

**2013 DRAFTING REQUEST**

**Bill**

Received: **1/16/2013** Received By: **tdodge**  
 Wanted: **As time permits** Same as LRB:  
 For: **Legislative Council - JLC 266-9791** By/Representing: **Laura Rose**  
 May Contact: Drafter: **tdodge**  
 Subject: **Mental Health - detent/commit** Addl. Drafters:  
 Extra Copies:

Submit via email: **YES**  
 Requester's email: **laura.rose@legis.wisconsin.gov**  
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Emergency detention, involuntary commitment, and privileged communications and information

**Instructions:**

WLC: 0073/5

**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>
/?	tdodge 2/28/2013			_____			
/P1	tdodge 3/28/2013	scalvin 3/20/2013	jmurphy 3/20/2013	_____	srose 3/20/2013		
/1		scalvin 3/29/2013	jmurphy 4/1/2013	_____	sbasford 4/1/2013	srose 4/2/2013	

FE Sent For:

Not  
needed

<END>

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/P1		scalvin 3/20/2013	jmurphy 3/20/2013	_____	srose 3/20/2013		
FE Sent For:	/1 sac 03/29/2013		<i>JM</i> 3/29	<i>JM</i> 4/1			

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/?	tdodge		1/30 ph				
FE Sent For:		1/31 sae 03/20/2013	LC Conversion jm 3/20/13		jm 3/20		

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LR:wu:jal;...

1/2/2013

1       **AN ACT** *to repeal* 51.20 (13) (g) 2. and 51.20 (13) (g) 2m.; *to renumber and amend*  
2       51.15 (1) (a) and (b); *to amend* 51.15 (2), 51.15 (3), 51.15 (4) (a), 51.15 (4) (b),  
3       51.15 (5) and (9), 51.20 (1) (a) 2. c., 51.20 (2) (b), 51.20 (2) (d), 51.20 (7) and (8) (b)  
4       and (bm) and 905.04 (4) (a); and *to create* 51.15 (1) (a) and 51.15 (4) (c) of the  
5       statutes; **relating to:** emergency detention, involuntary commitment, and privileged  
6       communications and information.

*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.

The bill makes the following changes to Wisconsin laws dealing with emergency detention, involuntary commitment, and privileged communications and information:

1. Current law allows a law enforcement officer or other specified persons to take a person into custody on an emergency detention basis if certain criteria are met. The bill modifies this statute to require a determination "...that taking the person into custody is the least restrictive alternative appropriate to the person's needs". [SECTION 1.]
2. Current law provides standards for emergency detention and involuntary commitment. The 3rd standard of dangerousness allows for commitment if there is a substantial probability of physical impairment or injury to himself or herself due to impaired judgment. The bill modifies this language to also include a substantial probability of physical impairment or injury **to others**. [SECTIONS 1 and 9.]
3. Under current law, an emergency detention of an individual under the 4th standard of dangerousness must be due to the individual's mental illness or drug dependency, which results in the individual's inability to satisfy certain basic needs which will result in death or serious harm to the individual. The bill deletes the reference to drug dependency from the 4th standard of emergency detention, to make this standard consistent with the 4th standard for involuntary commitment. [SECTION 1.]
4. The bill creates a "purpose" statement for the emergency detention statute. The statement says that the purpose of emergency detention is to

provide, on an emergency basis, treatment by the least restrictive means possible, to individuals who meet all of the following criteria: (a) are mentally ill, drug dependent, or developmentally disabled; (b) evidence one of the statutory standards of dangerousness; and (c) are unable or unwilling due to mental illness, drug dependency, or developmental disability, to cooperate with voluntary treatment. [SECTION 2.]

5. The bill provides that the county department may approve an emergency detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others. [SECTION 3.]

6. Under current law, emergency detention may occur in a hospital approved by the department of health services as a detention facility or under contract with the county department, an approved public treatment facility, a center for the developmentally disabled, a state treatment facility, or an approved private treatment facility if the facility agrees to detain the individual. The bill consolidates the references to these facilities to provide that detention may occur in a treatment facility approved by the department or county department, if the facility agrees to detain the individual, or a state treatment facility. [SECTIONS 3, 11, and 12.]

7. Current law provides that upon arrival at an emergency detention facility, the custody of the individual who is the subject of an emergency detention is transferred to the facility. However, current law does not specify when custody begins prior to the individual's arrival at a facility. The bill provides that an individual is deemed to be in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child or juvenile into custody, for the purposes of emergency detention. [SECTION 4.]

8. Current law provides different procedures for emergency detention in counties with a population of 500,000 or more and those with a population of less than 500,000. The bill increases the population threshold to 750,000, so that those procedures will continue to apply only to Milwaukee County. [SECTIONS 5 and 8.]

9. Current law in counties with a population of 500,000 or more requires that the treatment director of the facility in which the person is detained, or his or her designee, must determine within 24 hours whether the person is to be detained. If the individual is detained, the treatment director or designee may supplement in writing the statement filed by the law enforcement officer or other person undertaking the emergency



detention. The bill modifies this statute to provide that when calculating the 24 hours, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual shall be excluded from the calculation. [SECTIONS 6 and 7.]

10. Current law provides that an individual must be informed of his or her rights, by the director of the emergency detention facility, at the time of detention. The bill amends this provision to state that the individual must be informed of his or her rights at the time of the individual's arrival at the emergency detention facility. [SECTION 8.]

11. Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. This bill amends this provision to specify that the hearing must be held within 72 hours after the individual is taken into custody.

Also under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody. [SECTION 12.]

12. Generally, current law provides that the first order of involuntary commitment is for up to 6 months, and all subsequent consecutive orders of commitment are for up to one year. However, current law provides that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365-day period. The bill eliminates that provision with respect to persons committed under the 4th standard of dangerousness. [SECTION 13.]

13. Current law provides that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision. The bill repeals this provision. [SECTION 14.]

14. Current law provides that a patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, among the patient and various specified health care providers, including physicians, psychologists, social workers, marriage and family therapists, and professional counselors. Current law also

provides that there is no privilege for communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness or various other types of proceedings. The bill modifies this exception to the privilege statute to substitute "commitment" for "hospitalization" and to refer to "probable cause or final proceedings" to commit the patient for mental illness under s. 51.20. [SECTION 15.]

