicate a desire to leave the facility but who refuses or is unable to sign an application for admission is presumed to consent to admission and may be held for up to 7 days as a voluntary patient.

(c) On the first court day following admission under par. (a) 1, the facility shall notify the court assigned to exercise probate jurisdiction for the county in which the facility is located of the admission. Within 24 hours after receiving this notice, excluding Saturdays, Sundays and holidays, the court shall appoint a guardian ad litem to visit the facility and to determine if there has been compliance with this subsection. The guardian ad litem shall visit the patient within 48 hours, excluding Saturdays, Sundays and holidays, to ascertain whether the patient wishes a less restrictive form of treatment and, if so, shall assist the patient in obtaining the proper assistance from the facility. The guardian ad litem shall inform the patient of all rights to which the patient is entitled under this chapter.

(d) If a patient admitted under par. (a) 1 has not signed a voluntary admission application within 7 days after admission, the patient, the guardian ad litem and the physician who signed the admission request shall appear before the judge or court commissioner of the court assigned to exercise probate jurisdiction for the county in which the facility is located to determine whether the patient shall remain in the facility as a voluntary patient. If the judge or court commissioner determines that the patient desires to leave the facility, the facility shall discharge the patient. If the facility has reason to believe the patient is eligible for commitment under s. 51.20, the facility may initiate procedures for involuntary commitment.

(9) Upon admission to an inpatient facility, the facility shall offer the patient orally and in writing the opportunity to execute an informed consent form under s. 51.30 (2), requiring the facility to notify the patient's parent, child or spouse or any other adult of the patient's release. If the patient signs the consent form, the facility shall notify the person specified in the form as soon as possible after the patient requests release.

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

51.10 (5) (c) ~~Whenever a patient or resident who is voluntarily admitted to an inpatient facility requests discharge, the~~ Any patient or resident voluntarily admitted to an inpatient treatment facility shall be discharged on request, unless the treatment director or ~~such person's~~ the treatment director's designee has reason to believe that the patient or resident is dangerous in accordance with the standards provided under s. 51.20 (1) (a) 2 ~~or (am)~~ and files a statement of emergency detention under s. 51.15 with the court by the end of the next day in which the court transacts business. The patient or resident shall be notified immediately when such a statement is to be filed. Prior to the filing of a statement, the patient or resident may be detained only long enough for the staff of the facility to evaluate the individual's condition and to file the statement of emergency detention. ~~Such~~ This time period ~~shall~~ may not exceed the end of the next day in which the court transacts business. Once a statement is filed, a patient or resident may be detained as provided in s. 51.15 (1). The probable cause hearing required under s. 51.20 (7) shall be held within 72 hours after the request for discharge, excluding Saturdays, Sundays and legal holidays.

SECTION 4. 51.15 (1) (a) 2 and 3 of the statutes are amended to read:

51.15 (1) (a) 2. A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, 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~~ serious physical harm on his or her part; ~~or~~

3. A ~~very~~ substantial probability of physical impairment or injury to himself or herself due to impaired judgment, as manifested by evidence of a ~~pattern of recent acts or omissions~~ recent act or omission. The probability of physical impairment or injury ~~may not be deemed very~~ is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community; ~~or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11); or~~

SECTION 5. 51.15 (1) (a) 4 of the statutes is created to read:

51.15 (1) (a) 4. Behavior manifested by a recent act or omission that, due to mental illness or drug dependency, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness or drug dependency. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community, if the individual can receive protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision.

SECTION 6. 51.15 (1) (b), (4) and (5) of the statutes are amended to read:

51.15 (1) (b) The officer's belief shall be based on a specific recent overt acts, attempts or threats act, attempt or threat to act ~~or on a pattern of recent acts or omissions or omission~~ made by the individual and observed by or reliably reported to the officer.

(4) DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 or more, the law enforcement officer shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt ~~acts, attempts or threats~~ act, attempt or threat to act ~~or the pattern of recent acts or omissions~~ or omission on which the belief under sub. (1) is based and the names of the persons observing or reporting ~~such the recent overt acts, attempts or threats act, attempt or threat to act or pattern of recent acts or omissions or omission~~.

officer is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The law enforcement officer shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

(b) Upon delivery of the ~~statement~~ individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained and treated, if treatment is permitted under sub. (8), and shall either release the individual or detain him or her for a period not to exceed ~~48 hours from the time that the decision to detain the individual is made~~ 72 hours after delivery of the individual, exclusive of Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee, determines that ~~the individual is not mentally ill, drug dependent or developmentally disabled or that there is no substantial probability of physical harm to himself or herself or to others, or that there is not a very substantial probability of physical impairment or injury to himself or herself due to impaired judgment as manifested by evidence of a pattern of recent acts or omissions~~ the individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

(5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer shall sign a statement of emergency detention which shall provide detailed specific information concerning ~~the recent acts or omissions~~ act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting ~~such recent overt acts, attempts or threats~~ the recent overt act, attempt or threat to act or pattern of acts or omissions or omission. The law enforcement officer is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. ~~Such~~ The statement of emergency detention shall be filed by the officer with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.06 (11) (b), the subject individual may not be detained by the law enforcement officer and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and holidays.

