1999 DRAFTING REQUEST

Bill

Received: **10/26/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Gene Schaeffer (aide)**

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

Drafter: **kenneda**

May Contact:

Alt. Drafters:

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

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Various changes relating to fifth standard for civil commitments; access by corporation counsel to mental health records

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Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	kenneda 11/15/1999	chanaman 11/18/1999	mclark 11/19/1999	_____ _____	lrb_docadmin 11/19/1999		S&L
/2	kenneda 12/09/1999 kenneda 01/20/2000	chanaman 12/09/1999 chanaman 01/20/2000	kfollet 12/09/1999	_____ _____ _____ _____	lrb_docadmin 12/09/1999		S&L
/3			jfrantze 01/20/2000	_____ _____	lrb_docadmin 01/20/2000	lrb_docadmin 01/31/2000	S&L

FE Sent 02-11-00

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1/20
13

LRB-3821

1999 DRAFTING REQUEST

Bill

Received: **10/26/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Gene Schaeffer (aide)**

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

Drafter: **kenneda**

May Contact:

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

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Topic:

Various changes relating to fifth standard for civil commitments; access by corporation counsel to mental health records

Instructions:

See Attached

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/1

LRB-3821

1999 DRAFTING REQUEST

Bill

Received: **10/26/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Gene Schaeffer (aide)**

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

Drafter: **kenneda**

May Contact:

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

Extra Copies: **MGD**

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Topic:

Various changes relating to fifth standard for civil commitments; access by corporation counsel to mental health records

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kenneda	cmh 1/1 11/15	MRC 11/18	MRC/JF 11/18			

FE Sent For:

<END>

10/26 From Gene Schaeffer + Dick Sweet

✓ ① Delete sunset on Fifth Standard

✓ ② Delete fifth standard for emergency detentions

③ Access by corp counsel to records - WLC 0207

④ AG to sign off before petition is filed; if no approval or AG action, cannot file – for Fifth Standard

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone: (608) 266–1304
Fax: (608) 266–3830
Email: leg.council@legis.state.wi.us

DATE: October 18, 1999

TO: SENATOR PEGGY ROSENZWEIG

FROM: Richard Sweet, Senior Staff Attorney

SUBJECT: Access by Corporation Counsel to Mental Health Records

This memorandum is written pursuant to your request for a discussion of the law relating to access by county corporation counsel to court records and treatment records regarding a person who is the subject of an involuntary commitment or other mental health proceeding. The memorandum will describe current law on this topic and ways to address concerns that have been raised about limited access by corporation counsel to records.

A. CURRENT LAW

The term "treatment records" is defined in s. 51.30 (1) (b), Stats., for purposes of the statutory provisions on access to treatment records, as follows:

> 51.30 **(1)** (b) "Treatment records" include the registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Such records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility if such notes or records are not available to others.

Section 51.30 (4) (a), Stats., generally provides for confidentiality of all treatment records, with enumerated exceptions. Paragraph (b) states that treatment records of an individual may be released without informed written consent in several specified circumstances. Two of those circumstances are as follows:

> 51.30 (4) (b) *Access without informed written consent.* (intro.) Notwithstanding par. (a), treatment records of an individual may be released without informed written consent in the following circumstances, except as restricted under par. (c):
>
> . . .
>
> 11. To the subject individual's counsel or guardian ad litem, 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.
>
> . . .
>
> 14. To the counsel for the interests of the public 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. 48, 971 or 975. Records released under this subdivision are limited to information concerning the admission, detention or commitment of an individual who is presently admitted, detained or committed.

Under subd. 14. above, ***treatment records*** may be released to corporation counsel (referred to as "counsel for the interests of the public" in the statutes) to prepare for certain involuntary commitment or other mental health proceedings. However, the records are limited to information concerning the admission, detention or commitment of an individual who is presently admitted, detained or committed. Therefore, this subdivision may not be used to provide corporation counsel with treatment records for purposes of preparing for commitment of a person who is not presently admitted, detained or committed. However, subd. 11. gives the subject individual's counsel or guardian ad litem access to these records to prepare for the commitment or other proceedings.

In addition, s. 51.30 (3), Stats., states that with certain exceptions, the files and ***records of court proceedings*** under ch. 51, Stats., are closed, but are accessible to any individual who is the subject of a petition filed under ch. 51. One of the exceptions is provided in s. 51.30 (3) (b), Stats., which provides as follows:

> 51.30 (3) (b) An individual's attorney or guardian ad litem 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.

There is no similar provision that provides access by corporation counsel to court records for preparation of commitment or other proceedings.

B. DISCUSSION

This portion of the memorandum describes ways to amend the statutes to provide access to court records and treatment records by corporation counsel in order to prepare for specified mental health proceedings.

If you wish to provide corporation counsel with the same access to court records as the subject individual's attorney has to prepare for mental health proceedings, s. 51.30 (3) (b), Stats., could be amended. The amendment would insert "and counsel for the interests of the public" after "guardian ad litem" in that paragraph.

If you wish to provide corporation counsel with the same access to treatment records as the subject individual's attorney has to prepare for mental health proceedings, this could be done in one of two ways. The first alternative would be to repeal the second sentence in s. 51.30 (4) (b) 14., Stats. The second alternative would be to repeal all of subd. 14. and add to subd. 11. "and counsel for the interests of the public" after "guardian ad litem."

