

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1213/P1ins
TJD:.....

1

INSERT 5-20 ¹²

***NOTE: It is the policy of the Legislative Reference Bureau ^{to} only draft purpose or intent statements in very limited circumstances. The requested purpose statement does not meet one of those limited circumstances and therefore has been eliminated from this version of the draft. Furthermore, most of the language in the requested purpose statement is duplicative of the substantive statutory provisions and, therefore, unnecessary. The language, however, regarding the apparent requirement in the purpose statement that the emergency detention only occur in instances where the individual is unable or unwilling to cooperate with voluntary treatment due to certain circumstances seems to differ from the substantive provision, which only requires the department to believe, but not even attempt to ascertain, that a voluntary admission is not possible. Could an individual who is involuntarily committed challenge the ^{*}commitment on the basis that the department believed the individual would not consent but did not directly ask the individual? I believe that the presence of the requested purpose statement may make the answer to that question different, or at least more difficult, than if the court only had s. 51.15 (2) to rely on.

2

SECTION [AUTOREF B]. 51.15^x (2) (intro.) and (d) of the statutes are consolidated,

3

renumbered 51.15 (2) and amended to read:

4

51.15 (2) FACILITIES FOR DETENTION. The law enforcement officer or other person

5

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

6

under ch. 938 shall transport the individual, or cause him or her to be transported,

7

for detention, if the county department of community programs in the county in

8

which the individual was taken into custody approves the need for detention, and for

9

evaluation, diagnosis, and treatment if permitted under sub. (8) to any of the

10

following facilities: (d) An approved private ^{△△} facility. The county department may approve

11

the detention only if the county department reasonably believes the individual will

12

not voluntarily consent to evaluation, diagnosis, and treatment necessary to

13

stabilize the individual and remove the substantial probability of physical harm,

14

impairment, or injury to himself, herself, or others. Detention may only be in a

15

treatment facility approved by the department or the county department, if the

16

facility agrees to detain the individual, or a state treatment facility.

1

SECTION [AUTOREF C]. 51.15 (2) (a), (b) and (c) of the statutes are repealed.

(END INSERT 5-20) 12

↑
Autonumber
but not used
as autoref.

1213/PI

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Insert 6-19

xxxx Note: The definition of "treatment facility"^{b1}
from s. 51.01(19)
did not exactly match the statutory wording

so I have conformed it to match the statute.

Please advise if you prefer your
wording.

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1213/P1insTD
TJD:.....

1 INSERT 14-10-TD

2 **SECTION 1.** 51.20 (13) (g) 1. of the statutes is amended to read:

3 51.20 (13) (g) 1. ~~Except as provided in subd. 2.,~~ the The first order of
4 commitment of a subject individual under this section may be for a period not to
5 exceed 6 months, and all subsequent consecutive orders of commitment of the
6 individual may be for a period not to exceed one year.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; 2007 a. 20, 45, 116; 2009 a. 137, 258, 260.

(END INSERT 14-10-TD)

7 INSERT 14-11-TD

8 **SECTION 2.** 51.20 (13) (g) 2r. of the statutes is amended to read:

9 51.20 (13) (g) 2r. Twenty-one days prior to expiration of the period of
10 commitment under subd. 1., ~~2., or 2m.,~~ the department, if the individual is committed
11 to the department, or the county department to which an individual is committed
12 shall file an evaluation of the individual and the recommendation of the department
13 or county department regarding the individual's recommitment with the committing
14 court and provide a copy of the evaluation and recommendation to the individual's
15 counsel and the counsel designated under sub. (4). If the date for filing an evaluation
16 and recommendation under this subdivision falls on a Saturday, Sunday or legal
17 holiday, the date which is not a Saturday, Sunday or legal holiday and which most
18 closely precedes the evaluation and recommendation filing date shall be the filing
19 date. A failure of the department or the county department to which an individual

- 1 is committed to file an evaluation and recommendation under this subdivision does
- 2 not affect the jurisdiction of the court over a petition for recommitment.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; 2007 a. 20, 45, 116; 2009 a. 137, 258, 260.