SECTION 7. 51.20 (1) (a) 2. a, b and c of the statutes are amended to read:

51.20 (1) (a) 2. a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; or

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do ~~such~~ serious physical harm; ~~or~~

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a ~~very~~ substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury ~~may not be deemed very~~ is not substantial under this subparagraph if reasonable provision for the subject individual's protection is available in the community ~~or~~, if the individual is appropriate for placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The subject individual's status as a minor does not automatically establish a ~~very~~ substantial probability of physical impairment or injury under this subparagraph; ~~or~~

SECTION 8. 51.20 (1) (a) 2. d of the statutes is created to read:

51.20 (1) (a) 2. d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subparagraph exists if reasonable provision for the individual's treatment and protection is available in the community, if the individual can receive protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subparagraph.

SECTION 8f. 51.20 (1) (am) of the statutes is amended to read:

51.20 (1) (am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or ch. 971 or 975 immediately prior to commencement of the proceedings, the requirements of ~~specific a recent overt acts, attempts or threats to act or act, attempt or threat to act under par. (a) 2. a or b, a pattern of recent acts or omissions under par. (a) 2. c or recent behavior under par. (a) 2. d~~ may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act or a pattern of acts or omissions which took place immediately previous to the voluntary admission.

SECTION 8m. 51.20 (1m) of the statutes is created to read:

51.20 (1m) ALTERNATE GROUNDS FOR COMMITMENT. For purposes of subs. (2) to (9), the requirement of finding probable cause to believe the allegations in sub. (1) (a) or (am) may be satisfied by finding probable cause to believe that the individual satisfies sub. (1) (a) 1 and evidences such impaired judgment, manifested by evidence of a recent act or omission, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury may not be deemed substantial under this subsection if reasonable provision for the individual's protection is available in the community or if the individual is appropriate for placement under s.

55.06. The individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subsection.

SECTION 9. 51.20 (2) of the statutes, as affected by chapter 89, laws of 1979, is amended to read:

51.20 (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 there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and the individual ~~evidences the conditions specified in~~ is eligible for commitment under sub. (1) (a) and or (am) based upon specific recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual. If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, 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 the period specified in s. 51.15 (4) or (5) for the county of detention, and 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays.~~ The officer shall orally inform the individual that he or she is being taken into custody as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment. If the law enforcement officer has a detention order issued by a court, or if the law enforcement officer has cause to believe that the subject individual is mentally ill, drug dependent or developmentally disabled, ~~and evidences the conditions specified in~~ and is eligible for commitment under sub. (1) (a) and or (am), based upon specific recent overt acts, attempts or threats to act or on a pattern of omissions made by the individual, the law enforcement officer shall take the subject individual into custody. If the individual is detained by a law enforcement officer, the individual shall be orally informed of his or her rights under this section on arrival at the detention facility by the facility staff, who shall also serve all documents required by this section on the individual. Placement shall be made in a hospital which is approved by the department as a detention facility or under contract with a board established under s. 51.42 or 51.437, 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. Upon arrival at the facility, the individual is deemed to be in the custody of the facility.

SECTION 10. 51.20 (7) (a), (10) (c), (13) (e) and (g) and (16) (d) and (j) of the statutes are amended to read:

51.20 (7) (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section, ~~within the period specified in s. 51.15 (4) or (5) for the county of detention,~~ the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. 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.

(10) (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 and s. 801.01 (2) apply to such hearing~~ any judicial proceeding or hearing under this chapter. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.

(13) (e) ~~The burden of proof shall be upon the petitioner to prove~~ has the burden of proving all required facts ~~beyond a reasonable doubt, except that probability of physical harm, impairment or injury shall be proven to a reasonable certainty by evidence which is clear, satisfying and convincing evidence.~~

(g) ~~The 1.~~ Except as provided in subd. 2, 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~~ the individual may be for a period not to exceed one year.

2. Any commitment ordered under par. (a) 3 to 5, following proof of the allegations under sub. (1) (a) 2. d, may not continue longer than 45 days in any 365-day period.

3. 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. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a) 1 and evidences the conditions under sub. (1) (a) 2 or (am), 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.

(16) (d) Reexaminations under this subsection are subject to the standards prescribed in sub. ~~(14)~~ (13) (g).

(j) This subsection applies to petitions for reexamination which are filed ~~pursuant to~~ under chs. 971 and 975, except that the petitions shall be filed with the committing court.

SECTION 11. 51.20 (13) (dm) of the statutes is created to read:

51.20 (13) (dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the board established under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4).

SECTION 12. 51.39 of the statutes is amended to read:

51.39 Resident patients on unauthorized absence. If any patient who is admitted under s. 51.13, 51.15, 51.20 ~~or~~, 51.45 (11) (b), (12) or (13) or 55.06 or ch. 971 or 975 or transferred under s. 51.35 (3) or 51.37 is on unauthorized absence from a treatment

facility, the sheriff ~~of~~ or any other law enforcement agency in the county in which the patient is found or in which it is believed the patient may be present, 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 13. 51.67 of the statutes, as affected by chapter 89, laws of 1979, is amended to read:

51.67 Alternate procedure; protective services. If, after hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. Any interested party may then file a petition for permanent guardianship or protective placement or services under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available.

SECTION 14. **Effective date.** This act takes effect on the first day of the 2nd month commencing after its publication.