1           **SECTION 1.** 51.15 (1) (a) and (b) of the statutes are renumbered 51.15 (1) (b) and (c),  
2 and 51.15 (1) (b) (intro.) 3. and 4., as renumbered, are amended to read:

3           51.15 (1) (b) (intro.) A law enforcement officer or other person authorized to take a child  
4 into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an  
5 individual into custody if the officer or person has cause to believe that the individual is  
6 mentally ill, is drug dependent, or is developmentally disabled, that taking the person into  
7 custody is the least restrictive alternative appropriate to the person's needs, and that the  
8 individual evidences any of the following:

NOTE: The amendment adds a criterion that must be considered when determining whether to take a person into custody for an emergency detention: that taking the person into custody is the least restrictive alternative appropriate to the person's needs.

9           3. A substantial probability of physical impairment or injury to himself or herself or  
10 others due to impaired judgment, as manifested by evidence of a recent act or omission. The  
11 probability of physical impairment or injury is not substantial under this subdivision if  
12 reasonable provision for the individual's protection is available in the community and there  
13 is a reasonable probability that the individual will avail himself or herself of these services or,  
14 in the case of a minor, if the individual is appropriate for services or placement under s. 48.13  
15 (4) or (11) or 938.13 (4). Food, shelter or other care provided to an individual who is  
16 substantially incapable of obtaining the care for himself or herself, by any person other than  
17 a treatment facility, does not constitute reasonable provision for the individual's protection  
18 available in the community under this subdivision.

**NOTE:** This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial probability of an injury or impairment **to others** due to an individual's impaired judgment.

1           4. Behavior manifested by a recent act or omission that, due to mental illness ~~or drug~~  
2 ~~dependency~~, he or she is unable to satisfy basic needs for nourishment, medical care, shelter,  
3 or safety without prompt and adequate treatment so that a substantial probability exists that  
4 death, serious physical injury, serious physical debilitation, or serious physical disease will  
5 imminently ensue unless the individual receives prompt and adequate treatment for this  
6 mental illness ~~or drug dependency~~. No substantial probability of harm under this subdivision  
7 exists if reasonable provision for the individual's treatment and protection is available in the  
8 community and there is a reasonable probability that the individual will avail himself or  
9 herself of these services, if the individual may be provided protective placement or protective  
10 services under ch. 55, or, in the case of a minor, if the individual is appropriate for services  
11 or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does  
12 not automatically establish a substantial probability of death, serious physical injury, serious  
13 physical debilitation or serious disease under this subdivision. Food, shelter or other care  
14 provided to an individual who is substantially incapable of providing the care for himself or  
15 herself, by any person other than a treatment facility, does not constitute reasonable provision  
16 for the individual's treatment or protection available in the community under this subdivision.

**NOTE:** This amendment deletes references to drug dependency from the 4th standard of dangerousness for emergency detentions which makes this 4th standard consistent with the 4th standard of dangerousness for commitment under s. 51.20 (1) (a) 2. d.

17           **SECTION 2.** 51.15 (1) (a) <sup>2</sup> of the statutes is created to read:

Approved  
by Steve  
Miller

1 51.15 (1) (a)<sup>9</sup> Purpose. The purpose of this section is to provide, on an emergency basis,  
2 treatment by the least restrictive means appropriate to the individual's needs, to individuals  
3 who meet all of the following criteria:

- 4 1. Are mentally ill, drug dependent, or developmentally disabled.
- 5 2. Evidence one of the standards set forth in par. (b) 1. to 4.
- 6 3. Are <sup>reasonably believed to be</sup> unable or unwilling to cooperate with voluntary treatment, due to mental illness,  
7 drug dependency, or developmental disability.

NOTE: This SECTION adds a purpose statement to the beginning of s. 51.15, the emergency detention statute.

SECTION 3. 51.15 (2) of the statutes is amended to read:

9 51.15 (2) FACILITIES FOR DETENTION. The law enforcement officer or other person  
10 authorized to take a child into custody under ch. 48 or to take a juvenile into custody under  
11 ch. 938 shall transport the individual, or cause him or her to be transported, for detention, if  
12 the county department of community programs in the county in which the individual was taken  
13 into custody approves the need for detention, and for evaluation, diagnosis, and treatment if  
14 permitted under sub. (8) ~~to any of the following facilities:~~ The county department may  
15 approve the detention only if the county department reasonably believes the individual will  
16 not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the  
17 individual and remove the substantial probability of physical harm, impairment, or injury to  
18 himself, herself, or others.

19 ~~(a) A hospital which is approved by the department as a detention facility or under~~  
20 ~~contract with a county department under s. 51.42 or 51.437, or an approved public treatment~~  
21 ~~facility;~~

22 ~~(b) A center for the developmentally disabled;~~

1           ~~(c) A state treatment facility; or~~

2           ~~(d) An approved private~~ Detention may only be in a treatment facility approved by the  
3 department or the county department, if the facility agrees to detain the individual, or a state  
4 treatment facility.

**NOTE:** The amendment consolidates references to the types of facilities that may be used for emergency detention. Under the amendment, a person may be detained in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or in a state treatment facility. Section 51.01 (19), stats., defines a "treatment facility" as "a publicly or privately operated treatment facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs".

Section 51.01 (15), stats., defines "state treatment facility" as "any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes".

5           **SECTION 4.** 51.15 (3) of the statutes is amended to read:

6           51.15 (3) CUSTODY. An individual is deemed to be in custody when the individual is  
7 under the physical control of the law enforcement officer, or other person authorized to take  
8 a child into custody under ch. 48 or to take a juvenile into custody under ch. 938, for the  
9 purposes of emergency detention. Upon arrival at the facility under sub. (2), custody of the  
10 individual is deemed to be in the custody of transferred to the facility.

**NOTE:** Current law provides that an emergency detention facility has custody of an individual when the individual arrives at the facility. However, current law does not specify how it is determined who has custody of an individual before arrival at the facility. This amendment specifies that an individual is deemed to be "in custody" when the individual is under the physical control of 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, for the purposes of emergency detention. Upon arrival at the facility, custody of the individual is transferred to the facility.

1           **SECTION 5.** 51.15 (4) (a) of the statutes is amended to read:

2           51.15 **(4)** (a) In counties having a population of ~~500,000~~ 750,000 or more, the law  
3 enforcement officer or other person authorized to take a child into custody under ch. 48 or to  
4 take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which  
5 shall provide detailed specific information concerning the recent overt act, attempt, or threat  
6 to act or omission on which the belief under sub. (1) is based and the names of the persons  
7 observing or reporting the recent overt act, attempt, or threat to act or omission. The law  
8 enforcement officer or other person is not required to designate in the statement whether the  
9 subject individual is mentally ill, developmentally disabled, or drug dependent, but shall  
10 allege that he or she has cause to believe that the individual evidences one or more of these  
11 conditions. The law enforcement officer or other person shall deliver, or cause to be delivered,  
12 the statement to the detention facility upon the delivery of the individual to it.

