

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/13/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Rosenzweig (608) 266-2512**

By/Representing: **Gene**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Mental Health - AODA**  
**Mental Health - detent/commit**  
**Mental Health - miscellaneous**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Parental consent for mental health treatment for minors

**Instructions:**

Companion to LRB-1715

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Required</u>
/?	malaigm 02/8/99	gilfokm 02/8/99		_____		S&L
/1			jfrantze 02/9/99	_____	lrb_docadmin 02/9/99	S&L
/2	malaigm 02/24/99	gilfokm 03/4/99	jfrantze 03/4/99	_____	lrb_docadmin 03/4/99	lrb_docadmin 07/7/99

FE Sent For:

*7/22/99*

<END>

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1?	malaigm	1-2-8-99 kmg	2/9	2/9			

FE Sent For:

<END>



State of Wisconsin  
1999 - 2000 LEGISLATURE

D. Note

(Companion)

1999 BILL

17451

LRB-17157

GMM:pgt&kg:if

stays

1       **AN ACT to repeal** 51.13 (1) (b), 51.13 (2) (b) and (d) and (3) (b), 51.13 (4) (g) 1. and  
2           51.13 (7) (title), (a) and (b); **to renumber and amend** 51.13 (7) (c); **to amend**  
3           51.13 (1) (a), 51.13 (1) (c), 51.13 (1) (d), 51.13 (1) (e), 51.13 (2) (a), 51.13 (3) (c),  
4           51.13 (3) (e), 51.13 (4) (a) (intro.), 51.13 (4) (c), 51.13 (4) (d), 51.13 (4) (g) (intro.),  
5           51.13 (6) (a), 51.14 (3) (a), 51.14 (3) (b) 3., 51.14 (3) (b) 4., 51.14 (3) (g), 51.14 (3)  
6           (h) (intro.), 51.14 (4) (a), 51.14 (4) (b), 51.14 (4) (c), 51.14 (4) (g) (intro.), 51.20  
7           (16) (a), 51.22 (2), 51.30 (5) (a), 51.30 (5) (b) 1., 51.30 (5) (b) 2., 51.35 (3) (a), 51.35  
8           (3) (b), 51.35 (3) (g) and 51.61 (6); and **to create** 51.48 of the statutes; **relating**  
9           **to:** mental health treatment of minors.

---

***Analysis by the Legislative Reference Bureau***

Under current law, the Mental Health Act distinguishes between minors under 14 years of age and minors 14 years of age or over with regard to giving informed consent for treatment for mental illness, developmental disability, alcoholism or drug dependence (mental health treatment); voluntary admission to and discharge from an inpatient facility for mental health treatment; reexamination under, or modification or cancellation of, an involuntary commitment order; transfer from a juvenile secured correctional facility to an inpatient facility for mental health

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treatment; and access and consent to the release of court records and treatment records. This bill eliminates the distinction between a minor under 14 years of age and a minor 14 years of age or over with regard to those areas of the Mental Health Act.

Specifically, under current law, subject to certain exceptions, before a minor 14 years of age or over may receive mental health treatment, the written, informed consent of the minor and the minor's parent or guardian is required. This bill eliminates the requirement that a minor 14 years of age or over provide his or her written, informed consent, in addition to that of his or her parent or guardian, before he or she may receive mental health treatment.

Under current law, subject to certain exceptions, before a minor 14 years of age or over may be admitted voluntarily to an inpatient facility for mental health treatment, the minor and the minor's parent who has legal custody of the minor or the minor's guardian must execute an application for voluntary admission to the facility. This bill eliminates the requirement that a minor 14 years of age or over execute the application for voluntary admission to an inpatient facility, along with his or her parent or guardian, before the minor may be admitted to the facility.

Under current law, if a minor 14 years of age or over wishes to be admitted to an inpatient facility, but the minor's parent who has legal custody of the minor or the minor's guardian refuses to execute the application for admission or cannot be found, the minor may petition the court assigned to exercise jurisdiction under the children's code (juvenile court) for approval of the admission. This bill permits a minor under 14 years of age to petition the juvenile court for approval of his or her admission to an inpatient facility if the minor's parent or guardian refuses to execute the application for admission or cannot be found.

Under current law, a minor 14 years of age or over who is voluntarily admitted to an inpatient facility may request that he or she be discharged from the facility and, subject to certain exceptions, must be discharged within 48 hours after submission of the request. A minor under 14 years of age, however, may be discharged on his or her request only after a hearing before the juvenile court to determine the continued appropriateness of the admission. This bill eliminates the requirement that a minor 14 years of age or over who has been voluntarily admitted to an inpatient facility be discharged within 48 hours after his or her request and instead requires the juvenile court to hold a hearing on such a request to determine the continued appropriateness of the admission, as is the case for minors under 14 years of age under current law.

Under current law, a minor 14 years of age or over who has been involuntarily committed for mental health treatment may, on his or her own petition or on the petition of a guardian, relative, friend or person providing treatment under the commitment order, petition the juvenile court for an order that his or her mental condition be reexamined or for an order modifying or canceling his or her commitment. This bill eliminates the right of a minor 14 years of age or over to file his or her own petition for such a reexamination, modification or cancellation.

Under current law, a minor may be transferred from a juvenile secured correctional facility to an inpatient facility if the juvenile court finds that the transfer is appropriate and consistent with the needs of the minor and, if the minor is 14 years

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of age or over, that the transfer is voluntary on the part of the minor. This bill eliminates the requirement that a minor 14 years of age or over must consent to being transferred from a juvenile correctional facility to an inpatient facility. Under the bill, only the minor's parent or guardian need consent, as is the case for minors under 14 years of age under current law.

Under current law, a minor 14 years of age or over may have access to his or her court records and treatment records on the same basis as an adult, but a minor under 14 years of age may have access to his or her court records only in the presence of his or her parent, guardian, counsel, guardian ad litem or a judge and may have access to his or her treatment records only in the presence of his or her parent, guardian, counsel, guardian ad litem or a staff member of the treatment facility. This bill permits a minor 14 years of age or over to have access to his or her court records or treatment records only in the presence of a person whose presence is required under current law for a minor under 14 years of age. The bill also eliminates the right under current law of a developmentally disabled minor 14 years of age or over to object to his or her parent or guardian or a person in the place of a parent having access to the minor's court and treatment records.

Under current law, subject to certain exceptions, confidential information in the court records or treatment records of a minor 14 years of age or over may be released on the consent of the minor without the consent of the minor's parent or guardian or a person in place of a parent. This bill eliminates the right of a minor 14 years of age or over to consent to the release of confidential information in his or her court records or treatment records without the consent of his or her parent or guardian or a person in place of a parent.

Finally, the bill permits a minor's parent or guardian to consent to have the minor tested for drugs or alcohol without the consent of the minor.

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.** 51.13 (1) (a) of the statutes is amended to read:

2           51.13 (1) (a) Except as provided in s. 51.45 (2m), the application for voluntary  
3 admission of a minor ~~who is under 14 years of age~~ to an approved inpatient treatment  
4 facility shall be executed by a parent who has legal custody of the minor or the  
5 minor's guardian. Any statement or conduct by a minor ~~under the age of 14~~  
6 indicating that the minor does not agree to admission to the facility shall be noted  
7 on the face of the application and shall be noted in the petition required by sub. (4).

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1           **SECTION 2.** 51.13 (1) (b) of the statutes is repealed.

2           **SECTION 3.** 51.13 (1) (c) of the statutes is amended to read:

3           51.13 (1) (c) If a minor ~~14 years of age or older~~ wishes to be admitted to an  
4 approved inpatient treatment facility but a parent with legal custody or the guardian  
5 refuses to execute the application for admission or cannot be found, or if there is no  
6 parent with legal custody, the minor or a person acting on the minor's behalf may  
7 petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the  
8 county of residence of the parent or guardian for approval of the admission. A copy  
9 of the petition and a notice of hearing shall be served upon the parent or guardian  
10 at his or her last-known address. If, after a hearing, the court determines that the  
11 ~~parent or guardian's consent is~~ of the parent or guardian is being unreasonably  
12 withheld ~~or~~, that the parent or guardian cannot be found or that there is no parent  
13 with legal custody, and that the admission is proper under the standards prescribed  
14 in sub. (4) (d), ~~it~~ the court shall approve the minor's admission without the ~~parent~~  
15 ~~or guardian's consent~~ of the parent or guardian. The court may, at the minor's  
16 request, temporarily approve the admission pending a hearing on the petition. If a  
17 hearing is held under this subsection, no review or hearing under sub. (4) is required.

