

1983 Assembly Bill 234

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1983 Wisconsin Act 474

AN ACT to amend 51.20 (1) (a) (intro.), 51.20 (7) (b) and (c), 51.20 (11) (a), 51.20 (13) (g) 3, 51.22 (1), 51.35 (1) (e), 51.37 (5) (a) and 51.37 (8); to repeal and recreate 51.20 (13) (a) 4; and to create 46.03 (5) (c), 51.20 (1) (ar), 51.20 (13) (cm), 51.20 (13) (g) 2g, 51.20 (13) (g) 2m and 51.20 (19) of the statutes, relating to mental health commitments for inmates of state prisons and granting rule-making authority.

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

SECTION 1. 46.03 (5) (c) of the statutes is created to read:

46.03 (5) (c) On or before January 30 of each year, report to the joint committee on finance and to the presiding officer of each house of the legislature for referral to the appropriate standing committees on all of the following:

1. The number of prisoners transferred to a mental health institute under s. 51.20 (13) (a) 4 and their average length of stay and the number of prisoners transferred to a mental health institute on a voluntary basis and their average length of stay.
2. The number of prisoners being treated with psychotropic drugs on both a voluntary and involuntary basis and the types of drugs being used.
3. A description of the mental health services available to prisoners on both a voluntary and involuntary basis.

SECTION 2. 51.20 (1) (a) (intro.) of the statutes is amended to read:

51.20 (1) (a) (intro.) Every ~~Except as provided in pars. (ab), (am) and (ar), every~~ written petition for examination shall allege that the subject individual to be examined:

SECTION 3. 51.20 (1) (ar) of the statutes is created to read:

51.20 (1) (ar) 1. If the individual is an inmate of a state prison, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and it shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this

chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 53.11 (7) (a). The petition shall have attached to it a signed statement by a licensed physician or a licensed psychologist of a state prison and a signed statement by a licensed physician or a licensed psychologist of a state treatment facility attesting either of the following:

a. That the inmate needs inpatient treatment at a state treatment facility because appropriate treatment is not available in the prison.

b. That the inmate's treatment needs can be met on an outpatient basis in the prison.

2. This paragraph does not apply to petitions filed under this section on or after July 1, 1987, or the effective date of the 1987-89 biennial budget act, whichever is later.

SECTION 4. 51.20 (7) (b) and (c) of the statutes are amended to read:

51.20 (7) (b) If the subject individual is not detained or is an inmate of a state prison, 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 of detention of the subject individual, except as provided in sub. (11) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time of detention of the subject individual. If the subject individual is not detained under s. 51.15 or this section or is an inmate of a state prison, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment. In the event that the subject individual fails to appear for the hearing to determine probable cause for commitment, the court may issue an order for the subject individual's detention and shall hold the hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, from the time that the individual is detained.

SECTION 5. 51.20 (11) (a) of the statutes is amended to read:

51.20 (11) (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 if the individual does not object, the court shall direct that a jury of 6 people be drawn to determine if the allegations specified in sub. (1) ~~(a)~~ are true. A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual or his or her counsel. 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. If an inmate of a state prison demands a jury trial within 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the probable cause hearing. If an inmate of a state prison demands a jury trial later than 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the date of demand.

SECTION 6. 51.20 (13) (a) 4 of the statutes is repealed and recreated to read:

51.20 (13) (a) 4. If the individual is an inmate of a state prison and the allegations under sub. (1) (a) or (ar) are proven, order commitment to the department and either authorize the transfer of the inmate to a state treatment facility or if inpatient care is not needed authorize treatment on an outpatient basis in the prison; or

SECTION 7. 51.20 (13) (cm) of the statutes is created to read:

51.20 (13) (cm) If disposition is made under par. (a) 4 and the department transfers the inmate to a state treatment facility, the department may, after evaluating the inmate and developing an appropriate treatment plan, transfer the inmate back to the prison on

a conditional basis. The inmate shall be informed of the terms and conditions of the transfer as provided in s. 51.35 (1) (a). If the inmate does not cooperate with the treatment or if the inmate is in need of additional inpatient treatment, the department may return the inmate to a state treatment facility.

SECTION 7m. 51.20 (13) (g) 2g of the statutes is created to read:

51.20 (13) (g) 2g. The total period a person may be committed pursuant to commitments ordered under par. (a) 4, following proof of the allegations under sub. (1) (ar), may not exceed 180 days in any 365-day period.

