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1999 SENATE BILL 380

February 10, 2000 – Introduced by Senators ROSENZWEIG, GROBSCHMIDT, PANZER, GEORGE, RUDE, JAUCH, ROESSLER, SCHULTZ, DARLING, HUELSMAN and FARROW, cosponsored by Representatives RHOADES, BOCK, STONE, HUBER, LADWIG, URBAN, KELSO, LA FAVE, M. LEHMAN, PETTIS, MUSSER, HANDRICK, BERCEAU, SPILLNER, ALBERS, HAHN, AINSWORTH and BRANDEMUEHL. Referred to Committee on Judiciary and Consumer Affairs.

AN ACT ***to repeal*** 51.15 (1) (a) 5., 51.15 (1) (c), 51.20 (1) (ad) 3., 51.20 (10) (cm) 2., 51.20 (13) (g) 2d. c., 51.30 (4) (b) 14., 165.017 (1), 165.017 (3) and 165.017 (5); ***to renumber and amend*** 51.20 (10) (cm) 1.; ***to amend*** 51.15 (1) (a) (intro.), 51.15 (4) (a), 51.15 (5), 51.20 (1) (a) 2. e., 51.20 (1) (ad) 1., 51.30 (3) (b), 51.30 (4) (b) 11., 51.61 (1) (g) 3m. and 165.017 (2) of the statutes; and ***to affect*** 1995 Wisconsin Act 292, section 5, 1995 Wisconsin Act 292, section 12, 1995 Wisconsin Act 292, section 14, 1995 Wisconsin Act 292, section 16, 1995 Wisconsin Act 292, section 20, 1995 Wisconsin Act 292, section 22, 1995 Wisconsin Act 292, section 24, 1995 Wisconsin Act 292, section 28, 1995 Wisconsin Act 292, section 30, 1995 Wisconsin Act 292, section 30h, 1995 Wisconsin Act 292, section 32, 1995 Wisconsin Act 292, section 37 (1), 1997 Wisconsin Act 35, section 141, 1997 Wisconsin Act 35, section 144, 1997 Wisconsin Act 35, section 147 and 1997 Wisconsin Act 35, section 605 (1); **relating to:** eliminating emergency detention under the fifth standard of

dangerousness, eliminating termination of involuntary civil commitments under the fifth standard of dangerousness, permitting only petitions approved by the attorney general to be filed for involuntary civil commitment under the fifth standard of dangerousness and providing access by the counsel for the interests of the public to court records and treatment records of persons receiving services for mental illness, developmental disabilities, alcoholism or drug dependence.

Analysis by the Legislative Reference Bureau

Under current law, a person who is believed to be mentally ill and a proper subject for treatment and who evidences certain acts, omissions or other behavior that indicate that he or she satisfies at least one of five standards of dangerousness may be detained on an emergency basis and transported to and detained and treated in a mental health treatment facility. A petition signed by three others may be brought against the detained person alleging that the detained person is mentally ill, is a proper subject for treatment and is dangerous because he or she meets a standard for involuntary civil commitment. (Emergency detention is not, however, a prerequisite to bringing such a petition; it can be brought against any person.) If such a petition is filed with a court, the subject of the petition must be given a hearing to determine if there is probable cause sufficient to support the petition's allegations. If a court finds probable cause, a final hearing on commitment must be held, and if, again, the person is found to have satisfied one of the standards of dangerousness he or she may be involuntarily committed to the care and custody of a county department of community programs for appropriate treatment.

Currently, one of the five standards of dangerousness for emergency detention and involuntary civil commitment terminates on December 1, 2002. That standard, known as the "fifth standard", requires that a person, because of mental illness, either evidence the incapability of expressing an understanding of the advantages and disadvantages of and alternatives to accepting a particular medication or treatment after these have been explained to him or her or evidence substantial incapability of applying an understanding of those advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment. The person also must evidence a substantial probability, as demonstrated by both his or her treatment history and recent acts or omissions, that he or she needs care or treatment to prevent further disability or deterioration. Lastly, the person must evidence a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer mental, emotional or physical harm that will result in

either the loss of his or her ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions.