(END INSERT 14-11-TD)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1213/P1dn

TJD:/:...

SM

Date

To Laura Rose:

Please review the notes embedded in the draft.

Should you have any questions or redraft instructions, please contact me.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1213/P1dn
TJD:sac:jm

March 20, 2013

To Laura Rose:

Please review the notes embedded in the draft.

Should you have any questions or redraft instructions, please contact me.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Rose, Laura
Sent: Thursday, March 28, 2013 9:39 AM
To: Dodge, Tamara
Cc: Larson, Brian
Subject: RE: LRB 1213/P1

Hi Tami

Please include the purpose statement in LRB 1213/P1, and change the wording of the third criterion to track the statutory language, as we discussed earlier this morning.

Thanks very much,

Laura

Laura D. Rose

Deputy Director
Wisconsin Legislative Council
One East Main Street, Suite 401
PO Box 2536
Madison, WI 53701-2536
tel: 608.266.9791
fax: 608.266.3830
laura.rose@legis.wisconsin.gov

From: Dodge, Tamara
Sent: Tuesday, March 26, 2013 4:20 PM
To: Rose, Laura
Subject: RE: LRB 1213/P1

No preference. On Thursdays I'm usually in around 7:00am so I will be here. If you have an idea when you might come, let me know so I don't wander off.

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Rose, Laura
Sent: Tuesday, March 26, 2013 4:11 PM
To: Dodge, Tamara
Subject: RE: LRB 1213/P1

Okay, I will come down sometime in the morning – any preference as to time?

Laura D. Rose

Deputy Director

Wisconsin Legislative Council

One East Main Street, Suite 401

PO Box 2536

Madison, WI 53701-2536

tel. 608.266.9791

fax. 608.266.3830

laura.rose@legis.wisconsin.gov

From: Dodge, Tamara

Sent: Tuesday, March 26, 2013 4:03 PM

To: Rose, Laura

Cc: Larson, Brian

Subject: RE: LRB 1213/P1

Sure, I am available any time Thursday except between 12:30pm and 2:30pm to meet with you about LRB-1213.

Tamara J. Dodge

Attorney

Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

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tamara.dodge@legis.wisconsin.gov

From: Rose, Laura

Sent: Tuesday, March 26, 2013 3:54 PM

To: Dodge, Tamara

Cc: Larson, Brian

Subject: LRB 1213/P1

Hi, Tami,

Would it be possible for me to come and meet with you (this aft., tomorrow before 10:00, or any time on Thursday) about the purpose statement that you removed from this bill draft?

Thanks,

Laura

Laura D. Rose

Deputy Director

Wisconsin Legislative Council

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Dodge, Tamara

From: Rose, Laura
Sent: Thursday, March 28, 2013 1:19 PM
To: Dodge, Tamara
Subject: RE: LRB 1213/P1

Hi Tami

I like alternative #2 - not have any paragraph titles and just add "purpose" to the subsection title.

Thanks!

Laura

Laura D. Rose

Deputy Director

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fax: 608.266.3830

laura.rose@legis.wisconsin.gov

From: Dodge, Tamara
Sent: Thursday, March 28, 2013 12:40 PM
To: Rose, Laura
Subject: RE: LRB 1213/P1

Laura,

I noticed as I was adding the purpose provision that there is a title for that paragraph. If we have one paragraph with a title, then all paragraphs in the subsection need a title. I am adding to the subsection title so it reads "Basis for detention; purpose." The purpose paragraph will keep the paragraph title "Purpose." Then the paragraph that was (a) will be titled "Grounds for custody." Paragraph (b) in current law will be titled "Bases for belief."

You can 1) change the subsection title and add the 3 paragraph titles as I have done (feel free to suggest changes to the paragraph titles) or 2) not have any paragraph titles and just add "purpose" to the subsection title.

I thought I would ask over email instead of waiting for this to get through editing. Let me know what you'd like to do.