18           **SECTION 4.** 51.13 (1) (d) of the statutes is amended to read:

19           51.13 (1) (d) A minor against whom a petition or statement has been filed under  
20 s. 51.15, 51.20 or 51.45 (12) or (13) may be admitted under this section. The court  
21 may permit the minor to become a voluntary patient ~~pursuant to~~ under this section  
22 upon approval by the court of an application executed ~~pursuant to~~ under par. (a), (b)  
23 or (c), ~~and the judge.~~ The court shall then dismiss the proceedings under s. 51.15,  
24 51.20 or 51.45 (12) or (13). If a hearing is held under this subsection, no hearing  
25 under sub. (4) is required.



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1           **SECTION 5.** 51.13 (1) (e) of the statutes is amended to read:

2           51.13 (1) (e) A minor may be admitted immediately upon the approval of the  
3 application executed under par. (a) ~~or (b)~~ by the treatment director of the facility or  
4 his or her designee or, in the case of a center for the developmentally disabled, the  
5 director of the center or his or her designee, and the director of the appropriate county  
6 department under s. 51.42 or 51.437 if ~~such~~ the county department is to be  
7 responsible for the cost of the minor's therapy and treatment. Approval shall be  
8 based upon an informed professional opinion that the minor is in need of psychiatric  
9 services or services for developmental disability, alcoholism or drug abuse, that the  
10 treatment facility offers inpatient therapy or treatment which is appropriate for the  
11 minor's needs and that inpatient care in the facility is the least restrictive therapy  
12 or treatment consistent with the minor's needs.

13           **SECTION 6.** 51.13 (2) (a) of the statutes is amended to read:

14           51.13 (2) (a) A minor may be admitted to an inpatient treatment facility  
15 without complying with the requirements of this section if the admission does not  
16 involve the department or a county department under s. 51.42 or 51.437, or a contract  
17 between a treatment facility and the department or ~~between a treatment facility and~~  
18 a county department. The application for voluntary admission of a minor ~~who is 14~~  
19 ~~years of age or over~~ shall be executed by ~~the minor and~~ a parent who has legal custody  
20 of the minor or the minor's guardian.

21           **SECTION 7.** 51.13 (2) (b) and (d) and (3) (b) of the statutes are repealed.

22           **SECTION 8.** 51.13 (3) (c) of the statutes is amended to read:

23           51.13 (3) (c) A minor ~~under 14 years of age~~ and his or her parent or guardian  
24 shall also be informed by the director or his or her designee, both orally and in

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1 writing, in easily understandable language, of the minor's right to a hearing to  
2 determine continued appropriateness of the admission as provided in sub. (7).

3 **SECTION 9.** 51.13 (3) (e) of the statutes is amended to read:

4 51.13 (3) (e) Writing materials for use in requesting a hearing ~~or discharge~~  
5 under this section shall be made available to minors at all times by every inpatient  
6 treatment facility. The staff of each ~~such~~ facility shall assist minors in preparing and  
7 submitting requests for ~~discharge or hearing~~ hearings.

8 **SECTION 10.** 51.13 (4) (a) (intro.) of the statutes is amended to read:

9 51.13 (4) (a) (intro.) Within 3 days of after the admission of a minor under sub.  
10 (1), or within 3 days of after application for admission of the minor, whichever occurs  
11 first, the treatment director of the facility to which the minor is admitted or, in the  
12 case of a center for the developmentally disabled, the director of the center, shall file  
13 a verified petition for review of the admission in the court assigned to exercise  
14 jurisdiction under chs. 48 and 938 in the county in which the facility is located. A  
15 copy of the application for admission and of any relevant professional evaluations  
16 shall be attached to the petition. The petition shall contain all of the following:

17 **SECTION 11.** 51.13 (4) (c) of the statutes is amended to read:

18 51.13 (4) (c) A copy of the petition shall be provided by the petitioner to the  
19 minor and his or her parents or guardian within 5 days of after admission.

20 **SECTION 12.** 51.13 (4) (d) of the statutes is amended to read:

21 51.13 (4) (d) Within 5 days of after the filing of the petition, the court assigned  
22 to exercise jurisdiction under chs. 48 and 938 shall determine, based on the  
23 allegations of the petition and accompanying documents, ~~whether the admission is~~  
24 ~~voluntary on the part of the minor if the minor is 14 years of age or older and~~ whether  
25 there is a prima facie showing that the minor is in need of psychiatric services, or

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1 services for developmental disability, alcoholism or drug abuse, that the treatment  
2 facility offers inpatient therapy or treatment which is appropriate to the minor's  
3 needs, and that inpatient care in the treatment facility is the least restrictive therapy  
4 or treatment consistent with the needs of the minor. If such a showing is made, the  
5 court shall permit voluntary admission. If the court is unable to make ~~such those~~  
6 determinations based on the petition and accompanying documents, ~~it shall the~~  
7 court may dismiss the petition as provided in par. (h); ~~or~~ order additional information  
8 to be produced as ~~it deems~~ necessary for the court to make ~~such review, and make~~  
9 ~~such those~~ determinations within 14 days of after admission or application for  
10 admission, whichever is sooner; or ~~it may~~ hold a hearing within 14 days of after  
11 admission or application for admission, whichever is sooner. If a notation of the  
12 minor's unwillingness appears on the face of the petition, or if a hearing has been  
13 requested by the minor, the minor's counsel, parent or guardian, the court shall hold  
14 a hearing to review the admission within 14 days of after admission or application  
15 for admission, whichever is sooner, and shall appoint counsel to represent the minor  
16 if the minor is unrepresented. If the court ~~deems~~ considers it necessary, ~~it the court~~  
17 shall also appoint a guardian ad litem to represent the minor.

18 **SECTION 13.** 51.13 (4) (g) (intro.) of the statutes is amended to read:

19 51.13 (4) (g) (intro.) If the court finds that the minor is in need of psychiatric  
20 services or services for developmental disability, alcoholism or drug abuse in an  
21 inpatient facility, and that the inpatient facility to which the minor is admitted offers  
22 therapy or treatment that is appropriate for the minor's needs and that is the least  
23 restrictive therapy or treatment consistent with the minor's needs ~~and, in the case~~  
24 ~~of a minor aged 14 or older, the application is voluntary on the part of the minor,~~ the  
25 court shall permit voluntary admission. If the court finds that the therapy or

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1 treatment in the inpatient facility to which the minor is admitted is not appropriate  
2 or is not the least restrictive therapy or treatment consistent with the minor's needs,  
3 the court may order placement in or transfer to another more appropriate or less  
4 restrictive inpatient facility, except that the court may not permit or order placement  
5 in or transfer to the northern or southern centers for the developmentally disabled  
6 of a minor unless the department gives approval for the placement or transfer, and  
7 if the order of the court is approved by all of the following if applicable:

8 **SECTION 14.** 51.13 (4) (g) 1. of the statutes is repealed.

9 **SECTION 15.** 51.13 (6) (a) of the statutes is amended to read:

10 51.13 (6) (a) A minor may be admitted to an inpatient treatment facility  
11 without review of the application under sub. (4) for diagnosis and evaluation or for  
12 dental, medical or psychiatric services for a period not to exceed 12 days. The  
13 application for short-term admission of a minor shall be executed by the minor's  
14 parent or guardian, ~~and by the minor if he or she is 14 years of age or older.~~ A minor  
15 may not be readmitted to an inpatient treatment facility for psychiatric services  
16 under this paragraph within 120 days of after a previous admission under this  
17 paragraph.

18 **SECTION 16.** 51.13 (7) (title), (a) and (b) of the statutes are repealed.