Under current law, the attorney general or his or her designee must review an emergency detention that is made under the fifth standard before the detention takes place or within 12 hours after. If the attorney general or designee disapproves or fails to act with respect to the proposed detention, it may not be carried out; if the attorney general or designee disapproves or fails to act with respect to an actual emergency detention, the detained person must be released. The attorney general or designee also must review a petition for involuntary commitment that is based on the fifth standard before the petition is filed with a court or within 12 hours after the filing. If the attorney general or designee disapproves or fails to act with respect to a proposed petition, the petition may not be filed; if the attorney general or designee disapproves or fails to act with respect to a filed petition, the subject of the petition, if he or she has been detained under the petition, must be released and the petition is void. These provisions do not apply if the attorney general or designee makes a finding that a court of competent jurisdiction in this state, in a case challenging the constitutionality of the fifth standard, has upheld the constitutionality.

Currently, the inpatient treatment of a person who is involuntarily committed under the fifth standard may not be more than 30 days, unless the person violates a condition of outpatient treatment. Medication and treatment may be administered without the consent of the person if a court finds probable cause to believe that the person meets the fifth standard and if the court finds at the final commitment hearing that the standard is met.

Currently, the files and records of court proceedings for involuntary commitment of individuals are closed except to the individual or to other persons with the individual's informed consent and, without the individual's consent, to the individual's attorney or guardian ad litem in order that the attorney or guardian ad litem may prepare for certain proceedings with respect to the individual. Treatment records of an individual are confidential and may be released without the informed written consent of the individual only to certain persons or under certain circumstances. An individual's counsel or guardian ad litem may have access to the treatment records, without informed consent, at any time, without limitation, in order to prepare for proceedings with respect to the individual; access by the counsel for the interest of the public without informed consent, however, is restricted to those treatment records concerning the admission, detention or commitment of an individual who is presently admitted, detained or committed.

This bill eliminates the fifth standard for emergency detention. The bill also eliminates the December 1, 2002, termination of the fifth standard for involuntary civil commitment of persons with mental illness.

The bill eliminates the opportunity for the filing of a petition for involuntary commitment of persons under the fifth standard of dangerousness before review and approval by the attorney general or his or her designee has been obtained; under the bill, no petition for involuntary commitment of an individual under the fifth standard of dangerousness may be filed unless the attorney general or his or her designee has reviewed and approved it.

The bill provides access by the counsel for the interests of the public to an individual's files and records of court proceedings and to the individual's treatment records, to the same extent that the individual's attorney or guardian ad litem have the access.

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

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

SECTION 1. 51.15 (1) (a) (intro.) of the statutes is amended to read:

51.15 **(1)** (a) (intro.) A law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an individual into custody if the officer or person has cause to believe that such individual is mentally ill or~~, except as provided in subd. 5.,~~ is drug dependent or developmentally disabled, and that the individual evidences any of the following:

SECTION 2. 51.15 (1) (a) 5. of the statutes is repealed.

SECTION 3. 51.15 (1) (c) of the statutes is repealed.

SECTION 4. 51.15 (4) (a) of the statutes is amended to read:

51.15 **(4)** (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt or threat to act or omission on which the belief under sub. (1) is based and the names of the persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions

~~if sub. (1) (a) 1., 2., 3. or 4. is believed or mental illness, if sub. (1) (a) 5. is believed~~. The law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

SECTION 5. 51.15 (5) of the statutes is amended to read:

51.15 **(5)** DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt or threat to act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions ~~if sub. (1) (a) 1., 2., 3. or 4. is believed or mental illness, if sub. (1) (a) 5. is believed~~. The statement of emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.06 (11) (b), the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and legal holidays.

SECTION 6. 51.20 (1) (a) 2. e. of the statutes is amended to read:

51.20 **(1)** (a) 2. e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. 55.06. Food, shelter or other care that is provided to an individual who is substantially incapable of obtaining food, shelter or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd.

2. e. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional or physical harm under this subd. 2.e. ~~This subd. 2. e. does not apply after November 30, 2001.~~

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

51.20 **(1)** (ad) 1. If a petition under par. (a) is based on par. (a) 2. e., the petition shall be reviewed and approved by the attorney general or by his or her designee prior to ~~or within 12 hours after~~ the time that it is filed. If the attorney general or his or her designee disapproves or fails to act with respect to the petition, the petition may not be filed. ~~If the attorney general or his or her designee disapproves or fails to act with respect to a petition under this subdivision within 12 hours after the time that it is filed, the individual, if detained under the petition, shall be released and the petition is void.~~

SECTION 8. 51.20 (1) (ad) 3. of the statutes is repealed.

