State of Wisconsin
2025 - 2026 LEGISLATURE

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2025 ASSEMBLY BILL 114

March 11, 2025 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Mental Health and Substance Abuse Prevention.

AN ACT ***to amend*** 51.15 (3), 51.15 (5), 51.15 (7), 51.15 (11) and 51.15 (12); ***to create*** 51.15 (4r) of the statutes; **relating to:** clinician initiation of emergency detention of a minor and providing a penalty.

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 Study Committee on Emergency Detention and Civil Commitment of Minors.

Wisconsin law allows certain persons to take an individual who the person believes is mentally ill, developmentally disabled, or drug dependent into custody for 72 hours, based on observable behavior that the individual is "dangerous" to themself or others. This bill creates a process for certain medical and behavioral health clinicians to initiate the emergency detention of a minor. Current law provides detention procedures that apply only to emergency detentions in Milwaukee County and detention procedures that apply to all other counties. This bill allows a county, other than Milwaukee County, to elect to authorize certain medical and behavioral health clinicians to initiate emergency detentions of minors and creates a process for clinician-

initiated detentions in counties that elect to allow clinicians to initiate emergency detentions.

Current Law

Under current law, a law enforcement officer or other person authorized to take a child or juvenile into custody under the state's child welfare laws or juvenile justice code may take an individual into custody if the officer or other authorized person has cause to believe that the individual is mentally ill, developmentally disabled, or drug dependent and the individual evidences any of four statutorily prescribed standards of dangerousness. The officer or other authorized person's belief must be based on either a specific overt act or attempt or threat to act or omission by the individual which is observed by the officer or person or a specific, recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the officer or person by any other person. In all cases, the officer or other authorized person must have cause to believe that taking the individual into custody is the least restrictive alternative appropriate to the individual's needs.

County Approval

A county department of community programs must approve the need for detention and the need for evaluation, diagnosis, and treatment. To approve the detention, a psychiatrist, psychologist, or mental health professional must first perform a crisis assessment and agree with the need for detention. Further, the county department must reasonably believe that the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and to remove the substantial probability of physical harm, impairment, or injury to the individual or others.

Custody and Transportation

If the county approves the detention, the law enforcement officer or other authorized person must transport the individual to a facility for the detention. Another officer or person, another law enforcement agency, an ambulance service provider, or a third-party vendor may also provide the transportation. If an individual is under the physical control of a law enforcement officer or other authorized person, the individual is "in custody." The individual remains in the custody of the officer or other authorized person until the individual arrives at the facility for the detention or is transferred to a different law enforcement agency for transport. Upon arrival at a facility, custody of the individual is transferred to the facility for the detention.

The amount of time an individual may be detained before further proceedings begin may total no more than 72 hours (excluding Saturdays, Sundays, and legal holidays), including the detention by a law enforcement officer or other authorized person and the time at a treatment facility.

Filing Statement of Emergency Detention

The law enforcement officer or other person authorized to take a child or juvenile into custody must file the statement of detention with the detention facility at the time of admission and with the court immediately thereafter. The filing of the statement has the same effect as a petition for involuntary commitment.

Liability

A person who acts in accordance with the statutory emergency detention procedures, including making a determination that an individual has or does not have mental illness or evidences or does not evidence a substantial probability of harm, is not liable for any actions taken in good faith. Current law provides that the good faith of the actor shall be presumed in a civil action. Whoever asserts that the individual who acts in accordance with these procedures has not acted in good faith has the burden of proving that assertion by clear and convincing evidence. A person who signs a statement of emergency detention knowing the information contained in the statement is false is guilty of a Class H felony.

The Bill

The bill allows a county, other than Milwaukee County, to elect to authorize certain medical and behavioral health clinicians to initiate an emergency detention of a minor and creates a process for clinician-initiated emergency detentions. This process is optional for counties and is in addition to the current process that permits a law enforcement officer or person authorized to take a child or juvenile into custody under the child welfare laws or juvenile justice code to initiate an emergency detention by taking a minor into custody. The procedure the bill creates does not alter the emergency detention procedures specific to Milwaukee County.

Under the bill, a "clinician" is a psychologist, a psychiatrist, a psychiatric nurse practitioner, a psychiatric physician assistant, a marriage and family therapist, a professional counselor, or a clinical social worker. A clinician must be in good standing and may initiate an emergency detention only if the clinician has been authorized to do so by the county.

