



2013 SENATE BILL 126

April 3, 2013 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Health and Human Services.

1 **AN ACT** *to repeal* 51.13 (1) (c) 2. and 3.; *to renumber and amend* 51.13 (1) (c)
2 1.; *to amend* 51.13 (1) (title), 51.13 (1) (a) and (b), 51.13 (3) (b), 51.13 (4) (title),
3 51.13 (4) (a) (intro.) and 6., 51.13 (4) (d), 51.13 (4) (g) (intro.) and 1. c., 51.13 (6)
4 (a) 3., 51.13 (7) (b) 1. to 3., 51.35 (3) (a) and (b) and 51.61 (6); and *to create* 51.13
5 (1) (bm), 51.13 (1) (d) (title), 51.13 (1) (e) (title), 51.13 (1) (em) (title), 51.13 (3)
6 (am) (title), 51.13 (3) (b) (title), 51.13 (3) (d) (title), 51.13 (3) (e) (title), 51.13 (4)
7 (b) (title), 51.13 (4) (c) (title), 51.13 (4) (e) (title), 51.13 (4) (f) (title), 51.13 (4) (g)
8 4., 51.13 (4) (h) (title), 51.13 (4) (i) (title), 51.13 (6) (a) (title), 51.13 (6) (b) (title),
9 51.13 (6) (c) (title), 51.13 (7) (a) (title), 51.13 (7) (b) (title) and 51.13 (7) (c) (title)
10 of the statutes; **relating to:** admission of minors for inpatient treatment.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51.

Under current law, s. 51.13, stats., governs inpatient mental health treatment of minors. Section 51.13 (4), stats., requires a petition to be filed for the review of an admission of a minor of any age for treatment of mental illness, alcoholism or drug abuse, or developmental disability. Included in the petition must be a notation of any statement made or conduct demonstrated by the minor in the presence of the director or staff of the facility indicating that inpatient treatment is against the minor's wishes.

Also, under current law, a minor may be admitted to an inpatient treatment facility without following the review procedures for diagnosis and evaluation or for dental, medical, or psychiatric services, for no longer than 12 days. A minor's parent or guardian must execute the application for short-term admission. However, if the minor is age 14 or older, the minor must join in the application if it is for mental health or developmental disability services or treatment. If the minor refuses to do so, then the parent or guardian may do so. In that case, the review procedures outlined above apply, and the facility's treatment director must file a petition for review of the short-term admission.

An application for short-term admission must be reviewed by the facility's treatment director, who may approve it only if the treatment director determines that the admission provides the least restrictive means of providing the diagnosis or evaluation, or provision of dental, medical, or psychiatric services. The minor must be released at the end of the 12-day period unless a regular application for admission has been filed. Only one short-term admission under this procedure may be made every 120 days.

Finally, testimony provided to the special committee indicated that, in some areas of the state, there is little awareness of the ability of a parent of a minor age 14 or older to obtain treatment for the minor if the minor does not want treatment. In some cases, this lack of awareness has resulted in necessary treatment not being provided that could have prevented harm to a minor.

This bill does the following:

- Eliminates the need to file a petition for review of an admission of a minor under age 14 for treatment of mental illness, alcoholism or drug abuse, or developmental disability. Because under current law, parents have the authority to consent to inpatient admission for minors under age 14 without the minor joining in the petition, the committee recommended that the petition and hearing requirements in current law for minors under age 14 are unnecessary and should be eliminated. A petition would still be required if the minor wanted treatment but the parent refused; if a parent with legal custody or guardian cannot be found; or if there is no parent or guardian.

- Eliminates the need to file a petition for a minor age 14 to 17 who is voluntarily participating in inpatient treatment for mental illness. A petition would still have to be filed if the minor refused to join in the application, or if the parent with legal custody or guardian cannot be found, or there is no parent with legal custody or guardian. A petition would also still be required if the minor wanted treatment but the parent refused. It should be noted that a minor age 14 or older may request discharge from the inpatient

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facility at any time. If the request is denied, current law sets forth a procedure for determining the continued appropriateness of the admission. This provides protection of the minor's rights if the minor withdraws his or her consent to the treatment.