NOTE: Emergency detention procedures for Milwaukee County differ from the procedures in the rest of the state. This amendment raises the Milwaukee County population threshold from 500,000 to 750,000, to ensure that Dane County, the only other Wisconsin county whose population is approaching 500,000, is not made subject to these special procedures.

13           **SECTION 6.** 51.15 (4) (b) of the statutes is amended to read:

14           51.15 **(4)** (b) Upon delivery of the individual, the treatment director of the facility, or  
15 his or her designee, shall determine within 24 hours, except as provided in par. (c), whether  
16 the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if  
17 evaluation, diagnosis and treatment are permitted under sub. (8), and shall either release the  
18 individual or detain him or her for a period not to exceed 72 hours after ~~delivery of the~~  
19 individual is taken into custody for the purposes of emergency detention, exclusive of  
20 Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee,

1 determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the  
2 treatment director shall release the individual immediately, unless otherwise authorized by  
3 law. If the individual is detained, the treatment director or his or her designee may supplement  
4 in writing the statement filed by the law enforcement officer or other person, and shall  
5 designate whether the subject individual is believed to be mentally ill, developmentally  
6 disabled or drug dependent, if no designation was made by the law enforcement officer or  
7 other person. The director or designee may also include other specific information concerning  
8 his or her belief that the individual meets the standard for commitment. The treatment director  
9 or designee shall then promptly file the original statement together with any supplemental  
10 statement and notification of detention with the court having probate jurisdiction in the county  
11 in which the individual was taken into custody. The filing of the statement and notification  
12 has the same effect as a petition for commitment under s. 51.20.

13 **SECTION 7.** 51.15 (4) (c) of the statutes is created to read:

14 51.15 (4) (c) When calculating the 24 hours under par. (b) in which a treatment director  
15 determines whether an individual should be detained, any period delaying that determination  
16 that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical  
17 conditions of the individual shall be excluded from the calculation.

**NOTE:** The amendment to s. 51.15 (4) (b) and creation of s. 51.15 (4) (c)  
tolls the 24-hour time period for the treatment director's determination  
as to whether the individual should be detained, if the subject individual  
must be evaluated and treated for non-psychiatric medical conditions.

18 **SECTION 8.** 51.15 (5) and (9) of the statutes are amended to read:

19 51.15 (5) **DETENTION PROCEDURE; OTHER COUNTIES.** In counties having a population of  
20 less than ~~500,000~~ 750,000, the law enforcement officer or other person authorized to take a  
21 child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a

1 statement of emergency detention that shall provide detailed specific information concerning  
2 the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is  
3 based and the names of persons observing or reporting the recent overt act, attempt, or threat  
4 to act or omission. The law enforcement officer or other person is not required to designate  
5 in the statement whether the subject individual is mentally ill, developmentally disabled, or  
6 drug dependent, but shall allege that he or she has cause to believe that the individual evidences  
7 one or more of these conditions. The statement of emergency detention shall be filed by the  
8 officer or other person with the detention facility at the time of admission, and with the court  
9 immediately thereafter. The filing of the statement has the same effect as a petition for  
10 commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a  
11 facility specified in sub. (2) determines that the grounds for detention no longer exist, he or  
12 she shall discharge the individual detained under this section. Unless a hearing is held under  
13 s. 51.20 (7) or 55.135, the subject individual may not be detained by the law enforcement  
14 officer or other person and the facility for more than a total of 72 hours after the individual  
15 is taken into custody for the purposes of emergency detention, exclusive of Saturdays,  
16 Sundays, and legal holidays.

**NOTE:** This amendment provides that this emergency detention  
procedure applies in counties with a population less than 750,000.

17 **(9) NOTICE OF RIGHTS.** At the time of ~~detention~~ arrival at the facility, under sub. (2), the  
18 individual shall be informed by the director of the facility or such person's designee, both  
19 orally and in writing, of his or her right to contact an attorney and a member of his or her  
20 immediate family, the right to have an attorney provided at public expense, as provided under  
21 s. 51.60, and the right to remain silent and that the individual's statements may be used as a



1 basis for commitment. The individual shall also be provided with a copy of the statement of  
2 emergency detention.

**NOTE:** Under current law, an individual must be informed at the time of emergency detention regarding the individual's rights as a person under an emergency detention. This amendment specifies that the individual must be informed of these rights at the time the individual is taken into custody.

3 **SECTION 9.** 51.20 (1) (a) 2. c. of the statutes is amended to read:

4 51.20 (1) (a) 2. c. Evidences such impaired judgment, manifested by evidence of a  
5 pattern of recent acts or omissions, that there is a substantial probability of physical  
6 impairment or injury to himself or herself or others. The probability of physical impairment  
7 or injury is not substantial under this subd. 2. c. if reasonable provision for the subject  
8 individual's protection is available in the community and there is a reasonable probability that  
9 the individual will avail himself or herself of these services, if the individual may be provided  
10 protective placement or protective services under ch. 55, or, in the case of a minor, if the  
11 individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4).  
12 The subject individual's status as a minor does not automatically establish a substantial  
13 probability of physical impairment or injury under this subd. 2. c. Food, shelter or other care  
14 provided to an individual who is substantially incapable of obtaining the care for himself or  
15 herself, by a person other than a treatment facility, does not constitute reasonable provision  
16 for the subject individual's protection available in the community under this subd. 2. c.

**NOTE:** This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial probability of injury or impairment to others due to an individual's impaired judgment.

17 **SECTION 10.** 51.20 (2) (b) of the statutes is amended to read:

1           51.20 (2) (b) If the subject individual is to be detained, a law enforcement officer shall  
2 present the subject individual with a notice of hearing, a copy of the petition and detention  
3 order and a written statement of the individual's right to an attorney, a jury trial if requested  
4 more than 48 hours prior to the final hearing, the standard upon which he or she may be  
5 committed under this section and the right to a hearing to determine probable cause for  
6 commitment within 72 hours after the individual ~~arrives at the facility~~ is taken into custody  
7 under s. 51.15, excluding Saturdays, Sundays and legal holidays. The officer shall orally  
8 inform the individual that he or she is being ~~taken into custody~~ detained as the result of a  
9 petition and detention order issued under this chapter. If the individual is not to be detained,  
10 the law enforcement officer shall serve these documents on the subject individual and shall  
11 also orally inform the individual of these rights. The individual who is the subject of the  
12 petition, his or her counsel and, if the individual is a minor, his or her parent or guardian, if  
13 known, shall receive notice of all proceedings under this section. The court may also designate  
14 other persons to receive notices of hearings and rights under this chapter. Any such notice may  
15 be given by telephone. The person giving telephone notice shall place in the case file a signed  
16 statement of the time notice was given and the person to whom he or she spoke. The notice  
17 of time and place of a hearing shall be served personally on the subject of the petition, and his  
18 or her attorney, within a reasonable time prior to the hearing to determine probable cause for  
19 commitment.

