



## 1995 SENATE BILL 119

March 22, 1995 - Introduced by Senators ROSENZWEIG, RUDE, PANZER, BUETTNER, DARLING, SCHULTZ and HUELSMAN, cosponsored by Representatives OURADA, BOCK, ROBSON, SCHNEIDERS, MEYER, GOETSCH, URBAN, KRUG, HAHN, GRONEMUS, OWENS, BRANDEMUEHL and LEHMAN. Referred to Committee on Health, Human Services and Aging.

1 **AN ACT to amend** 51.20 (7) (d), 51.61 (1) (g) 4., 51.67, 880.01 (7m), 971.14 (3) (dm)  
2 and 971.16 (3) of the statutes; **relating to:** modifying the standards for  
3 incompetency to refuse medication or treatment and to refuse psychotropic  
4 medication.

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### *Analysis by the Legislative Reference Bureau*

Currently, certain patient rights apply to individuals who receive services for mental illness, developmental disability, alcoholism or drug dependency. These individuals include persons who are: voluntarily admitted to treatment facilities; detained on an emergency basis; detained prior to a probable cause hearing to determine if the individual is a proper subject for treatment and is dangerous; involuntarily civilly committed and recommitted; conditionally transferred between treatment facilities or from a treatment facility to the community; involuntarily committed for emergency treatment for alcoholism or involuntarily committed for alcoholism; and, in criminal trials, committed after the individual has been bound over for trial or found guilty and found incompetent or committed after a finding has been made that the individual is not guilty by reason of mental disease or defect. Among these patient rights is the right to refuse medication or treatment except as ordered by a court or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or others. However, a court may order that an individual be administered medication or treatment involuntarily under the following situations:

1. At or after a hearing to determine probable cause for the individual's commitment but prior to the final commitment order, if the court determines that there is probable cause to believe that the individual is not competent to refuse medication or treatment and that the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings.

2. Following a final commitment order, if the court determines that the individual is not competent to refuse medication or treatment.

3. After a court has found that it is probable that a defendant committed the offense charged, after a defendant has been bound over for trial or after a finding of guilty has been rendered by a jury or made by a court, if reason to doubt the defendant's competency arises.

4. When a defendant is found not guilty by reason of mental disease or defect and the state proves by clear and convincing evidence that the person is not competent to refuse medication or treatment.

Also, a court may order that an individual be administered psychotropic medication involuntarily if the court determines after a hearing that there is probable cause to believe that an individual is a fit subject for guardianship and protective placement or services and that unless the protective services, including psychotropic medication, are provided, the individual will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others, as evidenced by at least 2 previous episodes.

For the purpose of these court determinations, the standard for incompetency to refuse medication or treatment is that, because of mental illness, developmental disability, alcoholism or drug dependence, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment, and the alternatives to accepting the particular medication or treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual. The standard for incompetency to refuse psychotropic medication is similar: that, because of chronic mental illness, an individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual.

This bill changes one of the standards for incompetency to refuse medication or treatment to require that the individual in question be incapable of expressing an understanding of the advantages and disadvantages of accepting treatment as the treatment applies to his or her mental illness, developmental disability, alcoholism or drug dependence. The bill similarly changes one of the standards for incompetency to refuse psychotropic medication to require that the individual be incapable of expressing an understanding of the advantages and disadvantages of accepting treatment as the treatment applies to his or her chronic mental illness.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 51.20 (7) (d) of the statutes is amended to read:

1           51.20 (7) (d) If the court determines after hearing that there is probable cause  
2 to believe that the subject individual is a fit subject for guardianship and protective  
3 placement or services, the court may, without further notice, appoint a temporary  
4 guardian for the subject individual and order temporary protective placement or  
5 services under ch. 55 for a period not to exceed 30 days, and shall proceed as if  
6 petition had been made for guardianship and protective placement or services. If the  
7 court orders only temporary protective services for a subject individual under this  
8 paragraph, the individual shall be provided care only on an outpatient basis. The  
9 court may order psychotropic medication as a temporary protective service under  
10 this paragraph if it finds that there is probable cause to believe that the allegations  
11 under s. 880.07 (1m) (c) and (cm) apply, that the individual is not competent to refuse  
12 psychotropic medication and that the medication ordered will have therapeutic  
13 value and will not unreasonably impair the ability of the individual to prepare for  
14 and participate in subsequent legal proceedings. An individual is not competent to  
15 refuse psychotropic medication if, because of chronic mental illness, the individual  
16 is incapable of expressing an understanding of the advantages and disadvantages of  
17 accepting treatment as the treatment applies to his or her chronic mental illness, and  
18 the alternatives to accepting the particular treatment offered, after the advantages,  
19 disadvantages and alternatives have been explained to the individual.