19 **SECTION 17.** 51.13 (7) (c) of the statutes is renumbered 51.13 (7) and amended  
20 to read:

21 51.13 (7) ~~COURT HEARING~~ COURT HEARING CONTINUED APPROPRIATENESS OF ADMISSION. Any minor  
22 ~~under 14 years of age~~ who is voluntarily admitted under this section may submit a  
23 written request to the court for a hearing to determine the continued  
24 appropriateness of the admission. If the director or staff of the inpatient treatment  
25 facility to which a minor ~~under the age of 14~~ is admitted observes conduct by the

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1 minor which demonstrates an unwillingness to remain at the facility, including but  
2 ~~not limited to~~ a written expression of opinion or unauthorized absence, the director  
3 shall file a written request with the court to determine the continued  
4 appropriateness of the admission. A request ~~which that~~ is made personally by a  
5 minor under this ~~paragraph~~ subsection shall be signed by the minor but need not be  
6 written or composed by him or her. A request for a hearing under this ~~paragraph~~  
7 ~~which subsection that~~ is received by staff or the director of the facility in which the  
8 ~~child~~ minor is admitted shall be filed with the court by the director. The court shall  
9 order a hearing upon request if no hearing concerning the minor's admission has  
10 been held within 120 days ~~of receipt of~~ before the request is received. The court shall  
11 appoint counsel and, if the court ~~deems~~ considers it necessary, a guardian ad litem  
12 to represent the minor ~~and if~~. If a hearing is held, the court shall hold the hearing  
13 within 14 days ~~of after~~ the request, unless the parties agree to a longer period. After  
14 the hearing, the court shall ~~make disposition~~ dispose of the matter in the manner  
15 provided in sub. (4).

16 **SECTION 18.** 51.14 (3) (a) of the statutes is amended to read:

17 51.14 (3) (a) ~~Either a A minor 14 years of age or older or his or her parent or~~  
18 ~~guardian~~ may petition the mental health review officer in the county in which the  
19 parent or guardian has residence for a review of a refusal of ~~either the minor or his~~  
20 or her parent or guardian to provide the informed consent for outpatient mental  
21 health treatment required under s. 51.61 (6).

22 **SECTION 19.** 51.14 (3) (b) 3. of the statutes is amended to read:

23 51.14 (3) (b) 3. The facts substantiating the ~~petitioner's~~ minor's belief that ~~the~~  
24 ~~minor~~ he or she needs outpatient mental health treatment.

25 **SECTION 20.** 51.14 (3) (b) 4. of the statutes is amended to read:

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1           51.14 (3) (b) 4. Any available information which substantiates the  
2           appropriateness of the particular treatment sought ~~for~~ by the minor and that the  
3           particular treatment sought is the least restrictive treatment consistent with the  
4           needs of the minor.

5           **SECTION 21.** 51.14 (3) (g) of the statutes is amended to read:

6           51.14 (3) (g) Within 21 days after the filing of a petition under this subsection,  
7           the mental health review officer shall hold a hearing on the refusal of ~~the minor or~~  
8           the minor's parent or guardian to provide informed consent for outpatient treatment.  
9           The mental health review officer shall provide notice of the date, time and place of  
10          the hearing to the minor and the minor's parent or guardian at least 96 hours prior  
11          to the hearing.

12          **SECTION 22.** 51.14 (3) (h) (intro.) of the statutes is amended to read:

13          51.14 (3) (h) (intro.) If following the hearing under par. (g) and after taking into  
14          consideration the recommendations, if any, of the county department under s. 51.42  
15          or 51.437 made under par. (e), the mental health review officer finds all of the  
16          following, he or she shall issue a written order that, notwithstanding the written,  
17          informed consent requirement of s. 51.61 (6), ~~the written, informed consent of the~~  
18          ~~minor, if the minor is refusing to provide consent, or the written, informed consent~~  
19          of the minor's parent or guardian, ~~if the parent or guardian is refusing to provide~~  
20          ~~consent~~, is not required for outpatient mental health treatment for the minor:

21          **SECTION 23.** 51.14 (4) (a) of the statutes is amended to read:

22          51.14 (4) (a) Within 21 days after the issuance of the order by the mental health  
23          review officer under sub. (3) or if the requirements of sub. (3) (f) are satisfied, the  
24          minor or his or her parent or guardian may petition a court assigned to exercise  
25          jurisdiction under chs. 48 and 938 in the county of residence of the minor's parent

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1 or guardian for a review of the refusal of ~~either the minor or his or her~~ the parent or  
2 guardian to provide the informed consent for outpatient mental health treatment  
3 required under s. 51.61 (6).

4 **SECTION 24.** 51.14 (4) (b) of the statutes is amended to read:

5 51.14 (4) (b) The petition in par. (a) shall conform to the requirements set forth  
6 in sub. (3) (b). ~~If the minor has refused to provide informed consent, a notation of this~~  
7 ~~fact shall be made on the face of the petition.~~

8 **SECTION 25.** 51.14 (4) (c) of the statutes is amended to read:

9 51.14 (4) (c) ~~If a notation of a minor's refusal to provide informed consent to~~  
10 ~~outpatient mental health treatment appears on the petition, the court shall, at least~~  
11 ~~7 days prior to the time scheduled for the hearing, appoint counsel to represent the~~  
12 ~~minor if the minor is unrepresented.~~ If the minor's parent or guardian has refused  
13 to provide informed consent and the minor is unrepresented, the court shall appoint  
14 counsel to represent the minor, if requested by the minor or determined by the court  
15 to be in the best interests of the minor.

16 **SECTION 26.** 51.14 (4) (g) (intro.) of the statutes is amended to read:

17 51.14 (4) (g) (intro.) After the hearing under this subsection, the court shall  
18 issue a written order stating that, notwithstanding the written, informed consent  
19 requirement of s. 51.61 (6), ~~the written, informed consent of the minor, if the minor~~  
20 ~~refuses to provide consent, or the written, informed consent of the parent or~~  
21 ~~guardian, if the parent or guardian refuses to provide consent,~~ is not required for  
22 outpatient mental health treatment for the minor if the court finds all of the  
23 following:

24 **SECTION 27.** 51.20 (16) (a) of the statutes is amended to read:

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1           51.20 (16) (a) Except in the case of alcoholic commitments under s. 51.45 (13),  
2 any patient who is involuntarily committed for treatment under this chapter, may  
3 on the patient's own verified petition, ~~except in the case of a minor who is under 14~~  
4 ~~years of age~~, or on the verified petition of the patient's guardian, relative, friend, or  
5 any person providing treatment under the order of commitment, request a  
6 reexamination or request the court to modify or cancel an order of commitment.

7           **SECTION 28.** 51.22 (2) of the statutes is amended to read:

8           51.22 (2) ~~Voluntary~~ Except as provided in s. 51.13 (2), voluntary admissions  
9 under ss. 51.10, 51.13 and 51.45 (10) shall be through the county department under  
10 s. 51.42 or 51.437 serving the person's county of residence, or through the  
11 department if the person to be admitted is a nonresident of this state. Admissions  
12 through a county department under s. 51.42 or 51.437 shall be made in accordance  
13 with s. 51.42 (3) (as) 1. or 51.437 (4rm) (a). Admissions through the department shall  
14 be made in accordance with sub. (3).

15           **SECTION 29.** 51.30 (5) (a) of the statutes is amended to read:

16           51.30 (5) (a) *Consent for release of information.* The parent, guardian, or person  
17 in the place of a parent of a minor or the guardian of an adult adjudged incompetent  
18 under ch. 880 may consent to the release of confidential information in court or  
19 treatment records. ~~A minor who is aged 14 or more may consent to the release of~~  
20 ~~confidential information in court or treatment records without the consent of the~~  
21 ~~minor's parent, guardian or person in the place of a parent.~~ Consent under this  
22 paragraph must conform to the requirements of sub. (2).

23           **SECTION 30.** 51.30 (5) (b) 1. of the statutes is amended to read:

24           51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent  
25 under ch. 880 shall have access to the individual's court and treatment records at all



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1 times. The parent, guardian or person in the place of a parent of a developmentally  
2 disabled minor shall have access to the minor's court and treatment records at all  
3 times ~~except in the case of a minor aged 14 or older who files a written objection to~~  
4 ~~such access with the custodian of the records.~~ The parent, guardian or person in the  
5 place of a parent of other minors shall have the same rights of access as provided to  
6 subject individuals under this section.