20           **SECTION 11.** 51.20 (2) (d) of the statutes is amended to read:

21           51.20 (2) (d) Placement shall only be made in a hospital ~~that is approved by the~~  
22 ~~department as a detention facility or under contract with a county department under s. 51.42~~  
23 ~~or 51.437, approved public treatment facility, mental health institute, center for the~~  
24 ~~developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or~~

1 ~~in an approved private~~ treatment facility approved by the department or the county  
2 department, if the facility agrees to detain the subject individual, or in a state treatment facility.  
3 Upon arrival at the facility, the individual is considered to be in the custody of the facility.

NOTE: The amendments to this statute reflect the changes in SECTION 3  
of the draft.

4 SECTION 12. 51.20 (7) and (8) (b) and (bm) of the statutes are amended to read:

5 51.20 (7) PROBABLE-CAUSE HEARING. (a) After the filing of the petition under sub. (1),  
6 if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing  
7 to determine whether there is probable cause to believe the allegations made under sub. (1)  
8 (a) within 72 hours after the individual ~~arrives at the facility~~ is taken into custody under s.  
9 51.15 or this section, excluding Saturdays, Sundays and legal holidays. At the request of the  
10 subject individual or his or her counsel the hearing may be postponed, but in no case may the  
11 postponement exceed 7 days from the date of detention.

NOTE: Under current law, a hearing to determine probable cause to  
believe the allegations in an emergency detention petition must be held  
within 72 hours after the individual arrives at the emergency detention  
facility. This amendment specifies that the hearing must be held within  
72 hours after the individual is taken into custody.

12 51.20 (8) (b) If the court finds the services provided under par. (a) are not available,  
13 suitable, or desirable based on the condition of the individual, it may issue a detention order  
14 and the subject individual may be detained pending the hearing as provided in sub. (7) (c).  
15 Detention may only be in a ~~hospital which is approved by the department as a detention facility~~  
16 ~~or under contract with a county department under s. 51.42 or 51.437, approved public~~  
17 ~~treatment facility, mental health institute, center for the developmentally disabled under the~~  
18 ~~requirements of s. 51.06 (3), state treatment facility, or in an approved private treatment~~

1 facility approved by the department or the county department if the facility agrees to detain  
2 the subject individual, or in a state treatment facility.

NOTE: See the NOTE to SECTION 3.

3 (8) (bm) If, within 90 days from the date of the waiver under par. (bg), the subject  
4 individual fails to comply with the settlement agreement approved by the court under par. (bg),  
5 the counsel designated under sub. (4) may file with the court a statement of the facts which  
6 constitute the basis for the belief that the subject individual is not in compliance. The  
7 statement shall be sworn to be true and may be based on the information and belief of the  
8 person filing the statement. Upon receipt of the statement of noncompliance, the court may  
9 issue an order to detain the subject individual pending the final disposition. If the subject  
10 individual is detained under this paragraph, the court shall hold a probable cause hearing  
11 within 72 hours from the time of ~~detention~~ that the person is taken into custody under s. 51.15  
12 for this paragraph, excluding Saturdays, Sundays and legal holidays or, if the probable cause  
13 hearing was held prior to the approval of the settlement agreement under par. (bg), the court  
14 shall hold a final hearing within 14 days from the time of detention. If a jury trial is requested  
15 later than 5 days after the time of detention under this paragraph, but not less than 48 hours  
16 before the time of the final hearing, the final hearing shall be held within 21 days from the time  
17 of detention. The facts alleged as the basis for commitment prior to the waiver of the time  
18 periods for hearings under par. (bg) may be the basis for a finding of probable cause or a final  
19 disposition at a hearing under this paragraph.

NOTE: Under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must

be held within 72 hours from the time that the person is taken into custody.

1       **SECTION 13.** 51.20 (13) (g) 2. of the statutes is repealed.

**NOTE:** Section 51.20 (13) (g) 2. applies to persons involuntarily committed based on the 4th standard of dangerousness and states as follows:

“51.20 (13) (g) 2. Any commitment ordered under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. d., may not continue longer than 45 days in any 365-day period.”.

2       **SECTION 14.** 51.20 (13) (g) 2m. of the statutes is repealed.

**NOTE:** Section 51.20 (13) (g) 2m. states as follows:

“51.20 (13) (g) 2m. In addition to the provisions under subds. 1. and 2., no commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate’s date of release on parole or extended supervision, as determined under s. 302.11 or 302.113, whichever is applicable.”.

3       **SECTION 15.** 905.04 (4) (a) of the statutes is amended to read:

4       905.04 (4) (a) *Proceedings for ~~hospitalization~~ commitment, guardianship, protective*  
5       *services, or protective placement or for control, care, or treatment of a sexually violent person.*

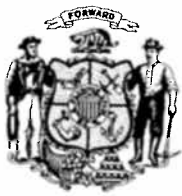
6       There is no privilege under this rule as to communications and information relevant to an issue  
7       in probable cause or final proceedings to ~~hospitalize~~ commit the patient for mental illness  
8       under s. 51.20, to appoint a guardian in this state, for court-ordered protective services or  
9       protective placement, for review of guardianship, protective services, or protective placement  
10       orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the  
11       physician, registered nurse, chiropractor, psychologist, social worker, marriage and family  
12       therapist, or professional counselor in the course of diagnosis or treatment has determined that  
13       the patient is in need of ~~hospitalization~~ commitment, guardianship, protective services, or  
14       protective placement or control, care, and treatment as a sexually violent person.

**NOTE:** This amendment changes a reference from “hospitalization” to “commitment”, in the statute that provides that there is no evidentiary

privilege as to communications and information relevant to an issue in probable cause or final proceedings in a commitment proceeding under s. 51.20, stats.

