

1999 DRAFTING REQUEST

Bill

Received: **10/29/98**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**

By/Representing: **Fossum**

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

Drafter: **kenneda**

May Contact:

Alt. Drafters:

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

Extra Copies:

Topic:

DOA:.....Fossum - Delete sunset on fifth standard for involuntary civil commitments

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kenneda 10/31/98	gilfokm 11/5/98	jfrantze 11/6/98	_____	lrb_docadmin 11/6/98		

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **10/29/98**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2288**

By/Representing: **Fossum**

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

Drafter: **kenneda**

May Contact:

Alt. Drafters:

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

Extra Copies:

Topic:

DOA:.....Fossum - Delete sunset on fifth standard for involuntary civil commitments

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	kenneda	1-11-6 King	11/6	11/6 RM			

FE Sent For:

<END>

MENTAL HEALTH FIFTH STANDARD

Background:

The fifth standard created in 1995 Wisconsin Act 292 for involuntary civil commitment is scheduled to sunset on November 30, 2001.

Requested Change:

Repeal the following sections:

- ✓ s. 51.15(1)(a)5.c.
- ✓ s. 51.15(1)(c)4.
- ✓ s. 51.20(1)(ad)3. ~~_____~~ RN; 51.20(10)(cm) 1. → 51.20(10)(cm)
- ✓ s. 51.20(10)(cm)2.
- ✓ s. 51.20(13)(g)2d.c.
- ✓ s. 165.017(5)

Repeal the last sentence of the following sections:

- ✓ s. 51.20(1)(a)2.e.
- ✓ s. 51.61(1)(g)3m.

Effect of the Change:

The fifth standard for involuntary civil commitment will continue to be effective after November 30, 2001.

Contact person: Gretchen A. Fossum (266-2288)

Repeal in Act 292: SEC 5
 12
 14
 16
 20
 22
 24
 28
 30
 30h
 32
 37 (1)

Amend in Act 292: 37(intro.)



SOON
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0689/1
DAK...PET...
King

DOA:.....Fossum – Delete sunset on fifth standard for involuntary civil commitments

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT *don't sen. CAT.* ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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} to believe 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 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 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.

lowercase

carried out

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 made; 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 his or her 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.

Currently, the inpatient treatment of persons who are 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~~ the person meets the fifth standard and if the court finds at the final commitment hearing that the standard is met.

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

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

- 1 SECTION 1. 51.15 (1) (a) 5. c. of the statutes is repealed.
- 2 SECTION 2. 51.15 (1) (c) 4. of the statutes is repealed.
- 3 SECTION 3. 51.20 (1) (a) 2. e. of the statutes is amended to read:

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.

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

1 probability of suffering severe mental, emotional or physical harm under this subd.

2 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 W (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 (36), 3202 (36); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 W (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 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

3 SECTION 4. 51.20 (1) (ad) 3. of the statutes is repealed.

Fix Component
INSERT 4.4

4 SECTION 5. 51.20 (10) (cm) 1. of the statutes is rnumbered 51.20 (10) (cm) ✓

5 SECTION 6. 51.20 (10) (cm) 2. of the statutes is repealed.

and amended
to read:

6 SECTION 7. 51.20 (13) (g) 2d. c. of the statutes is repealed.

7 SECTION 8. 51.61 (1) (g) 3m. of the statutes is amended to read:

8 51.61 (1) (g) 3m. Following a final commitment order for a subject individual
9 who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the
10 court shall issue an order permitting medication or treatment to be administered to
11 the individual regardless of his or her consent. ~~This subdivision does not apply after~~
12 ~~November 30, 2001.~~

~~REPORT 4.4~~

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.

13 SECTION 9. 165.017 (5) of the statutes is repealed.

ADD
SEPARATE
SECTION
FOR EACH
SECTION
Repealed

14
15

14 SECTION 10. 1995 Wisconsin Act 292, sections ~~5, 12, 14, 16, 20, 22, 24, 28, 30,~~
15 ~~30h and 32~~ is
are repealed.

~~CHANGE STATE~~

16 SECTION 11. 1995 Wisconsin Act 292, section 37 (1) is repealed.

Ins. 4-15

17 SECTION 9123. Nonstatutory provisions; health and family services.

WFO:
Fix
components

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

INSERT ~~4-4~~ ✓

~~Section # 51.20 (10) (cm) 1. of the statutes is 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 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 W (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 W (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 W (2d) xv (1997); 1997 a. 35, 130, 237, 283.

paragraph

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0689/lins
DAK.....