- Eliminates the petition requirement at the expiration of the 12-day time period if the admission was voluntary on the part of the minor and the parent.

- Eliminates the provision that allows for no more than one short-term (up to 12 days) voluntary admission of a minor every 120 days.

- Creates subsection and paragraph titles within s. 51.13 to provide guidance to the reader regarding the subject matter of the subsections and paragraphs and eliminates some redundant language in s. 51.13.

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

2 51.13 (1) (title) ADMISSION FOR TREATMENT.

3 **SECTION 2.** 51.13 (1) (a) and (b) of the statutes are amended to read:

4 51.13 (1) (a) Minors under 14 years of age. Except as provided in par. (c) and
5 ss. 51.45 (2m) and 51.47, the application for admission of a minor who is 14 years of
6 age or older to an approved inpatient treatment facility for the primary purpose of
7 treatment for alcoholism or drug abuse and the application for admission of a minor
8 who is under 14 years of age to an approved inpatient treatment facility for the
9 primary purpose of treatment for mental illness, developmental disability,
10 alcoholism, or drug abuse shall be executed by a parent who has legal custody of the
11 minor or the minor's guardian. Any statement or conduct by a minor who is the
12 subject of an application for admission under this paragraph indicating that the
13 minor does not agree to admission to the facility shall be noted on the face of the
14 application and shall be noted in the petition required by sub. (4).

15 (b) Minors 14 years of age or older; mental illness or developmental disability.

16 The application for admission of a minor who is 14 years of age or older to an approved
17 inpatient treatment facility for the primary purpose of treatment for mental illness
18 or developmental disability shall be executed by the minor and a parent who has
19 legal custody of the minor or the minor's guardian, except as provided in par. (c) 1.,

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1 ~~except that, if.~~ If the minor refuses to execute the application, a parent who has legal
2 custody of the minor or the minor's guardian may execute the application on the
3 minor's behalf, and the petition shall be filed as required under sub. (4).

4 **SECTION 3.** 51.13 (1) (bm) of the statutes is created to read:

5 51.13 (1) (bm) *Minors 14 years of age or older; alcoholism or drug abuse*
6 *treatment.* Except as provided in par. (c) and ss. 51.42 (2m) and 51.47, the application
7 for admission of a minor who is 14 years of age or older to an approved inpatient
8 facility for the primary purpose of treatment for alcoholism or drug abuse shall be
9 executed by a parent who has legal custody of the minor or the minor's guardian. Any
10 statement or conduct by a minor who is the subject of an application for admission
11 under this paragraph indicating that the minor does not agree to admission to the
12 facility shall be noted on the face of the application and shall be noted in the petition
13 required under sub. (4).

14 **SECTION 4.** 51.13 (1) (c) 1. of the statutes is renumbered 51.13 (1) (c) and
15 amended to read:

16 51.13 (1) (c) *Lack of parent or guardian consent to treatment.* ~~If a minor 14 years~~
17 ~~of age or older wishes to be admitted to an approved inpatient treatment facility but~~
18 ~~a parent with legal custody or the guardian refuses to execute the application for~~
19 ~~admission or cannot be found, or if there is no parent with legal custody or guardian,~~
20 or the parent with legal custody or guardian of a minor 14 years of age or older refuses
21 to execute the application, the minor or a person acting on the minor's behalf may
22 petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the
23 county of residence of the parent or guardian for approval of the admission. A copy
24 of the petition and a notice of hearing shall be served upon the parent or guardian
25 at his or her last-known address. ~~If, after a hearing, the court determines that the~~

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1 consent of the parent or guardian is being unreasonably withheld, that the parent
2 or guardian cannot be found, or that there is no parent with legal custody, and that
3 the admission is proper under the standards prescribed in sub. (4) (d), the court shall
4 approve the minor's admission without the consent of the parent or guardian under
5 sub. (4). The court may, at the minor's request, temporarily approve the admission
6 pending hearing on the petition, if such a hearing is required under sub. (4).