1

(END)



In: 2/28

FM (cmh)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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

D-note

1 **AN ACT to repeal** 51.20 (13) (g) 2. and 51.20 (13) (g) 2m.; **to renumber and**  
 2 **amend** 51.15 (1) (a) and (b); **to amend** 51.15 (2), 51.15 (3), 51.15 (4) (a), 51.15  
 3 (4) (b), 51.15 (5) and (9), 51.20 (1) (a) 2. c., 51.20 (2) (b), 51.20 (2) (d), 51.20 (7)  
 4 and (8) (b) and (bm) and 905.04 (4) (a); and **to create** 51.15 (1) (a) and 51.15 (4)  
 5 (c) of the statutes; **relating to:** emergency detention, involuntary commitment,  
 6 and privileged communications and information.

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

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

***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.

The bill makes the following changes to Wisconsin laws dealing with emergency detention, involuntary commitment, and privileged communications and information:

1. Current law allows a law enforcement officer or other specified persons to take a person into custody on an emergency detention basis if certain criteria are met. The bill

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(tr)

modifies this statute to require a determination "...that taking the person into custody is the least restrictive alternative appropriate to the person's needs" [SECTION 1.]

2. Current law provides standards for emergency detention and involuntary commitment. The 3rd standard of dangerousness allows for commitment if there is a substantial probability of physical impairment or injury to himself or herself due to impaired judgment. The bill modifies this language to also include a substantial probability of physical impairment or injury to others.' [SECTIONS 7 and 9.]

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3. Under current law, an emergency detention of an individual under the 4th standard of dangerousness must be due to the individual's mental illness or drug dependency, which results in the individual's inability to satisfy certain basic needs which will result in death or serious harm to the individual. The bill deletes the reference to drug dependency from the 4th standard of emergency detention, to make this standard consistent with the 4th standard for involuntary commitment.' [SECTION 1.]

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4. The bill creates a "purpose" statement for the emergency detention statute. The statement says that the purpose of emergency detention is to provide, on an emergency basis, treatment by the least restrictive means possible, to individuals who meet all of the following criteria: (a) are mentally ill, drug dependent, or developmentally disabled; (b) evidence one of the statutory standards of dangerousness; and (c) are unable or unwilling due to mental illness, drug dependency, or developmental disability, to cooperate with voluntary treatment. [SECTION 2.]

4 - 5. The bill provides that the county department may approve an emergency detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others.' [SECTION 3.]

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5 - 6. Under current law, emergency detention may occur in a hospital approved by the department of health services as a detention facility or under contract with the county department, an approved public treatment facility, a center for the developmentally disabled, a state treatment facility, or an approved private treatment facility if the facility agrees to detain the individual. The bill consolidates the references to these facilities to provide that detention may occur in a treatment facility approved by the department or county department, if the facility agrees to detain the individual, or a state treatment facility. [SECTIONS 1, 11, and 12.]

Ins Autoref B'

Ins autoref K'

Insert autoref L'

6 - 7. Current law provides that upon arrival at an emergency detention facility, the custody of the individual who is the subject of an emergency detention is transferred to the facility. However, current law does not specify when custody begins prior to the individual's arrival at a facility. The bill provides that an individual is deemed to be in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child or juvenile into custody, for the purposes of emergency detention. [SECTION 4.]

Ins autoref D'

7 - 8. Current law provides different procedures for emergency detention in counties with a population of 500,000 or more and those with a population of less than 500,000. The bill increases the population threshold to 750,000, so that those procedures will continue to apply only to Milwaukee County. [SECTIONS 5 and 8.]

Ins autoref E'

Ins Autoref H'

8 - 9. Current law in counties with a population of 500,000 or more requires that the treatment director of the facility in which the person is detained, or his or her designee, must determine within 24 hours whether the person is to be detained. If the individual is detained, the treatment director or designee may supplement in writing the statement filed by the law enforcement officer or other person undertaking the emergency detention. The bill modifies this statute to provide that when calculating the 24 hours,



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Insert Autoref G

any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual shall be excluded from the calculation. [SECTIONS 6 and 7]

9 — 10. Current law provides that an individual must be informed of his or her rights, by the director of the emergency detention facility, at the time of detention. The bill amends this provision to state that the individual must be informed of his or her rights at the time of the individual's arrival at the emergency detention facility. [SECTION 8]

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10 — 11. Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. This bill amends this provision to specify that the hearing must be held within 72 hours after the individual is taken into custody.

Also under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody. [SECTION 12]

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11 — 12. Generally, current law provides that the first order of involuntary commitment is for up to 6 months, and all subsequent consecutive orders of commitment are for up to one year. However, current law provides that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365-day period. The bill eliminates that provision with respect to persons committed under the 4th standard of dangerousness. [SECTION 13]

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12 — 13. Current law provides that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision. The bill repeals this provision. [SECTION 14]

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13 — 14. Current law provides that a patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, among the patient and various specified health care providers, including physicians, psychologists, social workers, marriage and family therapists, and professional counselors. Current law also provides that there is no privilege for communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness or various other types of proceedings. The bill modifies this exception to the privilege statute to substitute "commitment" for "hospitalization" and to refer to "probable cause or final proceedings" to commit the patient for mental illness under s. 51.20. [SECTION 15]

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Fix  
Component

1 SECTION 1. 51.15 (1) (a) and (b) of the statutes are renumbered 51.15 (1) (b) and

2 (c), and 51.15 (1) (b) (intro.) 3. and 4. as renumbered, are amended to read: \*

3 51.15 (1) (b) (intro.) A law enforcement officer or other person authorized to

4 take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938

5 may take an individual into custody if the officer or person has cause to believe that

6 the individual is mentally ill, is drug dependent, or is developmentally disabled, that

1 taking the person into custody is the least restrictive alternative appropriate to the  
2 person's needs, and that the individual evidences any of the following:

NOTE: The amendment adds a criterion that must be considered when determining whether to take a person into custody for an emergency detention: that taking the person into custody is the least restrictive alternative appropriate to the person's needs.

3 3. A substantial probability of physical impairment or injury to himself or  
4 other individuals ~~or others~~ due to impaired judgment, as manifested by evidence of a recent act  
5 or omission. The probability of physical impairment or injury is not substantial  
6 under this subdivision if reasonable provision for the individual's protection is  
7 available in the community and there is a reasonable probability that the individual  
8 will avail himself or herself of these services or, in the case of a minor, if the individual  
9 is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). Food,  
10 shelter or other care provided to an individual who is substantially incapable of  
11 obtaining the care for himself or herself, by any person other than a treatment  
12 facility, does not constitute reasonable provision for the individual's protection  
13 available in the community under this subdivision.