Attached to this memorandum are two bill drafts, WLCS: 0206/1 and WLCS: 0207/1, which present the two alternatives in combination with the amendment to s. 51.30 (3) (b), Stats., with respect to court records. Either of these drafts could be introduced as separate legislation or could be added to any bill that is introduced that repeals the sunset on the fifth standard of dangerousness for involuntary commitment under s. 51.20 (1) (a) 2. e., Stats., and other statutory provisions related to the fifth standard of dangerousness. The fifth standard will sunset as of December 1, 2001, unless legislation is enacted that repeals the sunset.

Feel free to contact me if I can be of further assistance.

RNS:jal:wu:jal

Attachments

AN ACT *to amend* 51.30 (3) (b) and 51.30 (4) (b) 14. of the statutes; **relating to:** providing access by the counsel for the interests of the public to court records and treatment records.

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

SECTION 1. 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 2. 51.30 (4) (b) 14. of the statutes is amended to read:

51.30 **(4)** (b) 14. To the counsel for the interests of the public 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. 48, 971 or 975. ~~Records released under this subdivision are limited to information concerning the admission, detention or commitment of an individual who is presently admitted, detained or committed.~~

(END)

Mental Health Records II

WLCS: 0207/1

RNS:jal;wu

10/18/1999

AN ACT *to repeal* 51.30 (4) (b) 14.; and *to amend* 51.30 (3) (b) and 51.30 (4) (b) 11. of the statutes; **relating to:** providing access by the counsel for the interests of the public to court records and treatment records.

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

SECTION 1. 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 2. 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 to 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 3. 51.30 (4) (b) 14. of the statutes is repealed.

(END)

By Friday 11/19

State of Wisconsin
1999 - 2000 LEGISLATURE

D-NOTE

LRB-3821/1
DAK:.....
CMH

1999 BILL

AN ACT ...; **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, 2001. 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 either approved the petition or taken no action with respect to 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:

NOTE: NOTE: Par. (a) (intro.) is repealed and recreated eff. 12–1–01 by 1997 Wis. Act 35 to read:NOTE:

(a) 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, drug dependent or developmentally disabled, and that the individual evidences any of the following:

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283.

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.

NOTE: NOTE: Par. (a) is repealed and recreated eff. 12–1–01 by 1997 Wis. Act 35 to read:NOTE:

(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.

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283.

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.

NOTE: NOTE: Sub. (5) is amended eff. 12–1–01 by 1997 Wis. Act 35 to read:NOTE:

(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 is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The 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 and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and legal holidays.

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283.

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.~~

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1–1–80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440;Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283.

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.~~

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1–1–80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283.

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.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1–1–80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440;Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283.

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.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

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.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

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.~~

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366, 367, 403; 1989 a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997 a. 292.

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.

History: 1995 a. 292.

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 ~~applies~~ apply notwithstanding section 990.03 (3) of the statutes.

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3821/1dn
DAK
cmh

To Senator Rosenzweig:

Please note that currently "counsel for the interests of the public" is used only in ss. 48.293 (3) and 51.30 ~~(4) (b)~~, stats. (Under the bill, the term is proposed for s. 51.30 (3) (b).) By contrast, "corporation counsel" occurs 81 times, "county corporation counsel" 18 times and "attorneys for local governmental units" 3 times. Since the term is undefined in either s. 48.293 (3) or 51.30 ~~(4) (b)~~, stats., currently, conceivably it could be judicially interpreted to mean a county corporation counsel; an attorney for a city, village or town; the state public defender; an assistant state public defender; the attorney general; an assistant attorney general; or a district attorney. Is it your intention to have this broad an application?

(4)(b)14.

5.

(4)(b)14.

and (4)(b)11.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266–0137

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3821/1dn
DAK:cmh:mrc

November 18, 1999

To Senator Rosenzweig:

Please note that currently "counsel for the interests of the public" is used only in ss. 48.293 (3) and 51.30 (4) (b) 14., stats. (Under the bill, the term is proposed for s. 51.30 (3) (b) and (4) (b) 11.) By contrast, "corporation counsel" occurs 81 times, "county corporation counsel" 18 times and "attorneys for local governmental units" 3 times. Since the term is undefined in either s. 48.293 (3) or s. 51.30 (4) (b) 14., stats., currently, conceivably it could be judicially interpreted to mean a county corporation counsel; an attorney for a city, village or town; the state public defender; an assistant state public defender; the attorney general; an assistant attorney general; or a district attorney. Is it your intention to have this broad an application?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266–0137

12/9 From Gene 3821/1

Redraft to fix analysis: AG has to review + approve petition before it is filed (if the AG fails to act, it's not approved)

TODAY 12/9

1999 – 2000 LEGISLATURE

LRB–3821/P2
DAK:cmh:~~rarc~~

1999 BILL

Only change is p. 3

regr cat

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, 2001. 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.

stays

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.

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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)

TODAY - 3:00

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3821/3
DAK:cmh:kjf

1999 BILL

Only change is to 2d par. 2 analysis, p. 2

regen cat

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, ~~2001~~ 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.

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. cs

(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)

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: 01/20/2000

To: Senator Rosenzweig

Relating to LRB drafting number: LRB-3821

Topic
Various changes relating to fifth standard for civil commitments; access by corporation counsel to mental health records

Subject(s)
Mental Health - detent/commit

1. **JACKET** the draft for introduction Peggy Rosenzweig

   in the **Senate** X 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.

Debora A. Kennedy, Managing Attorney
Telephone: (608) 266-0137