7 **SECTION 5.** 51.13 (1) (c) 2. and 3. of the statutes are repealed.

8 **SECTION 6.** 51.13 (1) (d) (title) of the statutes is created to read:

9 51.13 (1) (d) (title) *Other petition filed.*

10 **SECTION 7.** 51.13 (1) (e) (title) of the statutes is created to read:

11 51.13 (1) (e) (title) *Admission on approval of application.*

12 **SECTION 8.** 51.13 (1) (em) (title) of the statutes is created to read:

13 51.13 (1) (em) (title) *Standards for approval of admission.*

14 **SECTION 9.** 51.13 (3) (am) (title) of the statutes is created to read:

15 51.13 (3) (am) (title) *Rights.*

16 **SECTION 10.** 51.13 (3) (b) (title) of the statutes is created to read:

17 51.13 (3) (b) (title) *Right to request discharge.*

18 **SECTION 11.** 51.13 (3) (b) of the statutes is amended to read:

19 51.13 (3) (b) Prior to or at admission, a minor who is voluntarily admitted under
20 sub. (1) (c) ~~1. or 2.~~, and the minor's parent or guardian, if available, shall be informed
21 by the director or his or her designee, both orally and in writing, in easily
22 understandable language, of the minor's right to request discharge and to be
23 discharged within 48 hours of the request, as provided under sub. (7) (b), if no
24 statement is filed for emergency detention or if no petition is filed for emergency

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1 commitment, involuntary commitment, or protective placement, and the minor's
2 right to consent to or refuse treatment as provided in s. 51.61 (6).

3 **SECTION 12.** 51.13 (3) (d) (title) of the statutes is created to read:

4 51.13 (3) (d) (title) *Explanation of rights.*

5 **SECTION 13.** 51.13 (3) (e) (title) of the statutes is created to read:

6 51.13 (3) (e) (title) *Availability of writing materials.*

7 **SECTION 14.** 51.13 (4) (title) of the statutes is amended to read:

8 51.13 (4) (title) REVIEW PETITION REQUIREMENT; REVIEW PROCEDURE.

9 **SECTION 15.** 51.13 (4) (a) (intro.) and 6. of the statutes are amended to read:

10 51.13 (4) (a) (intro.) When petition filed. Within 3 days after the admission of
11 a minor under sub. (1) (b), or within 3 days after an application is executed for
12 admission of the minor, whichever occurs first, the treatment director of the facility
13 or the center for the developmentally disabled to which the minor is admitted, or his
14 or her designee ~~or, in the case of a center for the developmentally disabled, the~~
15 ~~director of the center or his or her designee,~~ shall file a verified petition for review
16 of the admission in the court assigned to exercise jurisdiction under chs. 48 and 938
17 in the county in which the facility is located, if the minor is 14 years of age or older
18 and refuses to join in the application; the minor wants treatment and the minor's
19 parent with legal custody or guardian refuses to join in the application; there is no
20 parent with legal custody or guardian; or the parent with legal custody or guardian
21 cannot be found. If the parent or guardian is not the petitioner, a copy of the petition
22 and a notice of hearing shall be served on the parent or guardian at his or her last
23 known address. A copy of the application for admission and of any relevant
24 professional evaluations shall be attached to the petition. The petition shall contain
25 all of the following:

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1 6. Notation of any ~~statement made or conduct demonstrated by the minor in~~
2 ~~the presence of the director or staff of the facility indicating that inpatient treatment~~
3 ~~is against the wishes of the minor~~ refusal of the minor 14 years of age or older to join
4 in the application.