Ins. 4-15

- SECTION 1.** 1995 Wisconsin Act 292, section 12 of the statutes is repealed.
- SECTION 2.** 1995 Wisconsin Act 292, section 14 of the statutes is repealed.
- SECTION 3.** 1995 Wisconsin Act 292, section 16 of the statutes is repealed.
- SECTION 4.** 1995 Wisconsin Act 292, section 20 of the statutes is repealed.
- SECTION 5.** 1995 Wisconsin Act 292, section 22 of the statutes is repealed.
- SECTION 6.** 1995 Wisconsin Act 292, section 24 of the statutes is repealed.
- SECTION 7.** 1995 Wisconsin Act 292, section 28 of the statutes is repealed.
- SECTION 8.** 1995 Wisconsin Act 292, section 30 of the statutes is repealed.
- SECTION 9.** 1995 Wisconsin Act 292, section 30h of the statutes is repealed.
- SECTION 10.** 1995 Wisconsin Act 292, section 32 of the statutes is repealed.

CORRESPONDENCE\MEMORANDUM

STATE OF WISCONSIN
Department of Administration

Date: November 27, 1998

To: Debora A. Kennedy, Assistant Chief Counsel
Legislative Reference Bureau

From: Gretchen A. Fossum, Budget Analyst *SAF*
State Budget Office

Subject: LRB Draft 0689/1, Delete Sunset on Fifth Standard

Attached is a request by the Department of Health and Family Services (DHFS) to eliminate or change some reporting requirements that were contain in 1995 WI Act 292. Please add the items requested by DHFS to LRB draft 0689/1.

If you have any questions, please contact me at 266-2288.

DHFS

Department of Health and Family Services
1999-2001 Remedial Statutory Language Request
November 6, 1998

Reporting on Fifth Standard Commitment Costs

Current Language

51.03 (3) (a) Beginning on September 1, 1996, the department shall collect and analyze information in this state on each of the following:

1. The number of commitments initiated under s. 51.15 or 51.20 (1).
2. The number of commitments ordered under s. 51.20 (13).
3. The number of, cost of and paying sources for days of inpatient mental health treatment that result from the commitments initiated under subd. 1. or ordered under subd. 2.
5. The number of persons who are receiving care and treatment under community support programs voluntarily or under commitments ordered under s. 51.20 (13).
6. The number of persons for whom guardians are appointed under s. 880.33 (4m).

The Administrative or Substantive Problem with the Current Statutes

The intent of this section in 1995 WI Act 292 was to track the potential increase in costs (particularly to DHFS and county governments) associated with the new fifth standard. However the law requires DHFS to collect numbers of and total cost of all emergency detention initiated, as well as all commitments ordered, with no distinction between the first four standards and the fifth standard. Total cost is interpreted to mean community aids, county tax levy, Medicaid, Medicare, private insurance and HMOs. This is problematic for several reasons:

1. The current statute requires DHFS to determine the total number of emergency detentions as well as the cost of providing services, from all payment sources, for individuals under emergency detentions. Emergency detentions normally occur when a law enforcement official detains a person at an approved treatment facility because there is probable cause the person may be a danger to him/herself or others. In 1991, it was estimated that Milwaukee County had over 6,000 emergency detentions. It would be very costly for counties and DHFS to track the cost of emergency detentions and would provide no useful information relevant to the fiscal impact of individuals committed under the fifth standard.
2. We have no baseline data on the cost of involuntary commitments to compare with future commitment costs. Therefore we have no way of knowing if the fifth standard has caused an increase in the total commitment costs.
3. Counties do not have the ability to track commitment costs paid by Medicaid, Medicare, HMOs, or private insurance. They can only provide DHFS with commitment costs paid for by community aids and county tax levy.

4. The state can not legally force private insurance and HMOs to submit commitment cost data, which means there is no way to collect these expenditures.

The Specific Statutory Changes Requested

Under 51.03 (3) (a):

- **Repeal s. 51.03(3)(a)1.** This will eliminate the requirement for DHFS to determine the number of emergency detentions initiated through 51.15 (police holds) and 51.20 (1) (3 party petitions) which have no bearing on the costs of fifth standard commitments.
- **Amend s. 51.03(3)(a)3** to direct the department to collect and analyze the number of, and cost of days of inpatient mental health treatment for persons committed under 51.20(1) (a) 2.e. [the fifth standard] paid for by community aids, county tax levy or Medicaid.
- **Amend s. 51.03(3)(a)⁵** to direct the department to collect and analyze the number of and cost of persons who are receiving care and treatment through community support programs or outpatient services committed under 51.20 (1) (a) 2.e. [the fifth standard], paid for by community aids, county tax levy or Medicaid.