SECTION 8. 51.20 (13) (g) 2m of the statutes is created to read:

51.20 (13) (g) 2m. In addition to the provisions under subds. 1, 2 and 2g, no commitment ordered under par. (a) 4 may continue beyond the inmate's date of release as determined under s. 53.11 (7) (a).

SECTION 9. 51.20 (13) (g) 3 of the statutes is amended to read:

51.20 (13) (g) 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) or is a proper subject for commitment as prescribed in sub. (1) (ar), 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.

SECTION 9m. 51.20 (19) of the statutes is created to read.

51.20 (19) DEPARTMENTAL DUTIES. (a) Prior to filing a petition for commitment of an inmate under sub. (1) (ar) the department shall:

1. Attempt to use less restrictive forms of treatment with the individual. Less restrictive forms of treatment shall include, but are not limited to, voluntary treatment within the prison or voluntary transfer to a state treatment facility, including an admission which meets the requirements of s. 51.10 (4m).

2. Ensure that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist.

(b) The department shall promulgate rules:

1. Establishing standards for the use of psychotropic drugs on prisoners in a state prison and inmates committed under sub. (1) (ar).

2. Providing for the periodic review and evaluation of the appropriateness of and the need for the use of psychotropic drugs on, and the need for the continuation of treatment for, each inmate committed under sub. (1) (ar).

3. Needed to carry out its duties under par. (a).

SECTION 10. 51.22 (1) of the statutes is amended to read:

51.22 (1) ~~Unless otherwise specified in this section~~ Except as provided in s. 51.20 (13) (a) 4 or 5, 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.~~

SECTION 11. 51.35 (1) (e) of the statutes is amended to read:

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51.35 (1) (e) Whenever any transfer between different treatment 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 public expense, as provided under s. 967.06 and ch. 977, 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. This paragraph does not apply to a return to a more restrictive facility if such return occurs within 7 days of a temporary transfer from such facility and the return was part of a previously established plan of which the patient was notified at the time of the temporary transfer. This paragraph does not apply to a return of an inmate to a state treatment facility under s. 51.20 (13) (cm).

SECTION 12. 51.37 (5) (a) of the statutes is amended to read:

51.37 (5) (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department 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~~ appropriate for treatment as provided in s. 51.20 (1), or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1 and 2; or that the prisoner is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in need of psychiatric or psychological treatment, and that the prisoner voluntarily consents to a transfer for treatment, the officer shall make a written report to the department which may transfer the prisoner if a voluntary application is made, and if not file a petition for involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent by a prisoner in an institution designated under sub. (2) or (3) shall be included as part of the individual's sentence.

SECTION 13. 51.37 (8) of the statutes is amended to read:

51.37 (8) (a) Rights to reexamination under s. 51.20 (16) 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 circuit 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 (13) ~~(f)~~ (g) 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~~ it is past his or her release date as determined under s. 53.11 (7) (a), in which case he or she shall be discharged.

(b) If the prisoner's condition will require of any prisoner committed or transferred under this section requires psychiatric or psychological treatment after his or her sentence expires date of release as determined under s. 53.11 (7) (a), the director of the state treatment facility shall, within a reasonable time before the prisoner's sentence expires release date, 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 release date. If the court commits the prisoner for the period commencing upon expiration of his or her sentence release date, 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).

SECTION 13m. **Nonstatutory provisions; health and social services.** Notwithstanding section 227.027 (1) (a) of the statutes, the department of health and social services shall promulgate the rules required under section 51.20 (19) of the statutes, as created by this

act, as emergency rules and such rules may remain in effect until the first day of the 12th month commencing after the effective date of this act.

SECTION 14. Cross-reference changes. In the sections of the statutes listed 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
51.20 (9)(a)	sub. (1)(a)	sub. (1)
51.20 (10)(c)	sub. (1)(a)	sub. (1)

SECTION 15. Initial applicability. The treatment of sections 51.20 (1) (a) (intro.) and (ar), (7) (b) and (c), (11) (a) and (13) (a) 4, (cm) and (g) 2m and 3, 51.22 (1) and 51.37 (5) (a) and (8) and of the statutes by this act first applies to proceedings in which a petition is filed under section 51.20 (1) of the statutes on the effective date of this act and to proceedings in which an application for extension of a commitment has been made under section 51.20 (13) (g) 3 of the statutes on the effective date of this act.