NOTE: This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial probability of an injury or impairment to others due to an individual's impaired judgment.

14 4. Behavior manifested by a recent act or omission that, due to mental illness  
15 ~~or drug dependency~~, he or she is unable to satisfy basic needs for nourishment,  
16 medical care, shelter, or safety without prompt and adequate treatment so that a  
17 substantial probability exists that death, serious physical injury, serious physical  
18 debilitation, or serious physical disease will imminently ensue unless the individual  
19 receives prompt and adequate treatment for this mental illness ~~or drug dependency~~.  
20 No substantial probability of harm under this subdivision exists if reasonable  
21 provision for the individual's treatment and protection is available in the community

1 and there is a reasonable probability that the individual will avail himself or herself  
 2 of these services, if the individual may be provided protective placement or protective  
 3 services under ch. 55, or, in the case of a minor, if the individual is appropriate for  
 4 services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status  
 5 as a minor does not automatically establish a substantial probability of death,  
 6 serious physical injury, serious physical debilitation or serious disease under this  
 7 subdivision. Food, shelter or other care provided to an individual who is  
 8 substantially incapable of providing the care for himself or herself, by any person  
 9 other than a treatment facility, does not constitute reasonable provision for the  
 10 individual's treatment or protection available in the community under this  
 11 subdivision.

NOTE: This amendment deletes references to drug dependency from the 4th standard of dangerousness for emergency detentions which makes this 4th standard consistent with the 4th standard of dangerousness for commitment under s. 51.20 (1) (a) 2. d.

Insert  
5-12

12 **SECTION 2.** 51.15 (1) (a) of the statutes is created to read:

13 51.15 (1)(a) *Purpose.* The purpose of this section is to provide, on an emergency  
 14 basis, treatment by the least restrictive means appropriate to the individual's needs,  
 15 to individuals who meet all of the following criteria:

- 16 1. Are mentally ill, drug dependent, or developmentally disabled.
- 17 2. Evidence one of the standards set forth in par. <sup>or</sup> (b) 1. to 4.
- 18 3. Are unable or unwilling to cooperate with voluntary treatment, due to
- 19 mental illness, drug dependency, or developmental disability.

NOTE: This SECTION adds a purpose statement to the beginning of s. 51.15, the emergency detention statute.

20 **SECTION 3.** 51.15 (2) of the statutes is amended to read:

1 ~~51.15 (2) FACILITIES FOR DETENTION. The law enforcement officer or other person~~  
 2 ~~authorized to take a child into custody under ch. 48 or to take a juvenile into custody~~  
 3 ~~under ch. 938 shall transport the individual, or cause him or her to be transported,~~  
 4 ~~for detention, if the county department of community programs in the county in~~  
 5 ~~which the individual was taken into custody approves the need for detention, and for~~  
 6 ~~evaluation, diagnosis, and treatment if permitted under sub. (8) to any of the~~  
 7 ~~following facilities: The county department may approve the detention only if the~~  
 8 ~~county department reasonably believes the individual will not voluntarily consent~~  
 9 ~~to evaluation, diagnosis, and treatment necessary to stabilize the individual and~~  
 10 ~~remove the substantial probability of physical harm, impairment, or injury to~~  
 11 ~~himself, herself, or others.~~

12 ~~(a) A hospital which is approved by the department as a detention facility or~~  
 13 ~~under contract with a county department under s. 51.42 or 51.437, or an approved~~  
 14 ~~public treatment facility;~~

15 ~~(b) A center for the developmentally disabled;~~

16 ~~(c) A state treatment facility; or~~

17 ~~(d) An approved private Detention may only be in a treatment facility approved~~  
 18 ~~by the department or the county department, if the facility agrees to detain the~~  
 19 ~~individual, or a state treatment facility.~~

NOTE: The amendment consolidates references to the types of facilities that may be used for emergency detention. Under the amendment, a person may be detained in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or in a state treatment facility. Section 51.01 (19), stats., defines a "treatment facility" as "a publicly or privately operated (treatment) facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs."

*Community support programs and rehabilitation programs.*

Section 51.01 (15), stats., defines "state treatment facility" as "any of the institutions operated by the department for the purpose of providing diagnosis, care or

Insert 6-19

any

Autoref D

treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes.

fr

1 SECTION 4 51.15 (3) of the statutes is amended to read:

2 51.15 (3) CUSTODY. An individual is deemed to be in custody when the  
3 individual is under the physical control of the law enforcement officer, or other  
4 person authorized to take a child into custody under ch. 48 or to take a juvenile into  
5 custody under ch. 938, for the purposes of emergency detention. Upon arrival at the  
6 facility under sub. (2), custody of the individual is deemed to be in the custody of  
7 transferred to the facility.

LPS: strike 1st comma, score 2nd comma

NOTE: Current law provides that an emergency detention facility has custody of an individual when the individual arrives at the facility. However, current law does not specify how it is determined who has custody of an individual before arrival at the facility. This amendment specifies that an individual is deemed to be "in custody" when the individual is under the physical control of 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, for the purposes of emergency detention. Upon arrival at the facility, custody of the individual is transferred to the facility.

Autoref E

8 SECTION 5 51.15 (4) (a) of the statutes is amended to read:

9 51.15 (4) (a) In counties having a population of 500,000 750,000 or more, the  
10 law enforcement officer or other person authorized to take a child into custody under  
11 ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of  
12 emergency detention which shall provide detailed specific information concerning  
13 the recent overt act, attempt, or threat to act or omission on which the belief under  
14 sub. (1) is based and the names of the persons observing or reporting the recent overt  
15 act, attempt, or threat to act or omission. The law enforcement officer or other person  
16 is not required to designate in the statement whether the subject individual is  
17 mentally ill, developmentally disabled, or drug dependent, but shall allege that he  
18 or she has cause to believe that the individual evidences one or more of these  
19 conditions. The law enforcement officer or other person shall deliver, or cause to be

1 delivered, the statement to the detention facility upon the delivery of the individual  
2 to it.

NOTE: Emergency detention procedures for Milwaukee County differ from the procedures in the rest of the state. This amendment raises the Milwaukee County population threshold from 500,000 to 750,000, to ensure that Dane County, the only other Wisconsin county whose population is approaching 500,000, is not made subject to these special procedures.