Thanks,
Tami

Tamara J. Dodge

Attorney
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Thanks very much,

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Subject: LRB 1213/P1

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Thanks,

Laura

Laura D. Rose

Deputy Director

Wisconsin Legislative Council

One East Main Street, Suite 401

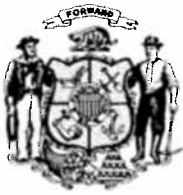
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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1213/P1

TJD:sac/jm

RMR

In: 3/28/13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen draft

1 **AN ACT to repeal** 51.15 (2) (a), (b) and (c), 51.20 (13) (g) 2. and 51.20 (13) (g) 2m.;

2 **to consolidate, renumber and amend** 51.15 (2) (intro.) and (d); **to amend**

3 51.15 (1) (a) (intro.), 3. and 4., 51.15 (3), 51.15 (4) (a), 51.15 (4) (b), 51.15 (5) and

4 (9), 51.20 (1) (a) 2. c., 51.20 (2) (b), 51.20 (2) (d), 51.20 (7) and (8) (b) and (bm),

5 51.20 (13) (g) 1., 51.20 (13) (g) 2r. and 905.04 (4) (a); and **to create** 51.15 (4) (c)

6 of the statutes; **relating to:** emergency detention, involuntary commitment,

7 and privileged communications and information.

Analysis by the Legislative Reference Bureau

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

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.]

Insert JLC-NOTE
5
④ 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 2.]

6
⑤ 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 2, 11, and 12.]

7
⑥ 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
⑦ 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
⑧ 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
⑨ 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 ¹⁰ 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 ¹¹ 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 14.]

13 ¹² 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 15.]

14 ¹³ 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 17.]

Insert 3-1

was renumbered

Fix amendment

1 SECTION 1. 51.15 (1) (a) (intro.), 3, and 4. of the statutes are amended to read:
2 51.15 (1) (a) (intro.) A law enforcement officer or other person authorized to
3 take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938
4 may take an individual into custody if the officer or person has cause to believe that
5 the individual is mentally ill, is drug dependent, or is developmentally disabled, that
6 taking the person into custody is the least restrictive alternative appropriate to the
7 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.

of the statutes is renumbered 51.15(1)(a) and 51.15(1)(a)

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

12 4. Behavior manifested by a recent act or omission that, due to mental illness
13 or ~~drug dependency~~, he or she is unable to satisfy basic needs for nourishment,
14 medical care, shelter, or safety without prompt and adequate treatment so that a
15 substantial probability exists that death, serious physical injury, serious physical
16 debilitation, or serious physical disease will imminently ensue unless the individual
17 receives prompt and adequate treatment for this mental illness ~~or drug dependency~~.
18 No substantial probability of harm under this subdivision exists if reasonable
19 provision for the individual's treatment and protection is available in the community
20 and there is a reasonable probability that the individual will avail himself or herself
21 of these services, if the individual may be provided protective placement or protective
22 services under ch. 55, or, in the case of a minor, if the individual is appropriate for
23 services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status

1 as a minor does not automatically establish a substantial probability of death,
2 serious physical injury, serious physical debilitation or serious disease under this
3 subdivision. Food, shelter or other care provided to an individual who is
4 substantially incapable of providing the care for himself or herself, by any person
5 other than a treatment facility, does not constitute reasonable provision for the
6 individual's treatment or protection available in the community under this
7 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
5-8

***NOTE: It is the policy of the Legislative Reference Bureau to only draft purpose or intent statements in very limited circumstances. The requested purpose statement does not meet one of those limited circumstances and therefore has been eliminated from this version of the draft. Furthermore, most of the language in the requested purpose statement is duplicative of the substantive statutory provisions and, therefore, unnecessary. The language, however, regarding the apparent requirement in the purpose statement that the emergency detention only occur in instances where the individual is unable or unwilling to cooperate with voluntary treatment due to certain circumstances seems to differ from the substantive provision, which only requires the department to believe, but not even attempt to ascertain, that a voluntary admission is not possible. Could an individual who is involuntarily committed challenge the commitment on the basis that the department believed the individual would not consent but did not directly ask the individual? I believe that the presence of the requested purpose statement may make the answer to that question different, or at least more difficult, than if the court only had s. 51.15 (2) to rely on.