7 **SECTION 31.** 51.30 (5) (b) 2. of the statutes is amended to read:

8 51.30 (5) (b) 2. ~~A minor upon reaching the age of 14 shall have access to his or~~  
9 ~~her own court and treatment records, as provided in this section.~~ A minor under the  
10 ~~age of 14~~ shall have access to court records but only in the presence of parent,  
11 guardian, counsel, guardian ad litem or judge and shall have access to treatment  
12 records as provided in this section but only in the presence of parent, guardian,  
13 counsel, guardian ad litem or staff member of the treatment facility.

14 **SECTION 32.** 51.35 (3) (a) of the statutes is amended to read:

15 51.35 (3) (a) A licensed psychologist of a juvenile correctional facility or a  
16 secured child caring institution, as defined in s. 938.02 (15g), or a licensed physician  
17 of the department of corrections, who has reason to believe that any individual  
18 confined in the facility or institution is, in his or her opinion, in need of services for  
19 developmental disability, alcoholism or drug dependency or in need of psychiatric  
20 services, and who has obtained voluntary consent to make a transfer for treatment,  
21 shall make a report, in writing, to the superintendent of the facility or institution,  
22 stating the nature and basis of the belief and verifying the consent. In the case of  
23 a minor ~~age 14 and over, the minor and,~~ the minor's parent or guardian shall consent  
24 unless the minor is admitted under s. 51.13 (1) (c); ~~and in the case of a minor under~~  
25 ~~the age of 14, only the minor's parent or guardian need consent.~~ The superintendent

**BILL**

1 shall inform, orally and in writing, the minor and the minor's parent or guardian,  
2 that transfer is being considered and shall inform them of the basis for the request  
3 and their rights as provided in s. 51.13 (3). If the department of corrections, upon  
4 review of a request for transfer, determines that transfer is appropriate, that  
5 department shall immediately notify the department of health and family services  
6 and, if the department of health and family services consents, the department of  
7 corrections may immediately transfer the individual. The department of corrections  
8 shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise jurisdiction  
9 under chs. 48 and 938 of the county where the treatment facility is located.

10 **SECTION 33.** 51.35 (3) (b) of the statutes is amended to read:

11 51.35 (3) (b) The court assigned to exercise jurisdiction under chs. 48 and 938  
12 shall determine, based on the allegations of the petition and accompanying  
13 documents, ~~whether the transfer is voluntary on the part of the minor if he or she is~~  
14 ~~aged 14 or over, and whether the transfer of the minor to an inpatient facility is~~  
15 ~~appropriate and consistent with the needs of the minor. In the event that~~ If the court  
16 ~~is unable to make such determinations that determination~~ based on the petition and  
17 accompanying documents, ~~it shall~~ the court may order additional information to be  
18 produced as ~~it deems necessary for the court to make such review, and make such~~  
19 ~~determinations~~ the determination within 14 days of after admission, or ~~it~~ the court  
20 may hold a hearing within 14 days of after admission. If a notation of the minor's  
21 unwillingness appears on the face of the petition, or ~~that~~ if a hearing has been  
22 requested by the minor, the minor's counsel, guardian ad litem, parent or guardian,  
23 the court shall hold a hearing and appoint counsel or a guardian ad litem for the  
24 minor as provided in s. 51.13 (4) (d). At the conclusion of the hearing, the court shall  
25 approve or disapprove the request for transfer. If the minor is under the continuing

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1 jurisdiction of the court of another county, the court may order the case transferred  
2 together with all appropriate records to that court.

3 **SECTION 34.** 51.35 (3) (g) of the statutes is amended to read:

4 51.35 (3) (g) A parent or guardian of a minor 14 years of age or older who is  
5 transferred to a treatment facility under par. (a) may request in writing a return of  
6 the minor to the juvenile correctional facility or secured child caring institution, as  
7 defined in s. 938.02 (15g). ~~In the case of a minor under 14 years of age, the parent~~  
8 ~~or guardian may make the request. Upon receipt of a request for return from a minor~~  
9 ~~14 years of age or over, the director shall immediately notify the minor's parent or~~  
10 ~~guardian.~~ The minor shall be returned to the juvenile correctional facility or secured  
11 child caring institution within 48 hours after submission of the request unless a  
12 petition or statement is filed for emergency detention, emergency commitment,  
13 involuntary commitment or protective placement.

14 **SECTION 35.** 51.48 of the statutes is created to read:

15 **51.48 Alcohol and other drug testing for minors.** A minor's parent or  
16 guardian may consent to have the minor tested for the presence of alcohol or other  
17 drugs in the minor's body. Consent of the minor is not required under this section.

18 **SECTION 36.** 51.61 (6) of the statutes is amended to read:

19 51.61 (6) Subject to the rights of patients provided under this chapter, the  
20 department, county departments under s. 51.42 or 51.437 and any agency providing  
21 services under an agreement with the department or those county departments have  
22 the right to use customary and usual treatment techniques and procedures in a  
23 reasonable and appropriate manner in the treatment of patients who are receiving  
24 services under the mental health system, for the purpose of ameliorating the  
25 conditions for which the patients were admitted to the system. The written,

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1 informed consent of any patient shall first be obtained, unless the person is a minor  
2 or has been found not competent to refuse medication and treatment under s. 51.61  
3 (1)(g). In the case of a minor, the written, informed consent of the parent or guardian  
4 is required. ~~Except, except~~ as provided under an order issued under s. 51.13 (1)(c)  
5 or 51.14 (3)(h) or (4)(g), if the minor is 14 years of age or older, the written, informed  
6 consent of the minor and the minor's parent or guardian is required. A refusal of  
7 either a parent or guardian of a minor 14 years of age or older or the minor's parent  
8 or guardian to provide written, informed consent for inpatient mental health  
9 treatment is reviewable under s. 51.13 (1)(c) and a refusal of a parent or guardian  
10 of a minor to provide written, informed consent for outpatient mental health  
11 treatment is reviewable under s. 51.14.

**SECTION 37. Initial applicability.**

12 (1) This act first applies to individuals who are receiving inpatient or  
13 outpatient mental health treatment on the effective date of this subsection  
14 regardless of whether admission to an inpatient facility or an outpatient program  
15 occurred or was sought prior to the effective date of this subsection.  
16

**SECTION 38. Effective date.**

17 (1) This act takes effect on the first day of the 2nd month beginning after  
18 publication.  
19

20 (END)

DMote

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRR 1715/1dn  
GMM:pgt&kg:jf

stays

February 8, 1999

Current law and this draft treat similarly situated minors differently depending on whether the minor has been admitted privately or with state or county involvement. Specifically, under current law, a minor 14 or over, whether admitted privately or with state or county involvement, must be discharged on request; while a minor under 14 is entitled to a hearing on the continued appropriateness of his or her admission only if the minor has been admitted with state or county involvement, but not if the minor has been admitted privately. Similarly, under this draft, a minor of any age who has been admitted with state or county involvement is entitled to a hearing on the continued appropriateness of his or her admission; while a minor of any age who has been admitted privately is not so entitled. Do you want to grant the right to a hearing to a minor admitted privately so as to place such a minor on the same due process footing as a minor admitted with state or county involvement? Because a private admission does not involve state action, there is no constitutional requirement that a privately admitted minor receive a hearing. Accordingly, this policy decision is entirely up to your discretion.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: Gordon.Malaise@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1745/1dn  
GMM:pgt&kg:jf

February 9, 1999

Current law and this draft treat similarly situated minors differently depending on whether the minor has been admitted privately or with state or county involvement. Specifically, under current law, a minor 14 or over, whether admitted privately or with state or county involvement, must be discharged on request; while a minor under 14 is entitled to a hearing on the continued appropriateness of his or her admission only if the minor has been admitted with state or county involvement, but not if the minor has been admitted privately. Similarly, under this draft, a minor of any age who has been admitted with state or county involvement is entitled to a hearing on the continued appropriateness of his or her admission; while a minor of any age who has been admitted privately is not so entitled. Do you want to grant the right to a hearing to a minor admitted privately so as to place such a minor on the same due process footing as a minor admitted with state or county involvement? Because a private admission does not involve state action, there is no constitutional requirement that a privately admitted minor receive a hearing. Accordingly, this policy decision is entirely up to your discretion.