SECTION 9. 51.20 (10) (cm) 1. of the statutes is renumbered 51.20 (10) (cm) and amended to read:

51.20 **(10)** (cm) Prior to or at the final hearing, for individuals for whom a petition is filed under sub. (1) (a) 2. e., the county department under s. 51.42 or 51.437 shall furnish to the court and the subject individual an initial recommended written treatment plan that contains the goals of treatment, the type of treatment to be provided and the expected providers. The treatment plan shall address the individual's needs for inpatient care, residential services, community support services, medication and its monitoring, case management, and other services to enable the person to live in the community upon release from an inpatient facility. The treatment plan shall contain information concerning the availability of the needed services and community treatment providers' acceptance of the individual

into their programs. The treatment plan is only a recommendation and is not subject to approval or disapproval by the court. Failure to furnish a treatment plan under this ~~subdivision~~ paragraph does not constitute grounds for dismissal of the petition unless the failure is made in bad faith.

SECTION 10. 51.20 (10) (cm) 2. of the statutes is repealed.

SECTION 11. 51.20 (13) (g) 2d. c. of the statutes is repealed.

SECTION 12. 51.30 (3) (b) of the statutes is amended to read:

51.30 **(3)** (b) An individual's attorney or guardian ad litem and the counsel for the interests of the public shall have access to the files and records of the court proceedings under this chapter without the individual's consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission or commitment under this chapter or ch. 971 or 975.

SECTION 13. 51.30 (4) (b) 11. of the statutes is amended to read:

51.30 **(4)** (b) 11. To the subject individual's counsel or guardian ad litem and the counsel for the interests of the public, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals or other actions relating to detention, admission, commitment or patients' rights under this chapter or ch. 48, 971 or 975.

SECTION 14. 51.30 (4) (b) 14. of the statutes is repealed.

SECTION 15. 51.61 (1) (g) 3m. of the statutes is amended to read:

51.61 **(1)** (g) 3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall issue an order permitting medication or treatment to be administered to

the individual regardless of his or her consent. ~~This subdivision does not apply after November 30, 2001.~~

SECTION 16. 165.017 (1) of the statutes is repealed.

SECTION 17. 165.017 (2) of the statutes is amended to read:

165.017 **(2)** The attorney general or his or her designee shall review and approve or disapprove all proposed petitions ~~or petitions~~ for commitment of individuals as specified under s. 51.20 (1) (ad) 1.

SECTION 18. 165.017 (3) of the statutes is repealed.

SECTION 19. 165.017 (5) of the statutes is repealed.

SECTION 20. 1995 Wisconsin Act 292, section 5 is repealed.

SECTION 21. 1995 Wisconsin Act 292, section 12 is repealed.

SECTION 22. 1995 Wisconsin Act 292, section 14 is repealed.

SECTION 23. 1995 Wisconsin Act 292, section 16 is repealed.

SECTION 24. 1995 Wisconsin Act 292, section 20 is repealed.

SECTION 25. 1995 Wisconsin Act 292, section 22 is repealed.

SECTION 26. 1995 Wisconsin Act 292, section 24 is repealed.

SECTION 27. 1995 Wisconsin Act 292, section 28 is repealed.

SECTION 28. 1995 Wisconsin Act 292, section 30 is repealed.

SECTION 29. 1995 Wisconsin Act 292, section 30h is repealed.

SECTION 30. 1995 Wisconsin Act 292, section 32 is repealed.

SECTION 31. 1995 Wisconsin Act 292, section 37 (1) is repealed.

SECTION 32. 1997 Wisconsin Act 35, section 141 is repealed.

SECTION 33. 1997 Wisconsin Act 35, section 144 is repealed.

SECTION 34. 1997 Wisconsin Act 35, section 147 is repealed.

SECTION 35. 1997 Wisconsin Act 35, section 605 (1) is repealed.

SECTION 36. Nonstatutory provisions; health and family services.

(1) FIFTH STANDARD FOR EMERGENCY DETENTION AND CIVIL COMMITMENT. The repeal of 1995 Wisconsin Act 292, sections 5, 12, 14, 16, 20, 22, 24, 28, 30, 30h, 32 and 37 (1), and the repeal of 1997 Wisconsin Act 35, sections 141, 144, 147 and 605 (1), by this act apply notwithstanding section 990.03 (3) of the statutes.

(END)