8 **SECTION 2.** 51.15 (2) (intro.) and (d) of the statutes are consolidated,
9 renumbered 51.15 (2) and amended to read:

10 51.15 (2) FACILITIES FOR DETENTION. The law enforcement officer or other person
11 authorized to take a child into custody under ch. 48 or to take a juvenile into custody
12 under ch. 938 shall transport the individual, or cause him or her to be transported,
13 for detention, if the county department of community programs in the county in
14 which the individual was taken into custody approves the need for detention, and for
15 evaluation, diagnosis, and treatment if permitted under sub. (8) to any of the
16 following facilities: ~~(d) An approved private.~~ The county department may approve

1 the detention only if the county department reasonably believes the individual will
2 not voluntarily consent to evaluation, diagnosis, and treatment necessary to
3 stabilize the individual and remove the substantial probability of physical harm,
4 impairment, or injury to himself, herself, or others. Detention may only be in a
5 treatment facility approved by the department or the county department, if the
6 facility agrees to detain the individual, or a state treatment facility.

7 **SECTION 3.** 51.15 (2) (a), (b) and (c) of the statutes are repealed.

***NOTE: The definition of "treatment facility" from w. 51.01 (19) did not exactly match the statutory wording so I have conformed it to match the statute. Please advise if you prefer your wording.

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

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

9 51.15 (3) CUSTODY. An individual is in custody when the individual is under
10 the physical control of the law enforcement officer, or other person authorized to take
11 a child into custody under ch. 48 or to take a juvenile into custody under ch. 938, for
12 the purposes of emergency detention. Upon arrival at the facility, under sub. (2),
13 custody of the 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
3 law enforcement officer or other person authorized to take a child into custody under
4 ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of
5 emergency detention which shall provide detailed specific information concerning
6 the recent overt act, attempt, or threat to act or omission on which the belief under
7 sub. (1) is based and the names of the persons observing or reporting the recent overt
8 act, attempt, or threat to act or omission. The law enforcement officer or other person
9 is not required to designate in the statement whether the subject individual is
10 mentally ill, developmentally disabled, or drug dependent, but shall allege that he
11 or she has cause to believe that the individual evidences one or more of these
12 conditions. The law enforcement officer or other person shall deliver, or cause to be
13 delivered, the statement to the detention facility upon the delivery of the individual
14 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.

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

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

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

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

16 51.15 (4) (c) When calculating the 24 hours under par. (b) in which a treatment
17 director determines whether an individual should be detained, any period delaying
18 that determination that is directly attributable to evaluation or stabilizing
19 treatment of non-psychiatric medical conditions of the individual is excluded from
20 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.

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

22 51.15 (5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a
23 population of less than ~~500,000~~ 750,000, the law enforcement officer or other person

1 authorized to take a child into custody under ch. 48 or to take a juvenile into custody
2 under ch. 938 shall sign a statement of emergency detention that shall provide
3 detailed specific information concerning the recent overt act, attempt, or threat to
4 act or omission on which the belief under sub. (1) is based and the names of persons
5 observing or reporting the recent overt act, attempt, or threat to act or omission. The
6 law enforcement officer or other person is not required to designate in the statement
7 whether the subject individual is mentally ill, developmentally disabled, or drug
8 dependent, but shall allege that he or she has cause to believe that the individual
9 evidences one or more of these conditions. The statement of emergency detention
10 shall be filed by the officer or other person with the detention facility at the time of
11 admission, and with the court immediately thereafter. The filing of the statement
12 has the same effect as a petition for commitment under s. 51.20. When, upon the
13 advice of the treatment staff, the director of a facility specified in sub. (2) determines
14 that the grounds for detention no longer exist, he or she shall discharge the
15 individual detained under this section. Unless a hearing is held under s. 51.20 (7)
16 or 55.135, the subject individual may not be detained by the law enforcement officer
17 or other person and the facility for more than a total of 72 hours after the individual
18 is taken into custody for the purposes of emergency detention, exclusive of
19 Saturdays, Sundays, and legal holidays.