Initiating Emergency Detention

The bill allows a clinician who has been authorized by a county to initiate emergency detentions to initiate the emergency detention of a minor individual who resides in that county if the clinician believes or has cause to believe that the minor individual is mentally ill, is drug dependent, or is developmentally disabled, that taking the minor into custody is the least restrictive alternative appropriate to the minor's needs, and that the minor individual evidences any of statutory standards of dangerousness that currently apply to emergency detentions. The clinician's belief must be based on either a specific, recent overt act or attempt or threat to act or omission by the individual which is observed by the clinician or a specific, recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the clinician by any other person.

To initiate the emergency detention of a minor individual, the clinician must prepare a statement of detention that includes certain information, including that the initiator believes the minor individual has mental illness, and what that mental illness is; detailed, specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief the minor is a danger to themself or others is based; and the clinician initiator's determination that taking the minor individual into custody is the least restrictive alternative appropriate to the minor's needs.

County Approval

The clinician initiator's determination that emergency detention is appropriate is subject to the approval of the county department in the county in which the minor resides. The county approval is subject to the same requirements that apply to a county's approval of an emergency detention initiated by a law enforcement officer or other person authorized to take a child or juvenile into custody or the child welfare laws or juvenile justice code.

Custody and Transportation

If the county department approves a clinician-initiated detention, the county department is responsible for placing the minor into custody and transporting the minor or causing the minor to be transported to a treatment facility for purposes of emergency detention. The county is responsible for the cost of transportation. The county may contract with a law enforcement agency, an ambulance service, or a third-party vendor for transportation. The bill specifies that, for the purposes of the 72-hour detention limit, a minor individual is in custody from the time the county department approves the detention of the minor individual. A county may request assistance from a law enforcement agency to take or maintain custody of a minor to ensure the safety of the minor or others during transportation for detention.

Filing Statement of Emergency Detention

Under the bill, the county department approving a clinician-initiated detention is

responsible for arranging to have the statement of emergency detention filed with the detention facility at the time of admission. In addition, a clinician that initiates an emergency detention must forward any information relating to the emergency detention to the corporation counsel of the county approving the detention no later than the next business day after initiation of the emergency detention, and the corporation counsel must promptly file the statement of emergency detention with the court.

Liability

The bill applies the same liability limitations and penalties for making a false statement that exist under current law to clinician-initiated emergency detentions.

County Authorization of Clinicians as Clinician-Initiators

The bill requires a county that elects to allow clinicians to initiate emergency detentions to develop and provide a training program for clinicians on emergency detention procedures. A county may enter into an agreement with one or more counties to provide this training. To be approved as an emergency detention initiator by a county, a clinician must attend and complete the county's training program at least every two years.

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

51.15 **(3)** CUSTODY. ~~An~~ Except as otherwise provided under sub. (4r), an individual is 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. The individual remains in the custody 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 transport for the purposes of emergency detention, except that if a law enforcement agency contracts with another law enforcement agency to transport an individual as described under sub. (2) (a) for the purposes of emergency detention, custody is transferred to the transporting law enforcement agency. Upon arrival at the facility under sub. (2), custody of the individual is transferred to the facility.

SECTION 2. 51.15 (4r) of the statutes is created to read:

51.15 **(4r)** CLINICIAN-INITIATED EMERGENCY DETENTION OF A MINOR. (a) In this subsection:

1. "Clinician" means any of the following with a valid credential to practice in this state:

a. A psychologist.

b. A psychiatrist.

c. A psychiatric nurse practitioner.

d. A psychiatric physician assistant.

e. A marriage and family therapist licensed under s. 457.10.

f. A professional counselor licensed under s. 457.12 or who is exercising the professional counselor privilege to practice, as defined in s. 457.50 (2) (s), in this state.

g. A clinical social worker who is licensed under s. 457.08 (4).

2. "Clinician" does not include an individual whose license, certificate, or privilege is suspended, revoked, or voluntarily surrendered, or whose license, certificate, or privilege is limited or restricted, when practicing in areas prohibited by the limitation or restriction.

(b) 1. In addition to the process otherwise set forth in this section, under which a 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 may initiate an emergency detention, a county may elect to authorize clinicians who have been approved by the county to initiate emergency detentions.

2. If a county elects to allow clinicians to initiate emergency detentions under this subsection, the county shall develop and provide a training program for clinicians on emergency detention procedures. A county may enter into an

agreement with one or more other counties to provide the training required under this paragraph.

3. In order to be approved as an emergency detention initiator by a county under this subsection, a clinician shall, at least every 2 years, attend and complete the county's training program on emergency detention procedures developed under this subsection.