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State of Wisconsin  
1999 - 2000 LEGISLATURE

NOTE

LRB-1745/4  
GMM:pgt&kg:jf

(2)  
RMR

1999 BILL

SOON

, that is, a hospital or unit of a hospital that has as its primary purpose the diagnosis, treatment, and rehabilitation of mental illness, developmental disability, alcoholism or drug abuse

1 **AN ACT to repeal** 51.13 (1) (b), 51.13 (2) (b) and (d) and (3) (b), 51.13 (4) (g) 1. and  
2 51.13 (7) (title), (a) and (b); **to renumber and amend** 51.13 (7) (c); **to amend**  
3 51.13 (1) (a), 51.13 (1) (c), 51.13 (1) (d), 51.13 (1) (e), 51.13 (2) (a), 51.13 (3) (c),  
4 51.13 (3) (e), 51.13 (4) (a) (intro.), 51.13 (4) (c), 51.13 (4) (d), 51.13 (4) (g) (intro.),  
5 51.13 (6) (a), 51.14 (3) (a), 51.14 (3) (b) 3., 51.14 (3) (b) 4., 51.14 (3) (g), 51.14 (3)  
6 (h) (intro.), 51.14 (4) (a), 51.14 (4) (b), 51.14 (4) (c), 51.14 (4) (g) (intro.), 51.20  
7 (16) (a), 51.22 (2), 51.30 (5) (a), 51.30 (5) (b) 1., 51.30 (5) (b) 2., 51.35 (3) (a), 51.35  
8 (3) (b), 51.35 (3) (g) and 51.61 (6); and **to create** 51.48 of the statutes; **relating**  
9 **to:** mental health treatment of minors.

outpatient

**Analysis by the Legislative Reference Bureau**

Under current law, the Mental Health Act distinguishes between minors under 14 years of age and minors 14 years of age or over with regard to giving informed consent for ~~treatment for mental illness, developmental disability, alcoholism or drug dependence~~ (mental health treatment); voluntary admission to and discharge from an inpatient facility for ~~mental health treatment~~; reexamination under, or modification or cancellation of, an involuntary commitment order; transfer from a juvenile secured correctional facility to an inpatient facility for ~~mental health~~ ✓

mental

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~~treatment~~; and access and consent to the release of court records and treatment records. This bill eliminates the distinction between a minor under 14 years of age and a minor 14 years of age or over with regard to those areas of the Mental Health Act.

Specifically, under current law, subject to certain exceptions, before a minor 14 years of age or over may receive mental health treatment, the written, informed consent of the minor and the minor's parent or guardian is required. This bill eliminates the requirement that a minor 14 years of age or over provide his or her written, informed consent, in addition to that of his or her parent or guardian, before he or she may receive mental health treatment.

Under current law, subject to certain exceptions, before a minor 14 years of age or over may be admitted voluntarily to an inpatient facility for ~~mental health treatment~~, the minor and the minor's parent who has legal custody of the minor or the minor's guardian must execute an application for voluntary admission to the facility. This bill eliminates the requirement that a minor 14 years of age or over execute the application for voluntary admission to an inpatient facility, along with his or her parent or guardian, before the minor may be admitted to the facility.

Under current law, if a minor 14 years of age or over wishes to be admitted to an inpatient facility, but the minor's parent who has legal custody of the minor or the minor's guardian refuses to execute the application for admission or cannot be found, the minor may petition the court assigned to exercise jurisdiction under the children's code (juvenile court) for approval of the admission. This bill permits a minor under 14 years of age to petition the juvenile court for approval of his or her admission to an inpatient facility if the minor's parent or guardian refuses to execute the application for admission or cannot be found.

Under current law, a minor 14 years of age or over who is voluntarily admitted to an inpatient facility may request that he or she be discharged from the facility and, subject to certain exceptions, must be discharged within 48 hours after submission of the request. A minor under 14 years of age, however, may be discharged on his or her request only after a hearing before the juvenile court to determine the continued appropriateness of the admission. This bill eliminates the requirement that a minor 14 years of age or over who has been voluntarily admitted to an inpatient facility be discharged within 48 hours after his or her request and instead requires the juvenile court to hold a hearing on such a request to determine the continued appropriateness of the admission, as is the case for minors under 14 years of age under current law.

Under current law, a minor 14 years of age or over who has been involuntarily committed for mental health treatment may, on his or her own petition or on the petition of a guardian, relative, friend or person providing treatment under the commitment order, petition the juvenile court for an order that his or her mental condition be reexamined or for an order modifying or canceling his or her commitment. This bill eliminates the right of a minor 14 years of age or over to file his or her own petition for such a reexamination, modification or cancellation.

Under current law, a minor may be transferred from a juvenile secured correctional facility to an inpatient facility if the juvenile court finds that the transfer is appropriate and consistent with the needs of the minor and, if the minor is 14 years



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of age or over, that the transfer is voluntary on the part of the minor. This bill eliminates the requirement that a minor 14 years of age or over must consent to being transferred from a juvenile correctional facility to an inpatient facility. Under the bill, only the minor's parent or guardian need consent, as is the case for minors under 14 years of age under current law.

Under current law, a minor 14 years of age or over may have access to his or her court records and treatment records on the same basis as an adult, but a minor under 14 years of age may have access to his or her court records only in the presence of his or her parent, guardian, counsel, guardian ad litem or a judge and may have access to his or her treatment records only in the presence of his or her parent, guardian, counsel, guardian ad litem or a staff member of the treatment facility. This bill permits a minor 14 years of age or over to have access to his or her court records or treatment records only in the presence of a person whose presence is required under current law for a minor under 14 years of age. The bill also eliminates the right under current law of a developmentally disabled minor 14 years of age or over to object to his or her parent or guardian or a person in the place of a parent having access to the minor's court and treatment records.

Under current law, subject to certain exceptions, confidential information in the court records or treatment records of a minor 14 years of age or over may be released on the consent of the minor without the consent of the minor's parent or guardian or a person in place of a parent. This bill eliminates the right of a minor 14 years of age or over to consent to the release of confidential information in his or her court records or treatment records without the consent of his or her parent or guardian or a person in place of a parent.

Finally, the bill permits a minor's parent or guardian to consent to have the minor tested for drugs or alcohol without the consent of the minor.

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.** 51.13 (1) (a) of the statutes is amended to read:
- 2           51.13 (1) (a) Except as provided in s. 51.45 (2m), the application for voluntary
- 3 admission of a minor ~~who is under 14 years of age~~ to an approved inpatient treatment
- 4 facility shall be executed by a parent who has legal custody of the minor or the
- 5 minor's guardian. Any statement or conduct by a minor ~~under the age of 14~~
- 6 indicating that the minor does not agree to admission to the facility shall be noted
- 7 on the face of the application and shall be noted in the petition required by sub. (4).

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1           **SECTION 2.** 51.13 (1) (b) of the statutes is repealed.

2           **SECTION 3.** 51.13 (1) (c) of the statutes is amended to read:

3           51.13 (1) (c) If a minor ~~14 years of age or older~~ wishes to be admitted to an  
4 approved inpatient treatment facility but a parent with legal custody or the guardian  
5 refuses to execute the application for admission or cannot be found, or if there is no  
6 parent with legal custody, the minor or a person acting on the minor's behalf may  
7 petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the  
8 county of residence of the parent or guardian for approval of the admission. A copy  
9 of the petition and a notice of hearing shall be served upon the parent or guardian  
10 at his or her last-known address. If, after a hearing, the court determines that the  
11 ~~parent or guardian's consent is~~ of the parent or guardian is being unreasonably  
12 withheld ~~or~~, that the parent or guardian cannot be found or that there is no parent  
13 with legal custody, and that the admission is proper under the standards prescribed  
14 in sub. (4) (d), ~~it the court~~ shall approve the minor's admission without the ~~parent~~  
15 ~~or guardian's consent~~ of the parent or guardian. The court may, at the minor's  
16 request, temporarily approve the admission pending a hearing on the petition. If a  
17 hearing is held under this subsection, no review or hearing under sub. (4) is required.