Rationale for the Change

The intent of this section of 1995 WI Act 292 was to determine any increase in cost to the public mental health system (specifically DHFS and counties) as a result of implementing another standard for mental health commitments. However the information DHFS is required to collect and analyze does not allow this intent to be met. Since there is no baseline data on the current commitment costs in Wisconsin, there is no basis for comparison if we begin to collect all this data now. Therefore, there would be no way to judge whether there was no increase in costs due to the fifth standard or any other factor. The requested revision would allow DHFS to determine. The number of persons committed under the fifth standard and their cost of inpatient treatment, community support program and/or outpatient services paid for with community aids, county tax levy. We would also ask the counties to submit names, social security number or MA number of individuals committed under the fifth standard where services were paid for by MA. DHCF would then generate this cost information. This would provide DHFS and the legislature with information on the fiscal impact to DHFS and county governments due to the fifth standard.

Fiscal Estimate

This will provide appropriate and meaningful statutory direction for the collection of statistics related to tracking the costs of fifth standard commitments. This will reduce state and county staff time to track, collect and analyze data unrelated to fifth standard commitments, and allow the same staff to provide the analysis intended under 1995 Wisconsin Act 292.

99-0689/2

11/30/98 Discussed by telephone with Gretchen Fossum:

DHFS is proposing repeal of all of 51.03 (3)(a)1. -
∴ DHFS would no longer have to report on
the number of Fifth Standard emerg. detentions
or commitments; also, is doing nothing with
51.03 (3)(a)2. - Keeps all extensions
She will check w/ Secy of DHFS office

DHFS is proposing that "county tax levy"
dollars be ascertained - how do I draft that?

She will check w/ Secy of DHFS office

Kennedy, Debora

From: Fossum, Gretchen [gretchen.fossum@doa.state.wi.us]
Sent: Monday, December 28, 1998 9:19 AM
To: Kennedy, Debora
Subject: FW: Reporting Requirements under the Fifth Standard

Debora:

Here is the information from DHFS on the 5th standard reporting requirements. Please call me after you have had a chance to review this.

Gretchen

> -----Original Message-----

> From: Lewis, Kevin
> Sent: Friday, December 18, 1998 2:15 PM
> To: Fossum, Gretchen
> Cc: Hendrickson, Chris; Kiesow, John; Hadidan, Ellen; Forsaith, Andrew
> Subject: Re: Reporting Requirements under the Fifth Standard

>
> Gretchen, thanks for your reminder. Here are the two response to the
> drafter's
> questions on our proposal related to improving the data collection
> requirements
> in Chapter 51 related to the fifth standard.

>
> 1. Data on emergency detentions
> The intent of 1995 WI Act 292 was to track the potential increase in costs
> (in
> the public sector) associated with the fifth standard of commitment.
> Costs
> resulting from standards of commitment are reflected not in the number of
> detentions related to the standard of commitment but in the commitment
> itself.
> Emergency detentions are numerous but of very short duration. Our laws
> obligate
> a commitment or release of the individual detained within 72 hours.
> Tracking
> the number of detentions proves to be very difficult, would be a resource
> drain
> and provide no information relevant to the costs of commitment related to
> the
> fifth standard. It would be superior to concentrate on the actual
> commitment
> costs instead.

>
> 2. Issue with "county tax levy"
>
> The syntax in the proposal was admittedly imprecise. Perhaps a better way
> to
> approach the intent of our proposal would be to identify "medicaid and
> (any)
> county contribution." Our focus is on the public supports that fund fifth
> standard commitments due to the difficulty of capturing accurate HMO and
> private
> insurance payments (for lack of any authority to compel summary
> disclosure).
> We're open to other suggestions in how to phrase the intent of capturing
> "public-sector expenditures."
>

12/28/98:

From Gretchen:

Do not redraft.

-
- > Please let me know if this doesn't answer the drafter's concerns.
 - >
 - > >>> Gretchen Fossum 12/17 4:15 PM >>>
 - > You were going to check with program staff concerning there request to
 - > repeal
 - > collecting data on all emergency detentions. The drafter had raised
 - > concerns
 - > that this included fifth standard detentions. Also, the drafter raised
 - > questions about the use of the words county levy.
 - >
 - > Where are we on getting the drafters questions answered?
 - >
 - >



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0689/1
DAK:kmg&pgt:jf

DOA:.....Fossum - Delete sunset on fifth standard for involuntary civil commitments

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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 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 persons who are 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.

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

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

1

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

1 **SECTION 2.** 51.15 (1) (c) 4. of the statutes is repealed.