5 **SECTION 16.** 51.13 (4) (b) (title) of the statutes is created to read:

6 51.13 (4) (b) (title) *Removal of petition.*

7 **SECTION 17.** 51.13 (4) (c) (title) of the statutes is created to read:

8 51.13 (4) (c) (title) *Copy of petition.*

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

10 51.13 (4) (d) Criteria for approving admission. Within 5 days after the filing
11 of the petition, the court assigned to exercise jurisdiction under chs. 48 and 938 shall
12 determine, based on the allegations of the petition and accompanying documents,
13 whether there is a prima facie showing that the minor is in need of psychiatric
14 services, or services for developmental disability, alcoholism, or drug abuse, whether
15 the treatment facility offers inpatient therapy or treatment that is appropriate to the
16 minor's needs; whether inpatient care in the treatment facility is the least restrictive
17 therapy or treatment consistent with the needs of the minor; and, if the minor is 14
18 years of age or older and has been admitted to the treatment facility for the primary
19 purpose of treatment for mental illness or developmental disability, whether the
20 admission was made under an application executed by the minor and the minor's
21 parent or guardian. If such a showing is made, the court shall permit admission. If
22 the court is unable to make those determinations based on the petition and
23 accompanying documents, the court may dismiss the petition as provided in par. (h);
24 order additional information, including an independent evaluation, to be produced
25 as necessary for the court to make those determinations within 7 days, exclusive of

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1 weekends and legal holidays, after admission or application for admission,
2 whichever is sooner; or hold a hearing within 7 days, exclusive of weekends and legal
3 holidays, after admission or application for admission, whichever is sooner. If a
4 ~~notation of the minor's unwillingness appears on the face of the petition,~~ if the
5 admission was made under an application executed by the minor's parent or
6 guardian despite the minor's refusal, or if a hearing has been requested by the minor
7 or by the minor's counsel, parent, or guardian, the court shall order an independent
8 evaluation of the minor and hold a hearing to review the admission, within 7 days,
9 exclusive of weekends and legal holidays, after admission or application for
10 admission, whichever is sooner, and shall appoint counsel to represent the minor if
11 the minor is unrepresented. If the court considers it necessary, the court shall also
12 appoint a guardian ad litem to represent the minor. The minor shall be informed
13 about how to contact the state protection and advocacy agency designated under s.
14 51.62 (2) (a).

15 **SECTION 19.** 51.13 (4) (e) (title) of the statutes is created to read:

16 51.13 (4) (e) (title) *Notice of hearing.*

17 **SECTION 20.** 51.13 (4) (f) (title) of the statutes is created to read:

18 51.13 (4) (f) (title) *Rules, records, and findings.*

19 **SECTION 21.** 51.13 (4) (g) (intro.) and 1. c. of the statutes are amended to read:

20 51.13 (4) (g) *Approval of admission.* (intro.) If the court finds, under a hearing
21 under par. (d), that the minor is in need of psychiatric services or services for
22 developmental disability, alcoholism, or drug abuse in an inpatient facility, that the
23 inpatient facility to which the minor is admitted offers therapy or treatment that is
24 appropriate for the minor's needs and that is the least restrictive therapy or
25 treatment consistent with the minor's needs, the court shall permit admission. If the

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1 court finds that the therapy or treatment in the inpatient facility to which the minor
2 is admitted is not appropriate or is not the least restrictive therapy or treatment
3 consistent with the minor's needs, the court may order placement in or transfer to
4 another more appropriate or less restrictive inpatient facility, if the placement or
5 transfer is first approved by all of the following, ~~except that placement in or transfer~~
6 ~~to a center for the developmentally disabled shall first be approved by all of the~~
7 ~~following and the department:~~

8 1. c. For a minor admitted under sub. (1) (c) ~~1. or 2.~~, the minor.

9 **SECTION 22.** 51.13 (4) (g) 4. of the statutes is created to read:

10 51.13 (4) (g) 4. The department, if the placement or transfer is to a center for
11 the developmentally disabled.