18           **SECTION 4.** 51.13 (1) (d) of the statutes is amended to read:

19           51.13 (1) (d) A minor against whom a petition or statement has been filed under  
20 s. 51.15, 51.20 or 51.45 (12) or (13) may be admitted under this section. The court  
21 may permit the minor to become a voluntary patient pursuant to under this section  
22 upon approval by the court of an application executed pursuant to under par. (a), (b)  
23 or (c), ~~and the judge~~. The court shall then dismiss the proceedings under s. 51.15,  
24 51.20 or 51.45 (12) or (13). If a hearing is held under this subsection, no hearing  
25 under sub. (4) is required.

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1           **SECTION 5.** 51.13 (1) (e) of the statutes is amended to read:

2           51.13 (1) (e) A minor may be admitted immediately upon the approval of the  
3 application executed under par. (a) ~~or (b)~~ by the treatment director of the facility or  
4 his or her designee or, in the case of a center for the developmentally disabled, the  
5 director of the center or his or her designee, and the director of the appropriate county  
6 department under s. 51.42 or 51.437 if ~~such~~ the county department is to be  
7 responsible for the cost of the minor's therapy and treatment. Approval shall be  
8 based upon an informed professional opinion that the minor is in need of psychiatric  
9 services or services for developmental disability, alcoholism or drug abuse, that the  
10 treatment facility offers inpatient therapy or treatment which is appropriate for the  
11 minor's needs and that inpatient care in the facility is the least restrictive therapy  
12 or treatment consistent with the minor's needs.

13           **SECTION 6.** 51.13 (2) (a) of the statutes is amended to read:

14           51.13 (2) (a) A minor may be admitted to an inpatient treatment facility  
15 without complying with the requirements of this section if the admission does not  
16 involve the department or a county department under s. 51.42 or 51.437, or a contract  
17 between a treatment facility and the department or ~~between a treatment facility and~~  
18 a county department. The application for voluntary admission of a minor ~~who is 14~~  
19 ~~years of age or over~~ shall be executed by ~~the minor and~~ a parent who has legal custody  
20 of the minor or the minor's guardian.

21           **SECTION 7.** 51.13 (2) (b) and (d) and (3) (b) of the statutes are repealed.

22           **SECTION 8.** 51.13 (3) (c) of the statutes is amended to read:

23           51.13 (3) (c) A minor ~~under 14 years of age~~ and his or her parent or guardian  
24 shall also be informed by the director or his or her designee, both orally and in

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1 writing, in easily understandable language, of the minor's right to a hearing to  
2 determine continued appropriateness of the admission as provided in sub. (7).

3 **SECTION 9.** 51.13 (3) (e) of the statutes is amended to read:

4 51.13 (3) (e) Writing materials for use in requesting a hearing ~~or discharge~~  
5 under this section shall be made available to minors at all times by every inpatient  
6 treatment facility. The staff of each ~~such~~ facility shall assist minors in preparing and  
7 submitting requests for ~~discharge or hearing~~ hearings.

8 **SECTION 10.** 51.13 (4) (a) (intro.) of the statutes is amended to read:

9 51.13 (4) (a) (intro.) Within 3 days of after the admission of a minor under sub.  
10 (1), or within 3 days of after application for admission of the minor, whichever occurs  
11 first, the treatment director of the facility to which the minor is admitted or, in the  
12 case of a center for the developmentally disabled, the director of the center, shall file  
13 a verified petition for review of the admission in the court assigned to exercise  
14 jurisdiction under chs. 48 and 938 in the county in which the facility is located. A  
15 copy of the application for admission and of any relevant professional evaluations  
16 shall be attached to the petition. The petition shall contain all of the following:

17 **SECTION 11.** 51.13 (4) (c) of the statutes is amended to read:

18 51.13 (4) (c) A copy of the petition shall be provided by the petitioner to the  
19 minor and his or her parents or guardian within 5 days of after admission.

20 **SECTION 12.** 51.13 (4) (d) of the statutes is amended to read:

21 51.13 (4) (d) Within 5 days of after the filing of the petition, the court assigned  
22 to exercise jurisdiction under chs. 48 and 938 shall determine, based on the  
23 allegations of the petition and accompanying documents, ~~whether the admission is~~  
24 ~~voluntary on the part of the minor if the minor is 14 years of age or older and whether~~  
25 there is a prima facie showing that the minor is in need of psychiatric services, or

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1 services for developmental disability, alcoholism or drug abuse, that the treatment  
2 facility offers inpatient therapy or treatment which is appropriate to the minor's  
3 needs, and that inpatient care in the treatment facility is the least restrictive therapy  
4 or treatment consistent with the needs of the minor. If such a showing is made, the  
5 court shall permit voluntary admission. If the court is unable to make ~~such~~ those  
6 determinations based on the petition and accompanying documents, ~~it shall~~ the  
7 court may dismiss the petition as provided in par. (h); ~~or~~ order additional information  
8 to be produced as ~~it deems~~ necessary for the court to make ~~such~~ review, and ~~make~~  
9 ~~such~~ those determinations within 14 days of after admission or application for  
10 admission, whichever is sooner; or ~~it may~~ hold a hearing within 14 days of after  
11 admission or application for admission, whichever is sooner. If a notation of the  
12 minor's unwillingness appears on the face of the petition, or if a hearing has been  
13 requested by the minor, the minor's counsel, parent or guardian, the court shall hold  
14 a hearing to review the admission within 14 days of after admission or application  
15 for admission, whichever is sooner, and shall appoint counsel to represent the minor  
16 if the minor is unrepresented. If the court ~~deems~~ considers it necessary, ~~it~~ the court  
17 shall also appoint a guardian ad litem to represent the minor.

18 **SECTION 13.** 51.13 (4) (g) (intro.) of the statutes is amended to read:

19 51.13 (4) (g) (intro.) If the court finds that the minor is in need of psychiatric  
20 services or services for developmental disability, alcoholism or drug abuse in an  
21 inpatient facility, and that the inpatient facility to which the minor is admitted offers  
22 therapy or treatment that is appropriate for the minor's needs and that is the least  
23 restrictive therapy or treatment consistent with the minor's needs and, ~~in the case~~  
24 ~~of a minor aged 14 or older, the application is voluntary on the part of the minor,~~ the  
25 court shall permit voluntary admission. If the court finds that the therapy or

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1 treatment in the inpatient facility to which the minor is admitted is not appropriate  
2 or is not the least restrictive therapy or treatment consistent with the minor's needs,  
3 the court may order placement in or transfer to another more appropriate or less  
4 restrictive inpatient facility, except that the court may not permit or order placement  
5 in or transfer to the northern or southern centers for the developmentally disabled  
6 of a minor unless the department gives approval for the placement or transfer, and  
7 if the order of the court is approved by all of the following if applicable:

8 **SECTION 14.** 51.13 (4) (g) 1. of the statutes is repealed.

9 **SECTION 15.** 51.13 (6) (a) of the statutes is amended to read:

10 51.13 (6) (a) A minor may be admitted to an inpatient treatment facility  
11 without review of the application under sub. (4) for diagnosis and evaluation or for  
12 dental, medical or psychiatric services for a period not to exceed 12 days. The  
13 application for short-term admission of a minor shall be executed by the minor's  
14 parent or guardian, ~~and by the minor if he or she is 14 years of age or older.~~ A minor  
15 may not be readmitted to an inpatient treatment facility for psychiatric services  
16 under this paragraph within 120 days of after a previous admission under this  
17 paragraph.

18 **SECTION 16.** 51.13 (7) (title), (a) and (b) of the statutes are repealed.