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

20 (9) NOTICE OF RIGHTS. At the time of detention arrival at the facility, under sub.
21 (2), the individual shall be informed by the director of the facility or such person's
22 designee, both orally and in writing, of his or her right to contact an attorney and a
23 member of his or her immediate family, the right to have an attorney provided at

1 public expense, as provided under s. 51.60, and the right to remain silent and that
2 the individual's statements may be used as a basis for commitment. The individual
3 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 in custody arrives at the facility.

****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.

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

5 51.20 (1) (a) 2. c. Evidences such impaired judgment, manifested by evidence
6 of a pattern of recent acts or omissions, that there is a substantial probability of
7 physical impairment or injury to himself or herself or other individuals. The
8 probability of physical impairment or injury is not substantial under this subd. 2. c.
9 if reasonable provision for the subject individual's protection is available in the
10 community and there is a reasonable probability that the individual will avail
11 himself or herself of these services, if the individual may be provided protective
12 placement or protective services under ch. 55, or, in the case of a minor, if the
13 individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13
14 (4). The subject individual's status as a minor does not automatically establish a
15 substantial probability of physical impairment or injury under this subd. 2. c. Food,
16 shelter or other care provided to an individual who is substantially incapable of
17 obtaining the care for himself or herself, by a person other than a treatment facility,
18 does not constitute reasonable provision for the subject individual's protection
19 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.

20 **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
2 shall present the subject individual with a notice of hearing, a copy of the petition
3 and detention order and a written statement of the individual's right to an attorney,
4 a jury trial if requested more than 48 hours prior to the final hearing, the standard
5 upon which he or she may be committed under this section and the right to a hearing
6 to determine probable cause for commitment within 72 hours after the individual
7 ~~arrives at the facility is taken into custody under s. 51.15,~~ excluding Saturdays,
8 Sundays and legal holidays. The officer shall orally inform the individual that he or
9 she is being ~~taken into custody~~ detained as the result of a petition and detention
10 order issued under this chapter. If the individual is not to be detained, the law
11 enforcement officer shall serve these documents on the subject individual and shall
12 also orally inform the individual of these rights. The individual who is the subject
13 of the petition, his or her counsel and, if the individual is a minor, his or her parent
14 or guardian, if known, shall receive notice of all proceedings under this section. The
15 court may also designate other persons to receive notices of hearings and rights
16 under this chapter. Any such notice may be given by telephone. The person giving
17 telephone notice shall place in the case file a signed statement of the time notice was
18 given and the person to whom he or she spoke. The notice of time and place of a
19 hearing shall be served personally on the subject of the petition, and his or her
20 attorney, within a reasonable time prior to the hearing to determine probable cause
21 for commitment.

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

23 51.20 (2) (d) Placement shall only be made in a hospital ~~that is approved by the~~
24 ~~department as a detention facility or under contract with a county department under~~
25 ~~s. 51.42 or 51.437, approved public treatment facility, mental health institute, center~~

1 ~~for the developmentally disabled under the requirements of s. 51.06 (3), state~~
2 ~~treatment facility, or in an approved private treatment facility approved by the~~
3 ~~department or the county department,~~ if the facility agrees to detain the subject
4 individual, or in a state treatment facility. Upon arrival at the facility, the individual
5 is considered to be in the custody of the facility.

NOTE: The amendments to this statute reflect the changes in SECTION 2 of the draft.

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

7 **51.20 (7) PROBABLE-CAUSE HEARING.** (a) After the filing of the petition under
8 sub. (1), if the subject individual is detained under s. 51.15 or this section the court
9 shall hold a hearing to determine whether there is probable cause to believe the
10 allegations made under sub. (1) (a) within 72 hours after the individual ~~arrives at the~~
11 facility is taken into custody under s. 51.15 or this section, excluding Saturdays,
12 Sundays and legal holidays. At the request of the subject individual or his or her
13 counsel the hearing may be postponed, but in no case may the postponement exceed
14 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.