12 **SECTION 23.** 51.13 (4) (h) (title) of the statutes is created to read:

13 51.13 (4) (h) (title) *Actions if petition not approved.*

14 **SECTION 24.** 51.13 (4) (i) (title) of the statutes is created to read:

15 51.13 (4) (i) (title) *Findings of review.*

16 **SECTION 25.** 51.13 (6) (a) (title) of the statutes is created to read:

17 51.13 (6) (a) (title) *Admission procedure.*

18 **SECTION 26.** 51.13 (6) (a) 3. of the statutes is amended to read:

19 51.13 (6) (a) 3. A If a minor 14 years of age or older who refused to execute the
20 application under subd. 2. is admitted after court review under sub. (4) (d), the minor
21 may not be readmitted to an inpatient treatment facility for psychiatric services
22 under this paragraph within 120 days of a previous admission under this paragraph.

23 **SECTION 27.** 51.13 (6) (b) (title) of the statutes is created to read:

24 51.13 (6) (b) (title) *Review and acceptance of application.*

25 **SECTION 28.** 51.13 (6) (c) (title) of the statutes is created to read:

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1 51.13 (6) (c) (title) *Release*.

2 **SECTION 29.** 51.13 (7) (a) (title) of the statutes is created to read:

3 51.13 (7) (a) (title) *Minor attains age 14 during admission*.

4 **SECTION 30.** 51.13 (7) (b) (title) of the statutes is created to read:

5 51.13 (7) (b) (title) *Discharge procedure*.

6 **SECTION 31.** 51.13 (7) (b) 1. to 3. of the statutes are amended to read:

7 51.13 (7) (b) 1. Any minor who is voluntarily admitted under sub. (1) (c) ~~1. or~~
8 ~~2.~~, may request discharge in writing.

9 2. For a minor 14 years of age or older who is admitted under sub. (1) (a) ~~or (b)~~
10 **(bm)** for the primary purpose of treatment for alcoholism or drug abuse or a minor
11 under 14 years of age who is admitted under sub. (1) (a) ~~or (b)~~ for the primary purpose
12 of treatment for mental illness, developmental disability, alcoholism, or drug abuse,
13 the parent or guardian of the minor may request discharge in writing.

14 3. For a minor 14 years of age or older who is admitted under sub. (1) (a) ~~or (b)~~
15 for the primary purpose of treatment for mental illness or developmental disability,
16 the minor and the minor's parent or guardian may request discharge in writing. If
17 the parent or guardian of the minor refuses to request discharge and if the director
18 of the facility to which the minor is admitted or his or her designee avers, in writing,
19 that the minor is in need of psychiatric services or services for developmental
20 disability, that the facility's therapy or treatment is appropriate to the minor's needs,
21 and that inpatient care in the treatment facility is the least restrictive therapy or
22 treatment consistent with the needs of the minor, the minor may not be discharged
23 under this paragraph.

24 **SECTION 32.** 51.13 (7) (c) (title) of the statutes is created to read:

25 51.13 (7) (c) (title) *Request for hearing when not discharged*.

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1 **SECTION 33.** 51.35 (3) (a) and (b) of the statutes are amended to read:

2 51.35 (3) (a) A licensed psychologist of a juvenile correctional facility or a
3 secured residential care center for children and youth, or a licensed physician of the
4 department of corrections, who has reason to believe that any individual confined in
5 the juvenile correctional facility or secured residential care center for children and
6 youth is, in his or her opinion, in need of services for developmental disability,
7 alcoholism, or drug dependency or in need of psychiatric services, and who has
8 obtained consent to make a transfer for treatment, shall make a report, in writing,
9 to the superintendent of the juvenile correctional facility or secured residential care
10 center for children and youth, stating the nature and basis of the belief and verifying
11 the consent. In the case of a minor age 14 or older who is in need of services for
12 developmental disability or who is in need of psychiatric services, the minor and the
13 minor's parent or guardian shall consent unless the minor is admitted under s. 51.13
14 (1) (c) ~~1.~~ or unless the minor refuses to consent, in which case the minor's parent or
15 guardian may consent on behalf of the minor. In the case of a minor age 14 or older
16 who is in need of services for alcoholism or drug dependency or a minor under the age
17 of 14 who is in need of services for developmental disability, alcoholism, or drug
18 dependency or in need of psychiatric services, only the minor's parent or guardian
19 needs to consent unless the minor is admitted under s. 51.13 (1) (c). The
20 superintendent shall inform, orally and in writing, the minor and the minor's parent
21 or guardian, that transfer is being considered and shall inform them of the basis for
22 the request and their rights as provided in s. 51.13 (3) (am). If the department of
23 corrections, upon review of a request for transfer, determines that transfer is
24 appropriate, that department shall immediately notify the department of health
25 services and, if the department of health services consents, the department of