19 **SECTION 17.** 51.13 (7) (c) of the statutes is renumbered 51.13 (7) and amended  
20 to read:

21 51.13 (7) ~~COURT HEARING~~ CONTINUED APPROPRIATENESS OF ADMISSION. Any minor  
22 under 14 years of age who is voluntarily admitted under this section may submit a  
23 written request to the court for a hearing to determine the continued  
24 appropriateness of the admission. If the director or staff of the inpatient treatment  
25 facility to which a minor ~~under the age of 14~~ is admitted observes conduct by the

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1 minor which demonstrates an unwillingness to remain at the facility, including ~~but~~  
2 ~~not limited to~~ a written expression of opinion or unauthorized absence, the director  
3 shall file a written request with the court to determine the continued  
4 appropriateness of the admission. A request ~~which~~ that is made personally by a  
5 minor under this ~~paragraph subsection~~ shall be signed by the minor but need not be  
6 written or composed by him or her. A request for a hearing under this ~~paragraph~~  
7 ~~which subsection that~~ is received by staff or the director of the facility in which the  
8 ~~child~~ minor is admitted shall be filed with the court by the director. The court shall  
9 order a hearing upon request if no hearing concerning the minor's admission has  
10 been held within 120 days of ~~receipt of~~ before the request is received. The court shall  
11 appoint counsel and, if the court ~~deems~~ considers it necessary, a guardian ad litem  
12 to represent the minor ~~and if~~. If a hearing is held, the court shall hold the hearing  
13 within 14 days of after the request, unless the parties agree to a longer period. After  
14 the hearing, the court shall ~~make disposition~~ dispose of the matter in the manner  
15 provided in sub. (4).

16 **SECTION 18.** 51.14 (3) (a) of the statutes is amended to read:

17 51.14 (3) (a) ~~Either a A minor 14 years of age or older or his or her parent or~~  
18 ~~guardian~~ may petition the mental health review officer in the county in which the  
19 parent or guardian has residence for a review of a refusal of ~~either the minor or his~~  
20 or her parent or guardian to provide the informed consent for outpatient mental  
21 health treatment required under s. 51.61 (6).

22 **SECTION 19.** 51.14 (3) (b) 3. of the statutes is amended to read:

23 51.14 (3) (b) 3. The facts substantiating the ~~petitioner's~~ minor's belief that ~~the~~  
24 ~~minor~~ he or she needs outpatient mental health treatment.

25 **SECTION 20.** 51.14 (3) (b) 4. of the statutes is amended to read:

**BILL****SECTION 20**

1           51.14 (3) (b) 4. Any available information which substantiates the  
2           appropriateness of the particular treatment sought ~~for~~ by the minor and that the  
3           particular treatment sought is the least restrictive treatment consistent with the  
4           needs of the minor.

5           **SECTION 21.** 51.14 (3) (g) of the statutes is amended to read:

6           51.14 (3) (g) Within 21 days after the filing of a petition under this subsection,  
7           the mental health review officer shall hold a hearing on the refusal of ~~the minor or~~  
8           the minor's parent or guardian to provide informed consent for outpatient treatment.  
9           The mental health review officer shall provide notice of the date, time and place of  
10          the hearing to the minor and the minor's parent or guardian at least 96 hours prior  
11          to the hearing.

12          **SECTION 22.** 51.14 (3) (h) (intro.) of the statutes is amended to read:

13          51.14 (3) (h) (intro.) If following the hearing under par. (g) and after taking into  
14          consideration the recommendations, if any, of the county department under s. 51.42  
15          or 51.437 made under par. (e), the mental health review officer finds all of the  
16          following, he or she shall issue a written order that, notwithstanding the written,  
17          informed consent requirement of s. 51.61 (6), ~~the written, informed consent of the~~  
18          ~~minor, if the minor is refusing to provide consent, or the written, informed consent~~  
19          of the minor's parent or guardian, ~~if the parent or guardian is refusing to provide~~  
20          ~~consent~~, is not required for outpatient mental health treatment for the minor:

21          **SECTION 23.** 51.14 (4) (a) of the statutes is amended to read:

22          51.14 (4) (a) Within 21 days after the issuance of the order by the mental health  
23          review officer under sub. (3) or if the requirements of sub. (3) (f) are satisfied, the  
24          minor or his or her parent or guardian may petition a court assigned to exercise  
25          jurisdiction under chs. 48 and 938 in the county of residence of the minor's parent



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1 or guardian for a review of the refusal of ~~either the minor or his or her~~ the parent or  
2 guardian to provide the informed consent for outpatient mental health treatment  
3 required under s. 51.61 (6).

4 **SECTION 24.** 51.14 (4) (b) of the statutes is amended to read:

5 51.14 (4) (b) The petition in par. (a) shall conform to the requirements set forth  
6 in sub. (3) (b). ~~If the minor has refused to provide informed consent, a notation of this~~  
7 ~~fact shall be made on the face of the petition.~~

8 **SECTION 25.** 51.14 (4) (c) of the statutes is amended to read:

9 51.14 (4) (c) ~~If a notation of a minor's refusal to provide informed consent to~~  
10 ~~outpatient mental health treatment appears on the petition, the court shall, at least~~  
11 ~~7 days prior to the time scheduled for the hearing, appoint counsel to represent the~~  
12 ~~minor if the minor is unrepresented.~~ If the minor's parent or guardian has refused  
13 to provide informed consent and the minor is unrepresented, the court shall appoint  
14 counsel to represent the minor, if requested by the minor or determined by the court  
15 to be in the best interests of the minor.

16 **SECTION 26.** 51.14 (4) (g) (intro.) of the statutes is amended to read:

17 51.14 (4) (g) (intro.) After the hearing under this subsection, the court shall  
18 issue a written order stating that, notwithstanding the written, informed consent  
19 requirement of s. 51.61 (6), ~~the written, informed consent of the minor, if the minor~~  
20 ~~refuses to provide consent, or the written, informed consent of the parent or~~  
21 ~~guardian, if the parent or guardian refuses to provide consent,~~ is not required for  
22 outpatient mental health treatment for the minor if the court finds all of the  
23 following:

24 **SECTION 27.** 51.20 (16) (a) of the statutes is amended to read:

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1           51.20 (16) (a) Except in the case of alcoholic commitments under s. 51.45 (13),  
2 any patient who is involuntarily committed for treatment under this chapter, may  
3 on the patient's own verified petition, except in the case of a minor ~~who is under 14~~  
4 ~~years of age~~, or on the verified petition of the patient's guardian, relative, friend, or  
5 any person providing treatment under the order of commitment, request a  
6 reexamination or request the court to modify or cancel an order of commitment.

7           **SECTION 28.** 51.22 (2) of the statutes is amended to read:

8           51.22 (2) ~~Voluntary~~ Except as provided in s. 51.13 (2), voluntary admissions  
9 under ss. 51.10, 51.13 and 51.45 (10) shall be through the county department under  
10 s. 51.42 or 51.437 serving the person's county of residence, or through the  
11 department if the person to be admitted is a nonresident of this state. Admissions  
12 through a county department under s. 51.42 or 51.437 shall be made in accordance  
13 with s. 51.42 (3) (as) 1. or 51.437 (4rm) (a). Admissions through the department shall  
14 be made in accordance with sub. (3).

15           **SECTION 29.** 51.30 (5) (a) of the statutes is amended to read:

16           51.30 (5) (a) *Consent for release of information.* The parent, guardian, or person  
17 in the place of a parent of a minor or the guardian of an adult adjudged incompetent  
18 under ch. 880 may consent to the release of confidential information in court or  
19 treatment records. ~~A minor who is aged 14 or more may consent to the release of~~  
20 ~~confidential information in court or treatment records without the consent of the~~  
21 ~~minor's parent, guardian or person in the place of a parent.~~ Consent under this  
22 paragraph must conform to the requirements of sub. (2).

23           **SECTION 30.** 51.30 (5) (b) 1. of the statutes is amended to read:

24           51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent  
25 under ch. 880 shall have access to the individual's court and treatment records at all

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1 times. The parent, guardian or person in the place of a parent of a developmentally  
2 disabled minor shall have access to the minor's court and treatment records at all  
3 times ~~except in the case of a minor aged 14 or older who files a written objection to~~  
4 ~~such access with the custodian of the records.~~ The parent, guardian or person in the  
5 place of a parent of other minors shall have the same rights of access as provided to  
6 subject individuals under this section.