Autoref F

3 SECTION (6) 51.15 (4) (b) of the statutes is amended to read:

4 51.15 (4) (b) Upon delivery of the individual, the treatment director of the  
5 facility, or his or her designee, shall determine within 24 hours, except as provided  
6 in par. (c) whether the individual shall be detained, or shall be detained, evaluated,  
7 diagnosed and treated, if evaluation, diagnosis and treatment are permitted under  
8 sub. (8), and shall either release the individual or detain him or her for a period not  
9 to exceed 72 hours after ~~delivery of the individual~~ is taken into custody for the  
10 purposes of emergency detention, exclusive of Saturdays, Sundays and legal  
11 holidays. If the treatment director, or his or her designee, determines that the  
12 individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director  
13 shall release the individual immediately, unless otherwise authorized by law. If the  
14 individual is detained, the treatment director or his or her designee may supplement  
15 in writing the statement filed by the law enforcement officer or other person, and  
16 shall designate whether the subject individual is believed to be mentally ill,  
17 developmentally disabled or drug dependent, if no designation was made by the law  
18 enforcement officer or other person. The director or designee may also include other  
19 specific information concerning his or her belief that the individual meets the  
20 standard for commitment. The treatment director or designee shall then promptly  
21 file the original statement together with any supplemental statement and  
22 notification of detention with the court having probate jurisdiction in the county in

Autoref 6

1 which the individual was taken into custody. The filing of the statement and  
2 notification has the same effect as a petition for commitment under s. 51.20.

3 **SECTION 7.** 51.15<sup>✓</sup> (4) (c) of the statutes is created to read:

4 51.15 (4) (c) When calculating the 24 hours under par. (b)<sup>✓</sup> in which a treatment  
5 director determines whether an individual should be detained, any period delaying  
6 that determination that is directly attributable to evaluation or stabilizing  
7 treatment of non-<sup>✓</sup>psychiatric medical conditions of the individual shall be excluded<sup>is</sup>  
8 from the calculation.

NOTE: The amendment to s. 51.15 (4) (b) and creation of s. 51.15 (4) (c) tolls the  
24-hour time period for the treatment director's determination as to whether the  
individual should be detained, if the subject individual must be evaluated and treated for  
non-<sup>✓</sup>psychiatric medical conditions.

Autoref H

9 **SECTION 8.** 51.15<sup>x</sup> (5) and (9)<sup>✓</sup> of the statutes are amended to read:

10 51.15 (5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a  
11 population of less than 500,000 750,000, the law enforcement officer or other person  
12 authorized to take a child into custody under ch. 48 or to take a juvenile into custody  
13 under ch. 938 shall sign a statement of emergency detention that shall provide  
14 detailed specific information concerning the recent overt act, attempt, or threat to  
15 act or omission on which the belief under sub. (1) is based and the names of persons  
16 observing or reporting the recent overt act, attempt, or threat to act or omission. The  
17 law enforcement officer or other person is not required to designate in the statement  
18 whether the subject individual is mentally ill, developmentally disabled, or drug  
19 dependent, but shall allege that he or she has cause to believe that the individual  
20 evidences one or more of these conditions. The statement of emergency detention  
21 shall be filed by the officer or other person with the detention facility at the time of  
22 admission, and with the court immediately thereafter. The filing of the statement  
23 has the same effect as a petition for commitment under s. 51.20. When, upon the

1 advice of the treatment staff, the director of a facility specified in sub. (2) determines  
2 that the grounds for detention no longer exist, he or she shall discharge the  
3 individual detained under this section. Unless a hearing is held under s. 51.20 (7)  
4 or 55.135, the subject individual may not be detained by the law enforcement officer  
5 or other person and the facility for more than a total of 72 hours after the individual  
6 is taken into custody for the purposes of emergency detention, exclusive of  
7 Saturdays, Sundays, and legal holidays.

NOTE: This amendment provides that this emergency detention procedure applies in counties with a population less than 750,000.

8 (9) NOTICE OF RIGHTS. At the time of detention arrival at the facility, under sub.  
9 (2), the individual shall be informed by the director of the facility or such person's  
10 designee, both orally and in writing, of his or her right to contact an attorney and a  
11 member of his or her immediate family, the right to have an attorney provided at  
12 public expense, as provided under s. 51.60, and the right to remain silent and that  
13 the individual's statements may be used as a basis for commitment. The individual  
14 shall also be provided with a copy of the statement of emergency detention.

NOTE: Under current law, an individual must be informed at the time of emergency detention regarding the individual's rights as a person under an emergency detention. This amendment specifies that the individual must be informed of these rights at the time the individual is taken into custody.

Autoref J

arrives at the facility

other individuals

15 SECTION 9. 51.20 (1) (a) 2. c. of the statutes is amended to read:  
16 51.20 (1) (a) 2. c. Evidences such impaired judgment, manifested by evidence  
17 of a pattern of recent acts or omissions, that there is a substantial probability of  
18 physical impairment or injury to himself or herself or others. The probability of  
19 physical impairment or injury is not substantial under this subd. 2. c. if reasonable  
20 provision for the subject individual's protection is available in the community and  
21 there is a reasonable probability that the individual will avail himself or herself of

\*\*\*Note: I changed the wording of the last sentence of the note as it did not match the provision. Please confirm the change is okay.



1 these services, if the individual may be provided protective placement or protective  
2 services under ch. 55, or, in the case of a minor, if the individual is appropriate for  
3 services or placement under s. 48.13 (4) or (11) or 938.13 (4). The subject individual's  
4 status as a minor does not automatically establish a substantial probability of  
5 physical impairment or injury under this subd. 2. c. Food, shelter or other care  
6 provided to an individual who is substantially incapable of obtaining the care for  
7 himself or herself, by a person other than a treatment facility, does not constitute  
8 reasonable provision for the subject individual's protection available in the  
9 community under this subd. 2. c.

NOTE: This amendment modifies the 3rd standard of dangerousness for emergency  
detention to allow for detention if there is a substantial probability of injury or  
impairment to others due to an individual's impaired judgment.