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1 corrections may immediately transfer the individual. The department of health
2 services shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise
3 jurisdiction under chs. 48 and 938 of the county where the treatment facility is
4 located.

5 (b) The court assigned to exercise jurisdiction under chs. 48 and 938 shall
6 determine, based on the allegations of the petition and accompanying documents,
7 whether the transfer under par. (a) of the minor to an inpatient facility is appropriate
8 and consistent with the needs of the minor and, if the minor is 14 years of age or older
9 and is being transferred for the purpose of receiving services for developmental
10 disability or psychiatric services, whether consent for the transfer was provided by
11 the minor and his or her parent or guardian or whether the minor was admitted
12 under s. 51.13 (1) (c) 1. If the court is unable to make those determinations based
13 on the petition and accompanying documents, the court may order additional
14 information, including an independent evaluation, to be produced as necessary to
15 make those determinations within 14 days after admission, or the court may hold a
16 hearing within 14 days after admission. If a notation of the minor's unwillingness
17 appears on the face of the petition, if the transfer was made under a consent of the
18 minor's parent or guardian despite the minor's refusal, or if a hearing has been
19 requested by the minor or by the minor's counsel, guardian ad litem, parent, or
20 guardian, the court shall order an independent evaluation of the minor, hold a
21 hearing, and appoint counsel or a guardian ad litem for the minor as provided in s.
22 51.13 (4) (d). The minor shall be informed about how to contact the state protection
23 and advocacy agency designated under s. 51.62 (2) (a). At the conclusion of the
24 hearing, the court shall approve or disapprove the request for transfer. If the minor

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

3 **SECTION 34.** 51.61 (6) of the statutes is amended to read:

4 51.61 (6) Subject to the rights of patients provided under this chapter, the
5 department, county departments under s. 51.42 or 51.437, and any agency providing
6 services under an agreement with the department or those county departments have
7 the right to use customary and usual treatment techniques and procedures in a
8 reasonable and appropriate manner in the treatment of patients who are receiving
9 services under the mental health system, for the purpose of ameliorating the
10 conditions for which the patients were admitted to the system. The written,
11 informed consent of any patient shall first be obtained, unless the person has been
12 found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the
13 person is a minor 14 years of age or older who is receiving services for alcoholism or
14 drug abuse or a minor under 14 years of age who is receiving services for mental
15 illness, developmental disability, alcoholism, or drug abuse. In the case of such a
16 minor, the written, informed consent of the parent or guardian is required, except as
17 provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g), or as
18 provided in s. 51.47. If the minor is 14 years of age or older and is receiving services
19 for mental illness or developmental disability, the written, informed consent of the
20 minor and the minor's parent or guardian is required, except that a refusal of either
21 such a minor 14 years of age or older or the minor's parent or guardian to provide
22 written, informed consent for admission or transfer to an approved inpatient
23 treatment facility is reviewable under s. 51.13 (1) (c) ~~1.~~, (3), or (4), or 51.35 (3) (b), and
24 a refusal of either a minor 14 years of age or older or the minor's parent or guardian

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SECTION 34

1 to provide written, informed consent for outpatient mental health treatment is
2 reviewable under s. 51.14.

3 (END)