7 **SECTION 31.** 51.30 (5) (b) 2. of the statutes is amended to read:

8 51.30 (5) (b) 2. ~~A minor upon reaching the age of 14 shall have access to his or~~  
9 ~~her own court and treatment records, as provided in this section.~~ A minor under the  
10 age of 14 shall have access to court records but only in the presence of parent,  
11 guardian, counsel, guardian ad litem or judge and shall have access to treatment  
12 records as provided in this section but only in the presence of parent, guardian,  
13 counsel, guardian ad litem or staff member of the treatment facility.

14 **SECTION 32.** 51.35 (3) (a) of the statutes is amended to read:

15 51.35 (3) (a) A licensed psychologist of a juvenile correctional facility or a  
16 secured child caring institution, as defined in s. 938.02 (15g), or a licensed physician  
17 of the department of corrections, who has reason to believe that any individual  
18 confined in the facility or institution is, in his or her opinion, in need of services for  
19 developmental disability, alcoholism or drug dependency or in need of psychiatric  
20 services, and who has obtained voluntary consent to make a transfer for treatment,  
21 shall make a report, in writing, to the superintendent of the facility or institution,  
22 stating the nature and basis of the belief and verifying the consent. In the case of  
23 a minor age 14 and over, ~~the minor and,~~ the minor's parent or guardian shall consent  
24 unless the minor is admitted under s. 51.13 (1) (c); ~~and in the case of a minor under~~  
25 ~~the age of 14, only the minor's parent or guardian need consent.~~ The superintendent

**BILL**

1 shall inform, orally and in writing, the minor and the minor's parent or guardian,  
2 that transfer is being considered and shall inform them of the basis for the request  
3 and their rights as provided in s. 51.13 (3). If the department of corrections, upon  
4 review of a request for transfer, determines that transfer is appropriate, that  
5 department shall immediately notify the department of health and family services  
6 and, if the department of health and family services consents, the department of  
7 corrections may immediately transfer the individual. The department of corrections  
8 shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise jurisdiction  
9 under chs. 48 and 938 of the county where the treatment facility is located.

10 **SECTION 33.** 51.35 (3) (b) of the statutes is amended to read:

11 51.35 (3) (b) The court assigned to exercise jurisdiction under chs. 48 and 938  
12 shall determine, based on the allegations of the petition and accompanying  
13 documents, ~~whether the transfer is voluntary on the part of the minor if he or she is~~  
14 ~~aged 14 or over, and whether the transfer of the minor to an inpatient facility is~~  
15 ~~appropriate and consistent with the needs of the minor. In the event that~~ If the court  
16 is unable to make ~~such determinations~~ that determination based on the petition and  
17 accompanying documents, ~~it shall~~ the court may order additional information to be  
18 produced as ~~it deems necessary for the court to make such review, and make such~~  
19 ~~determinations~~ the determination within 14 days of ~~after~~ admission, or ~~it~~ the court  
20 may hold a hearing within 14 days of ~~after~~ admission. If a notation of the minor's  
21 unwillingness appears on the face of the petition, or ~~that~~ if a hearing has been  
22 requested by the minor, the minor's counsel, guardian ad litem, parent or guardian,  
23 the court shall hold a hearing and appoint counsel or a guardian ad litem for the  
24 minor as provided in s. 51.13 (4) (d). At the conclusion of the hearing, the court shall  
25 approve or disapprove the request for transfer. If the minor is under the continuing

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1 jurisdiction of the court of another county, the court may order the case transferred  
2 together with all appropriate records to that court.

3 **SECTION 34.** 51.35 (3) (g) of the statutes is amended to read:

4 51.35 (3) (g) A parent or guardian of a minor 14 years of age or older who is  
5 transferred to a treatment facility under par. (a) may request in writing a return of  
6 the minor to the juvenile correctional facility or secured child caring institution, as  
7 defined in s. 938.02 (15g). ~~In the case of a minor under 14 years of age, the parent~~  
8 ~~or guardian may make the request. Upon receipt of a request for return from a minor~~  
9 ~~14 years of age or over, the director shall immediately notify the minor's parent or~~  
10 ~~guardian.~~ The minor shall be returned to the juvenile correctional facility or secured  
11 child caring institution within 48 hours after submission of the request unless a  
12 petition or statement is filed for emergency detention, emergency commitment,  
13 involuntary commitment or protective placement.

14 **SECTION 35.** 51.48 of the statutes is created to read:

15 **51.48 Alcohol and other drug testing for minors.** A minor's parent or  
16 guardian may consent to have the minor tested for the presence of alcohol or other  
17 drugs in the minor's body. Consent of the minor is not required under this section.

18 **SECTION 36.** 51.61 (6) of the statutes is amended to read:

19 51.61 (6) Subject to the rights of patients provided under this chapter, the  
20 department, county departments under s. 51.42 or 51.437 and any agency providing  
21 services under an agreement with the department or those county departments have  
22 the right to use customary and usual treatment techniques and procedures in a  
23 reasonable and appropriate manner in the treatment of patients who are receiving  
24 services under the mental health system, for the purpose of ameliorating the  
25 conditions for which the patients were admitted to the system. The written,

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admission to an approved

1 informed consent of any patient shall first be obtained, unless the person is a minor  
 2 or has been found not competent to refuse medication and treatment under s. 51.61  
 3 (1)(g). In the case of a minor, the written, informed consent of the parent or guardian  
 4 is required. ~~Except, except~~ as provided under an order issued under s. 51.13 (1)(c)  
 5 or 51.14 (3)(h) or (4)(g), if the minor is 14 years of age or older, the written, informed  
 6 consent of the minor and the minor's parent or guardian is required. A refusal of  
 7 either a parent or guardian of a minor 14 years of age or older or the minor's parent  
 8 or guardian to provide written, informed consent for inpatient mental health  
 9 treatment is reviewable under s. 51.13 (1)(c) and a refusal of a parent or guardian  
 10 of a minor to provide written, informed consent for outpatient mental health  
 11 treatment is reviewable under s. 51.14.

Facility

Keep no record

8  
9  
10  
11

treatment in an approved inpatient treatment facility, or who are receiving

**SECTION 37. Initial applicability.**

12 (1) This act first applies to individuals who are receiving inpatient or  
 13 outpatient mental health treatment on the effective date of this subsection  
 14 regardless of whether admission to an inpatient facility or an outpatient program  
 15 occurred or was sought prior to the effective date of this subsection.  
 16

**SECTION 38. Effective date.**

17 (1) This act takes effect on the first day of the 2nd month beginning after  
 18 publication.  
 19

(END)

20

D-Note

Managing Attorney

On the advice of ~~Deborah~~ A. Kennedy, who specializes in the drafting of mental health law, this redraft changes certain references in the analysis, s. 51.61 (b), as affected by the draft, and the Initial Applicability SECTION of the draft from "inpatient mental health treatment" to "admission to (or treatment in) an approved inpatient treatment facility". The new reference is more accurate and legally correct because an inpatient facility may treat not only mental illness, but also developmental ~~disability~~ ~~disability~~ and alcohol or other drug abuse.

GAM

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1745/2dn  
GMM:pgt&kg:jf

March 4, 1999

On the advice of Managing Attorney Debora A. Kennedy, who specializes in the drafting of mental health law, this redraft changes certain references in the analysis, s. 51.61 (6), as affected by the draft, and the Initial Applicability Section of the draft from "inpatient mental health treatment" to "admission to (or treatment in) an approved inpatient treatment facility". The new reference is more accurate and legally correct because an inpatient facility may treat not only mental illness, but also developmental disability and alcohol or other drug abuse.

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**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 3/4/99

**To:** Senator Rosenzweig

**Relating to LRB drafting number:** LRB-1745

**Topic**

Parental consent for mental health treatment for minors

**Subject(s)**

Mental Health - AODA, Mental Health - detent/commit, Mental Health - miscellaneous

1. **JACKET** the draft for introduction Peggy Rosenzweig  
in the **Senate**  or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.  
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaisc, Senior Legislative Attorney  
Telephone: (608) 266-9738