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

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

NOTE: See the NOTE to SECTION 2.

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

2 51.20 (13) (g) 1. ~~Except as provided in subd. 2., the~~ The first order of
3 commitment of a subject individual under this section may be for a period not to
4 exceed 6 months, and all subsequent consecutive orders of commitment of the
5 individual may be for a period not to exceed one year.

6 **SECTION 14.** 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.”

7 **SECTION 15.** 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.”

8 **SECTION 16.** 51.20 (13) (g) 2r. of the statutes is amended to read:

9 51.20 (13) (g) 2r. Twenty-one days prior to expiration of the period of
10 commitment under subd. 1., ~~2., or 2m.,~~ the department, if the individual is committed
11 to the department, or the county department to which an individual is committed
12 shall file an evaluation of the individual and the recommendation of the department
13 or county department regarding the individual’s recommitment with the committing
14 court and provide a copy of the evaluation and recommendation to the individual’s
15 counsel and the counsel designated under sub. (4). If the date for filing an evaluation
16 and recommendation under this subdivision falls on a Saturday, Sunday or legal
17 holiday, the date which is not a Saturday, Sunday or legal holiday and which most
18 closely precedes the evaluation and recommendation filing date shall be the filing
19 date. A failure of the department or the county department to which an individual

1 is committed to file an evaluation and recommendation under this subdivision does
2 not affect the jurisdiction of the court over a petition for recommitment.

3 **SECTION 17.** 905.04 (4) (a) of the statutes is amended to read:

4 905.04 (4) (a) *Proceedings for ~~hospitalization~~ commitment, guardianship,*
5 *protective services, or protective placement or for control, care, or treatment of a*
6 *sexually violent person.* There is no privilege under this rule as to communications
7 and information relevant to an issue in probable cause or final proceedings to
8 ~~hospitalize~~ commit the patient for mental illness under s. 51.20, to appoint a
9 guardian in this state, for court-ordered protective services or protective placement,
10 for review of guardianship, protective services, or protective placement orders, or for
11 control, care, or treatment of a sexually violent person under ch. 980, if the physician,
12 registered nurse, chiropractor, psychologist, social worker, marriage and family
13 therapist, or professional counselor in the course of diagnosis or treatment has
14 determined that the patient is in need of ~~hospitalization~~ commitment, guardianship,
15 protective services, or protective placement or control, care, and treatment as a
16 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.

17

(END)

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LRB-1213/1ins
TJD:.....

1 INSERT JLC-NOTE

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 reasonably believed to be unable or unwilling to cooperate with voluntary treatment. [SECTION 1]

(END INSERT JLC-NOTE)

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2 INSERT 3-1

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

4 51.15 (1) (title) BASIS FOR DETENTION; PURPOSE.

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283; 2001 a. 16 ss. 1966d to 1966h, 4034zb to 4034zd, 4041d to 4041g; 2001 a. 109; 2005 a. 264; 2007 a. 20; 2009 a. 28.

(END INSERT 3-1)

5 INSERT 5-8

Auto Ref X

6 SECTION 2. 51.15 (1) (ag) of the statutes is created to read:

7 51.15 (1) (ag) The purpose of this section is to provide, on an emergency basis,
8 treatment by the least restrictive means appropriate to the individual's needs, to
9 individuals who meet all of the following criteria:

- 10 1. Are mentally ill, drug dependent, or developmentally disabled.
- 11 2. Evidence one of the standards set forth in par. (ar) 1. to 4.
- 12 3. Are reasonably believed to be unable or unwilling to cooperate with
- 13 voluntary treatment.

(END INSERT 5-8)

Rose, Stefanie

From: Rose, Laura
Sent: Tuesday, April 02, 2013 9:22 AM
To: LRB.Legal
Subject: Draft Review: LRB -1213/1 Topic: Emergency detention, involuntary commitment, and privileged communications and information

Please Jacket LRB -1213/1 for the SENATE.