20           **SECTION 2.** 51.61 (1) (g) 4. of the statutes is amended to read:

21           51.61 (1) (g) 4. For purposes of a determination under subd. 2. or 3., an  
22 individual is not competent to refuse medication or treatment if, because of mental  
23 illness, developmental disability, alcoholism or drug dependence, the individual is  
24 incapable of expressing an understanding of the advantages and disadvantages of  
25 accepting medication or treatment as the medication or treatment applies to his or

1 her mental illness, developmental disability, alcoholism or drug dependence, and the  
2 alternatives to accepting the particular medication or treatment offered, after the  
3 advantages, disadvantages and alternatives have been explained to the individual.

4 **SECTION 3.** 51.67 of the statutes is amended to read:

5 **51.67 Alternate procedure; protective services.** If, after hearing under  
6 s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not  
7 warranted and that the subject individual is a fit subject for guardianship and  
8 protective placement or services, the court may, without further notice, appoint a  
9 temporary guardian for the subject individual and order temporary protective  
10 placement or services under ch. 55 for a period not to exceed 30 days. The court may  
11 order psychotropic medication as a temporary protective service under this section  
12 if it finds that there is probable cause to believe the individual is not competent to  
13 refuse psychotropic medication and that the medication ordered will have  
14 therapeutic value and will not unreasonably impair the ability of the individual to  
15 prepare for and participate in subsequent legal proceedings. An individual is not  
16 competent to refuse psychotropic medication if, because of chronic mental illness, the  
17 individual is incapable of expressing an understanding of the advantages and  
18 disadvantages of accepting treatment as the treatment applies to his or her chronic  
19 mental illness, and the alternatives to accepting the particular treatment offered,  
20 after the advantages, disadvantages and alternatives have been explained to the  
21 individual. If the court orders temporary protective placement for an individual  
22 under the age of 22 years in a center for the developmentally disabled, this placement  
23 may be made only at the central center for the developmentally disabled unless the  
24 department authorizes the placement or transfer to the northern or southern center  
25 for the developmentally disabled. Any interested party may then file a petition for

1 permanent guardianship or protective placement or services, including medication,  
2 under ch. 55. If the individual is in a treatment facility, the individual may remain  
3 in the facility during the period of temporary protective placement if no other  
4 appropriate facility is available.

5 **SECTION 4.** 880.01 (7m) of the statutes is amended to read:

6 880.01 **(7m)** "Not competent to refuse psychotropic medication" means that,  
7 because of chronic mental illness, as defined in s. 51.01 (3g), a person is incapable  
8 of expressing an understanding of the advantages and disadvantages of accepting  
9 treatment as the treatment applies to his or her chronic mental illness, and the  
10 alternatives to accepting the particular treatment offered, after the advantages,  
11 disadvantages and alternatives have been explained to the person.

12 **SECTION 5.** 971.14 (3) (dm) of the statutes is amended to read:

13 971.14 **(3)** (dm) If sufficient information is available to the examiner to reach  
14 an opinion, the examiner's opinion on whether the defendant needs medication or  
15 treatment and whether the defendant is not competent to refuse medication or  
16 treatment for the defendant's mental condition. The defendant is not competent to  
17 refuse medication or treatment if, because of mental illness, developmental  
18 disability, alcoholism or drug dependence, the defendant is incapable of expressing  
19 an understanding of the advantages and disadvantages of accepting medication or  
20 treatment as the medication or treatment applies to his or her mental illness,  
21 developmental disability, alcoholism or drug dependence, and the alternatives to  
22 accepting the particular medication or treatment offered, after the advantages,  
23 disadvantages and alternatives have been explained to the defendant.

24 **SECTION 6.** 971.16 (3) of the statutes is amended to read:

