

# State of Wisconsin



2013 Assembly Bill 435

Date of enactment: **March 27, 2014**

Date of publication\*: **March 28, 2014**

## 2013 WISCONSIN ACT 161

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

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

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

51.13 (1) (title) ADMISSION FOR TREATMENT.

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

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

shall be noted on the face of the application and shall be noted in the petition required by sub. (4).

(b) Minors 14 years of age or older; mental illness or developmental disability. The application for admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian, except as provided in par. (c) 1., ~~except that, if,~~ If the minor refuses to execute the application, a parent who has legal custody of the minor or the minor's guardian may execute the application on the minor's behalf, and the petition shall be filed as required under sub. (4).

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

51.13 (1) (bm) Minors 14 years of age or older; alcoholism or drug abuse treatment. Except as provided in par. (c) and ss. 51.42 (2m) and 51.47, the application for admission of a minor who is 14 years of age or older to an approved inpatient facility for the primary purpose of treatment for alcoholism or drug abuse shall be executed

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

by a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct by a minor who is the subject of an application for admission under this paragraph indicating that the minor does not agree to admission to the facility shall be noted on the face of the application and shall be noted in the petition required under sub. (4).

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

51.13 (1) (c) Lack of parent or guardian consent to treatment. If a minor 14 years of age or older wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian refuses to execute the application for admission or cannot be found, or if there is no parent with legal custody or guardian, or the parent with legal custody or guardian of a minor 14 years of age or older refuses to execute the application, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last known address. If, after a hearing, the court determines that the consent of the parent or guardian is being unreasonably withheld, that the parent or guardian cannot be found, or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's admission without the consent of the parent or guardian under sub. (4). The court may, at the minor's request, temporarily approve the admission pending hearing on the petition, if such a hearing is required under sub. (4).

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

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

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

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

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

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

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

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

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

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

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

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

51.13 (3) (b) Prior to or at admission, a minor who is voluntarily admitted under sub. (1) (c) 1. or 2., and the

minor's parent or guardian, if available, shall be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of the minor's right to request discharge and to be discharged within 48 hours of the request, as provided under sub. (7) (b), if no statement is filed for emergency detention or if no petition is filed for emergency commitment, involuntary commitment, or protective placement, and the minor's right to consent to or refuse treatment as provided in s. 51.61 (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51.13 (4) (d) Criteria for approving admission. Within 5 days after the filing of the petition, the court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether there is a prima facie showing that the minor is in need of psychiatric services, or services for developmental disability, alcoholism, or drug abuse, whether the treatment facility offers inpatient therapy or treatment that is appropriate to the minor's needs; whether inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor; and, if the minor is 14 years of age or older and has been admitted to the treatment facility for the primary purpose of treatment for mental illness or developmental disability, whether the admission was made under an application executed by the minor and the minor's parent or guardian. If such a showing is made, the court shall permit admission. If the court is unable to make those determinations based on the petition and accompanying documents, the court may dismiss the petition as provided in par. (h); order additional information, including an independent evaluation, to be produced as necessary for the court to make those determinations within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner; or hold a hearing within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner. ~~If a notation of the minor's unwillingness appears on the face of the petition, if the admission was made under an application executed by the minor's parent or guardian despite the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel, parent, or guardian, the court shall order an independent evaluation of the minor and hold a hearing to review the admission, within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner, and shall appoint counsel to represent the minor if the minor is unrepresented. If the court considers it necessary, the court shall also appoint a guardian ad litem to represent the minor. The minor shall be informed about how to contact the state protection and advocacy agency designated under s. 51.62 (2) (a).~~

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

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

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

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

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

51.13 (4) (g) Approval of admission. (intro.) If the court finds, under a hearing under par. (d), that the minor

is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse in an inpatient facility, that the inpatient facility to which the minor is admitted offers therapy or treatment that is appropriate for the minor's needs and that is the least restrictive therapy or treatment consistent with the minor's needs, the court shall permit admission. If the court finds that the therapy or treatment in the inpatient facility to which the minor is admitted is not appropriate or is not the least restrictive therapy or treatment consistent with the minor's needs, the court may order placement in or transfer to another more appropriate or less restrictive inpatient facility, if the placement or transfer is first approved by all of the following, ~~except that placement in or transfer to a center for the developmentally disabled shall first be approved by all of the following and the department:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51.35 (3) (a) A licensed psychologist of a juvenile correctional facility or a secured residential care center for children and youth, or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the juvenile correctional facility or secured residential care center for children and youth is, in his or her opinion, in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, and who has obtained consent to make a transfer for treatment, shall make a report, in writing, to the superintendent of the juvenile correctional facility or secured residential care center for children and youth, stating the nature and basis of the belief and verifying the consent. In the case of a minor age 14 or older who is in need of services for developmental disability or who is in need of psychiatric services, the minor and the minor's parent or guardian shall consent unless the minor is admitted under s. 51.13 (1) (c) ~~1.~~ or unless the minor refuses to consent, in which case the minor's parent or guardian may consent on behalf of the minor. In the case of a minor age 14 or older who is in need of services for alcoholism or drug dependency or a minor under the age of 14 who is in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, only the minor's

parent or guardian needs to consent unless the minor is admitted under s. 51.13 (1) (c). The superintendent shall inform, orally and in writing, the minor and the minor's parent or guardian, that transfer is being considered and shall inform them of the basis for the request and their rights as provided in s. 51.13 (3) (am). If the department of corrections, upon review of a request for transfer, determines that transfer is appropriate, that department shall immediately notify the department of health services and, if the department of health services consents, the department of corrections may immediately transfer the individual. The department of health services shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county where the treatment facility is located.

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

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

51.61 (6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients

who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of such a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g), or as provided in s. 51.47.

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If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required, except that a refusal of either such a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission or transfer to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) ~~+~~, (3), or (4), or 51.35 (3) (b), and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.