2 **SECTION 3.** 51.20 (1) (a) 2. e. of the statutes is amended to read:

3 51.20 (1) (a) 2. e. For an individual, other than an individual who is alleged to
4 be drug dependent or developmentally disabled, after the advantages and
5 disadvantages of and alternatives to accepting a particular medication or treatment
6 have been explained to him or her and because of mental illness, evidences either
7 incapability of expressing an understanding of the advantages and disadvantages of
8 accepting medication or treatment and the alternatives, or substantial incapability
9 of applying an understanding of the advantages, disadvantages and alternatives to
10 his or her mental illness in order to make an informed choice as to whether to accept
11 or refuse medication or treatment; and evidences a substantial probability, as
12 demonstrated by both the individual's treatment history and his or her recent acts
13 or omissions, that the individual needs care or treatment to prevent further
14 disability or deterioration and a substantial probability that he or she will, if left
15 untreated, lack services necessary for his or her health or safety and suffer severe
16 mental, emotional or physical harm that will result in the loss of the individual's
17 ability to function independently in the community or the loss of cognitive or
18 volitional control over his or her thoughts or actions. The probability of suffering
19 severe mental, emotional or physical harm is not substantial under this subd. 2. e.
20 if reasonable provision for the individual's care or treatment is available in the
21 community and there is a reasonable probability that the individual will avail
22 himself or herself of these services or if the individual is appropriate for protective
23 placement under s. 55.06. Food, shelter or other care that is provided to an individual
24 who is substantially incapable of obtaining food, shelter or other care for himself or
25 herself by any person other than a treatment facility does not constitute reasonable

1 provision for the individual's care or treatment in the community under this subd.

2 2. e. The individual's status as a minor does not automatically establish a substantial
3 probability of suffering severe mental, emotional or physical harm under this subd.

4 2.e. ~~This subd. 2. e. does not apply after November 30, 2001.~~

5 **SECTION 4.** 51.20 (1) (ad) 3. of the statutes is repealed.

6 **SECTION 5.** 51.20 (10) (cm) 1. of the statutes is renumbered 51.20 (10) (cm) and
7 amended to read:

8 51.20 (10) (cm) Prior to or at the final hearing, for individuals for whom a
9 petition is filed under sub. (1)(a) 2. e., the county department under s. 51.42 or 51.437
10 shall furnish to the court and the subject individual an initial recommended written
11 treatment plan that contains the goals of treatment, the type of treatment to be
12 provided and the expected providers. The treatment plan shall address the
13 individual's needs for inpatient care, residential services, community support
14 services, medication and its monitoring, case management, and other services to
15 enable the person to live in the community upon release from an inpatient facility.
16 The treatment plan shall contain information concerning the availability of the
17 needed services and community treatment providers' acceptance of the individual
18 into their programs. The treatment plan is only a recommendation and is not subject
19 to approval or disapproval by the court. Failure to furnish a treatment plan under
20 this ~~subdivision~~ paragraph does not constitute grounds for dismissal of the petition
21 unless the failure is made in bad faith.

22 **SECTION 6.** 51.20 (10) (cm) 2. of the statutes is repealed.

23 **SECTION 7.** 51.20 (13) (g) 2d. c. of the statutes is repealed.

24 **SECTION 8.** 51.61 (1) (g) 3m. of the statutes is amended to read:

1 51.61 (1) (g) 3m. Following a final commitment order for a subject individual
2 who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the
3 court shall issue an order permitting medication or treatment to be administered to
4 the individual regardless of his or her consent. ~~This subdivision does not apply after~~
5 ~~November 30, 2001.~~

6 **SECTION 9.** 165.017 (5) of the statutes is repealed.

7 **SECTION 10.** 1995 Wisconsin Act 292, section 5 is repealed.

8 **SECTION 11.** 1995 Wisconsin Act 292, section 12 is repealed.

9 **SECTION 12.** 1995 Wisconsin Act 292, section 14 is repealed.

10 **SECTION 13.** 1995 Wisconsin Act 292, section 16 is repealed.

11 **SECTION 14.** 1995 Wisconsin Act 292, section 20 is repealed.

12 **SECTION 15.** 1995 Wisconsin Act 292, section 22 is repealed.

13 **SECTION 16.** 1995 Wisconsin Act 292, section 24 is repealed.

14 **SECTION 17.** 1995 Wisconsin Act 292, section 28 is repealed.

15 **SECTION 18.** 1995 Wisconsin Act 292, section 30 is repealed.

16 **SECTION 19.** 1995 Wisconsin Act 292, section 30h is repealed.

17 **SECTION 20.** 1995 Wisconsin Act 292, section 32 is repealed.

18 **SECTION 21.** 1995 Wisconsin Act 292, section 37 (1) is repealed.

19 **SECTION 9123. Nonstatutory provisions; health and family services.**

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

23

(END)