(c) 1. A clinician who has been approved by a county under this subsection as an emergency detention initiator may initiate the emergency detention of a minor who resides in that county if the clinician believes or has cause to believe that the minor is mentally ill, is drug dependent, or is developmentally disabled, that taking the minor into custody is the least restrictive alternative appropriate to the minor's needs, and that the minor evidences any of the standards described in sub. (1) (ar) 1. to 4.

2. A clinician initiator's belief for purposes of subd. 1. is subject to the same standards set forth under sub. (1) (b).

(d) To initiate the emergency detention of a minor under this subsection, the clinician initiator shall prepare a statement of emergency detention that contains certain information, including at least all of the following:

1. A statement that the clinician initiator believes or has cause to believe that the minor is mentally ill, is drug dependent, or is developmentally disabled and, if the clinician initiator believes or has cause to believe that the minor is mentally ill, a statement of what the mental illness is.

2. Detailed, specific information concerning the recent overt act, attempt, or threat to act or omission on which the clinician initiator's belief under par. (c) 1. is

based and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission.

3. The clinician initiator's determination that taking the minor into custody is the least restrictive alternative appropriate to the minor's needs.

(e) 1. The clinician initiator's determination that emergency detention is appropriate under this subsection is subject to the approval of the county department of community programs for the county in which the minor resides, and sub. (2) (c) applies to the county department's approval.

2. If the county department approves the detention, the county department is responsible for placing the minor into custody and transporting the minor or causing the minor to be transported to a treatment facility for purposes of the emergency detention. The county is responsible for the cost of transportation. A county may contract with a law enforcement agency, an ambulance service, or a 3rd-party vendor for transportation of a minor for detention under this subdivision. A county may request assistance from a law enforcement agency to take or maintain custody of a minor to ensure the safety of the minor or others during transportation of the minor for detention.

(f) Notwithstanding sub. (3), for purposes of an emergency detention initiated by a clinician under this subsection, a minor is in custody from the time the county department of community programs approves the detention of the minor under par. (e). The minor is in the custody of the county from the time of county department's approval until custody is transferred to the person transporting the minor for the purposes of emergency detention. Upon arrival at the facility under sub. (2), custody of the minor is transferred to the facility.

(g) The county department approving the detention under this subsection is responsible for arranging to have the statement of emergency detention under par. (d) filed with the detention facility at the time of admission. A clinician that initiates an emergency detention under this subsection shall, no later than the next business day after initiation of the emergency detention, forward all information relating to the emergency detention, including the statement of emergency detention, to the corporation counsel of the county approving the detention, and the corporation counsel shall promptly file the statement of emergency detention with the court.

(h) This subsection does not apply in counties having a population of 750,000 or more.

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

51.15 **(5)** DETENTION PROCEDURE; OTHER COUNTIES. ~~In~~ Except as otherwise provided under sub. (4r), in counties having a population of less than 750,000, 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 shall sign a statement of emergency detention that shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. ~~The~~ Except as otherwise provided under sub. (4r), the statement of

emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement under this subsection or sub. (4r) has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) (d) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.135, the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours after the individual is taken into custody for the purposes of emergency detention, exclusive of Saturdays, Sundays, and legal holidays.

SECTION 4. 51.15 (7) of the statutes is amended to read:

51.15 **(7)** INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings conducted under this section and s. 51.20 by the county of detention concerning individuals taken into custody in the other county and shall include provisions to cover the cost of any voluntary or involuntary services provided under this chapter to the subject individual as a result of proceedings or conditional suspension of proceedings resulting from the notification of detention. Where there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention specified

in subs. (4), (4r), and (5) and the notification specified in sub. (4) shall be filed with the court having probate jurisdiction in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody.

SECTION 5. 51.15 (11) of the statutes is amended to read:

51.15 **(11)** LIABILITY. Any individual who acts in accordance with this section, including making a determination that an individual has or does not have mental illness or evidences or does not evidence a substantial probability of harm under sub. (1) (ar) 1., 2., 3., or 4. or (4r) or a determination under sub. (2) (b) that the transfer of an individual is medically appropriate, is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that the individual who acts in accordance with this section has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory and convincing.

SECTION 6. 51.15 (12) of the statutes is amended to read:

51.15 **(12)** PENALTY. Whoever signs a statement under sub. (4), (4r), (5) or (10) knowing the information contained therein to be false is guilty of a Class H felony.

(END)