10 **SECTION 10.** 51.20<sup>x</sup> (2) (b) of the statutes is amended to read:

11 51.20 (2) (b) If the subject individual is to be detained, a law enforcement officer  
12 shall present the subject individual with a notice of hearing, a copy of the petition  
13 and detention order and a written statement of the individual's right to an attorney,  
14 a jury trial if requested more than 48 hours prior to the final hearing, the standard  
15 upon which he or she may be committed under this section and the right to a hearing  
16 to determine probable cause for commitment within 72 hours after the individual  
17 ~~arrives at the facility is taken into custody under s. 51.15,~~ excluding Saturdays,  
18 Sundays and legal holidays. The officer shall orally inform the individual that he or  
19 she is being ~~taken into custody~~ detained as the result of a petition and detention  
20 order issued under this chapter. If the individual is not to be detained, the law  
21 enforcement officer shall serve these documents on the subject individual and shall  
22 also orally inform the individual of these rights. The individual who is the subject  
23 of the petition, his or her counsel and, if the individual is a minor, his or her parent

1 or guardian, if known, shall receive notice of all proceedings under this section. The  
 2 court may also designate other persons to receive notices of hearings and rights  
 3 under this chapter. Any such notice may be given by telephone. The person giving  
 4 telephone notice shall place in the case file a signed statement of the time notice was  
 5 given and the person to whom he or she spoke. The notice of time and place of a  
 6 hearing shall be served personally on the subject of the petition, and his or her  
 7 attorney, within a reasonable time prior to the hearing to determine probable cause  
 8 for commitment.

Autoref K  
 9 SECTION 11. 51.20 (2) (d) of the statutes is amended to read:

10 51.20 (2) (d) Placement shall only be made in a hospital that is approved by the  
 11 department as a detention facility or under contract with a county department under  
 12 s. 51.42 or 51.437, approved public treatment facility, mental health institute, center  
 13 for the developmentally disabled under the requirements of s. 51.06 (3), state  
 14 treatment facility, or in an approved private treatment facility approved by the  
 15 department or the county department, if the facility agrees to detain the subject  
 16 individual, or in a state treatment facility. Upon arrival at the facility, the individual  
 17 is considered to be in the custody of the facility.

NOTE: The amendments to this statute reflect the changes in SECTION 3 of the draft.

Autoref L  
 18 SECTION 12. 51.20 (7) and (8) (b) and (bm) of the statutes are amended to read:

19 51.20 (7) PROBABLE-CAUSE HEARING. (a) After the filing of the petition under  
 20 sub. (1), if the subject individual is detained under s. 51.15 or this section the court  
 21 shall hold a hearing to determine whether there is probable cause to believe the  
 22 allegations made under sub. (1) (a) within 72 hours after the individual arrives at the  
 23 facility is taken into custody under s. 51.15 or this section, excluding Saturdays,  
 24 Sundays and legal holidays. At the request of the subject individual or his or her

Ins Autoref B

1 counsel the hearing may be postponed, but in no case may the postponement exceed  
2 7 days from the date of detention.

NOTE: Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. This amendment specifies that the hearing must be held within 72 hours after the individual is taken into custody.

3 51.20 (8) (b) If the court finds the services provided under par. (a) are not  
4 available, suitable, or desirable based on the condition of the individual, it may issue  
5 a detention order and the subject individual may be detained pending the hearing  
6 as provided in sub. (7) (c). Detention may only be in a hospital which is approved by  
7 the department as a detention facility or under contract with a county department  
8 under s. 51.42 or 51.437, approved public treatment facility, mental health institute,  
9 center for the developmentally disabled under the requirements of s. 51.06 (3), state  
10 treatment facility, or in an approved private treatment facility approved by the  
11 department or the county department if the facility agrees to detain the subject  
12 individual, or in a state treatment facility. *Ins*

NOTE: See the NOTE to SECTION 3 *Autoref B*

13 (8) (bm) If, within 90 days from the date of the waiver under par. (bg), the  
14 subject individual fails to comply with the settlement agreement approved by the  
15 court under par. (bg), the counsel designated under sub. (4) may file with the court  
16 a statement of the facts which constitute the basis for the belief that the subject  
17 individual is not in compliance. The statement shall be sworn to be true and may be  
18 based on the information and belief of the person filing the statement. Upon receipt  
19 of the statement of noncompliance, the court may issue an order to detain the subject  
20 individual pending the final disposition. If the subject individual is detained under  
21 this paragraph, the court shall hold a probable cause hearing within 72 hours from  
22 the time of ~~detention~~ that the person is taken into custody under s. 51.15 for this

1 paragraph, excluding Saturdays, Sundays and legal holidays or, if the probable  
 2 cause hearing was held prior to the approval of the settlement agreement under par.  
 3 (bg), the court shall hold a final hearing within 14 days from the time of detention.  
 4 If a jury trial is requested later than 5 days after the time of detention under this  
 5 paragraph, but not less than 48 hours before the time of the final hearing, the final  
 6 hearing shall be held within 21 days from the time of detention. The facts alleged  
 7 as the basis for commitment prior to the waiver of the time periods for hearings under  
 8 par. (bg) may be the basis for a finding of probable cause or a final disposition at a  
 9 hearing under this paragraph.

NOTE: Under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody.

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M

10 SECTION 13. 51.20 (13) (g) 2. of the statutes is repealed.

NOTE: Section 51.20 (13) (g) 2. applies to persons involuntarily committed based on the 4th standard of dangerousness and states as follows:

"51.20 (13) (g) 2. Any commitment ordered under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. d., may not continue longer than 45 days in any 365-day period."

11 SECTION 14. 51.20 (13) (g) 2m. of the statutes is repealed.

NOTE: Section 51.20 (13) (g) 2m. states as follows:

"51.20 (13) (g) 2m. In addition to the provisions under subs. 1. and 2., no commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date of release on parole or extended supervision, as determined under s. 302.11 or 302.113, whichever is applicable."

12 SECTION 15. 905.04 (4) (a) of the statutes is amended to read:

13 905.04 (4) (a) *Proceedings for hospitalization commitment, guardianship,*  
 14 *protective services, or protective placement or for control, care, or treatment of a*  
 15 *sexually violent person.* There is no privilege under this rule as to communications  
 16 and information relevant to an issue in probable cause or final proceedings to

Autoref  
N

Insert  
14-10-11  
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Insert  
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1 ~~hospitalize~~ commit the patient for mental illness under s. 51.20, to appoint a  
2 guardian in this state, for court-ordered protective services or protective placement,  
3 for review of guardianship, protective services, or protective placement orders, or for  
4 control, care, or treatment of a sexually violent person under ch. 980, if the physician,  
5 registered nurse, chiropractor, psychologist, social worker, marriage and family  
6 therapist, or professional counselor in the course of diagnosis or treatment has  
7 determined that the patient is in need of ~~hospitalization~~ commitment, guardianship,  
8 protective services, or protective placement or control, care, and treatment as a  
9 sexually violent person.

fr  
NOTE: This amendment changes a reference from "hospitalization" to  
"commitment" in the statute that provides that there is no evidentiary privilege as to  
communications and information relevant to an issue in probable cause or final  
proceedings in a commitment proceeding under s. 51.20, stats.

10

(END)