



2013 SENATE BILL 477

January 9, 2014 – Introduced by Senators HARRIS, LASSA, L. TAYLOR and LEHMAN, cosponsored by Representatives PASCH, SEVERSON, SANFELIPPO, ZEPNICK, YOUNG, SINICKI, ZAMARRIPA, GOYKE, JOHNSON, RIEMER, BALLWEG, BERNARD SCHABER, WACHS, POPE, OHNSTAD, GENRICH, KAHL and BERNIER. Referred to Committee on Health and Human Services.

- 1 **AN ACT** *to create* 51.15 (4m) of the statutes; **relating to:** emergency detention
2 pilot program in Milwaukee County.

Analysis by the Legislative Reference Bureau

Under current law, a law enforcement officer or certain other persons may take an individual into custody for emergency detention if the officer or other person has cause to believe that the individual is mentally ill, drug dependent, or developmentally disabled, and that the individual shows any of the following: 1) a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; 2) a substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm, as evidenced by a recent overt act, attempt, or threat to do serious physical harm; 3) a substantial probability of physical impairment or injury to himself or herself due to impaired judgment, as manifested by evidence of a recent act or omission; or 4) due to mental illness or drug dependency, the inability to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment, as evidenced by behavior manifested by a recent act or omission (standards for emergency detention). The belief of the officer or other person must be based on a specific recent overt act, attempt or threat to act, or omission either observed by the officer or other person or reliably reported to the

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officer or other person. The county department of community programs in the county in which the individual was taken into custody must approve the need for detention, and for evaluation, diagnosis, and treatment if permitted, before the law enforcement officer or other person delivers the individual to the detention facility.

Under current law, in Milwaukee County, the law enforcement officer or other person must sign a statement of emergency detention that provides detailed, specific information on the basis for the belief that the individual meets the standards for emergency detention. The law enforcement officer or other person, in Milwaukee County, delivers the individual to a detention facility along with the statement of emergency detention. Then the treatment director of the facility must determine within 24 hours whether the individual shall be detained or detained, evaluated, diagnosed, and treated, if permitted. Current law defines the treatment director as the person who has primary responsibility for the treatment provided by a treatment facility and the term “treatment director” includes the medical director of a facility. The treatment director in Milwaukee County then may detain the individual for a period not to exceed 72 hours after delivery of the individual to the facility, excluding Saturdays, Sundays, and legal holidays. If the treatment director determines that the individual is not eligible for involuntary commitment, the treatment director must release the individual. If the treatment director determines that continued detention is appropriate, the treatment director must file the statement of detention, after supplementation if he or she desires, and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for involuntary commitment.

This bill creates a pilot program to grant authority to certain individuals to initiate an emergency detention in Milwaukee County for approximately two years before the pilot program terminates. The pilot program for Milwaukee County under the bill operates in addition to the statutory procedures for emergency detention under current law. Under the bill, in Milwaukee County, a treatment director or treatment director designee may take an individual into custody for emergency detention under the same standards as a law enforcement officer may take an individual into custody for emergency detention under current law. “Treatment director” has the same definition as current law, but under the bill, also includes a physician or psychologist who is an employee of, or on contract with, the Milwaukee County Behavioral Health Division and who actively assumes clinical responsibility for providing emergency service care. A treatment director designee (designee) is an individual who is all of the following: 1) a licensed clinical social worker, an advanced practice social worker, a licensed professional counselor, a licensed marriage and family therapist, or a psychiatric nurse; 2) an employee of, or on contract with, the Milwaukee County Behavioral Health Division; and 3) an individual who may provide care to individuals in accordance with and as permitted by licensure laws in collaboration with a treatment director who is assigned to the same service or program. The treatment director or designee must transport the individual, or cause the individual to be transported, for detention to any of the facilities allowed for

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emergency detention under current law and must approve evaluation, diagnosis, and treatment, if permitted.

Under the Milwaukee County pilot program in the bill, the treatment director or designee who takes the individual into custody for emergency detention must sign a statement of emergency detention on the basis for the belief that the individual meets the standards for emergency detention. The treatment director or designee must designate whether the subject individual is mentally ill, developmentally disabled, or drug dependent, and provide any information concerning his or her belief that the individual meets the standards for involuntary commitment. If evaluation, diagnosis, and treatment are permitted, the treatment director or designee must detain the individual for a period not to exceed 72 hours after delivery of the individual to the detention facility, excluding Saturdays, Sundays, and legal holidays. The bill requires the treatment director or designee to promptly file the original statement of emergency detention with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of that statement and notification has the same effect as a petition for involuntary commitment.

Before the date of termination of the pilot program in Milwaukee County, the legislative audit bureau must begin a performance evaluation audit of the pilot program including details specified in the bill. The bill requires certain Milwaukee County entities to provide access to information for and cooperate with the audit.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 51.15 (4m) of the statutes is created to read:

2 **51.15 (4m) DETENTION PILOT PROGRAM; MILWAUKEE COUNTY.** (a) *Definitions.* In
3 this subsection:

4 1. “Treatment director” includes a fully licensed physician or licensed
5 psychologist who is a full-time or part-time employee of, or on contract with, the
6 Milwaukee County Behavioral Health Division and who actively assumes clinical
7 responsibility for the provision of emergency service care.

8 2. “Treatment director designee” means an individual who is any of the
9 following licensed mental health professionals, who is a full-time or part-time
10 employee of, or on contract with, the Milwaukee County Behavioral Health Division,

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1 and who may provide care to individuals in accordance with, and as permitted by,
2 state licensure laws, in collaboration with a treatment director who is assigned to the
3 same service or program:

- 4 a. Licensed clinical social worker as described in s. 457.01 (1r).
- 5 b. Advanced practice social worker as defined in s. 457.01 (1c).
- 6 c. Licensed professional counselor as described in s. 457.01 (7)
- 7 d. Licensed marriage and family therapist as described in s. 457.01 (3).
- 8 e. Psychiatric nurse.

9 (b) *Basis for detention.* In Milwaukee County, a treatment director or
10 treatment director designee may take an individual into custody if the treatment
11 director or treatment director designee has cause to believe that the individual is
12 mentally ill, is drug dependent, or is developmentally disabled, and that the
13 individual evidences any of the criteria under sub. (1) (a) 1. to 4. The treatment
14 director's belief or the treatment director designee's belief shall be based on any of
15 the criteria under sub. (1) (b).

16 (c) *Facilities for detention.* The treatment director or treatment director
17 designee shall transport the individual, or cause him or her to be transported, for
18 detention to any of the facilities described in sub. (2) (a) to (d) and shall approve
19 evaluation, diagnosis, and treatment if permitted under sub. (8).

20 (d) *Procedure.* 1. In Milwaukee County, a treatment director or treatment
21 director designee who takes an individual, or causes an individual to be taken, into
22 custody under par. (b) shall sign a statement of emergency detention which shall
23 provide detailed specific information concerning the recent overt act, attempt, or
24 threat to act or omission on which the belief under par. (b) is based and the names
25 of the persons observing or reporting the recent overt act, attempt, or threat to act

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1 or omission. The treatment director or treatment director designee shall designate
2 in the statement whether the subject individual is mentally ill, developmentally
3 disabled, or drug dependent and provide any information concerning his or her belief
4 that the individual meets the standard for commitment.

5 2. If evaluation, diagnosis, and treatment are permitted under sub. (8), the
6 treatment director or treatment director designee shall detain the individual for a
7 period not to exceed 72 hours after delivery of the individual to the detention facility,
8 exclusive of Saturdays, Sundays and legal holidays. The treatment director or
9 treatment director designee shall promptly file the original statement of emergency
10 detention together with any supplemental statement and notification of detention
11 with the court having probate jurisdiction in the county in which the individual was
12 taken into custody. The filing of the statement and notification has the same effect
13 as a petition for commitment under s. 51.20.

14 (e) *Termination of pilot program.* Paragraphs (a) to (d) do not apply after the
15 first day of the 25th month following the effective date of this paragraph [LRB
16 inserts date].

SECTION 2. Nonstatutory provisions.

17
18 (1) MILWAUKEE COUNTY PILOT PROGRAM AUDIT. (a) Notwithstanding section 13.94
19 (1) (m) of the statutes, before the date on which authority under the emergency
20 detention pilot program in Milwaukee County terminates under section 51.15 (4m)
21 (e) of the statutes, as created by this act, the legislative audit bureau shall begin a
22 performance evaluation audit of that pilot program under section 51.15 (4m) of the
23 statutes, as created by this act, that shall include all of the following:

