

State of Wisconsin



1995 Senate Bill 270

Date of enactment: **April 25, 1996**

Date of publication*: **May 9, 1996**

1995 WISCONSIN ACT 292

(Vetoed in Part)

AN ACT *to amend* 51.10 (4), 51.10 (5) (c), 51.15 (1) (a) (intro.), 51.15 (1) (b) (intro.), 51.15 (1) (b) 2., 51.15 (2) (intro.), 51.15 (4), 51.15 (5), 51.20 (1) (a) 1., 51.20 (1) (am), 51.20 (7) (d), 51.20 (13) (dm), 51.35 (2), 51.35 (3) (c) and (e), 51.37 (5) (a) and (b), 51.61 (1) (g) 2. and 51.61 (1) (g) 3.; *to repeal and recreate* 51.15 (1) (a) (intro.), 51.15 (4) (a), 51.15 (5), 51.20 (1) (a) 1., 51.20 (1) (am), 51.20 (7) (d), 51.20 (13) (dm), 51.35 (3) (c) and (e), 51.37 (5) (b), 51.61 (1) (g) 2. and 51.61 (1) (g) 3.; and *to create* 51.03 (3), 51.15 (1) (a) 5., 51.15 (1) (c), 51.20 (1) (a) 2. e., 51.20 (1) (ad), 51.20 (10) (cm), 51.20 (13) (g) 2d., 51.61 (1) (g) 3m. and 165.017 of the statutes; **relating to:** creating a new standard of dangerousness for involuntary civil commitments and emergency detentions, requiring review by the attorney general or his or her designee of certain proposed emergency detentions, emergency detentions, proposed involuntary civil commitments and involuntary civil commitments, requiring preparation and submittal of certain reports and making an appropriation.

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

SECTION 1. 51.03 (3) of the statutes is created to read:
51.03 (3) (a) Beginning on the effective date of this paragraph [revisor inserts date], the department shall collect and analyze information in this state on each of the following:

1. The number of commitments initiated under s.

Vetoed 51.10 (5) (c), 51.15 or 51.20 (1).

In Part 2. The number of commitments ordered under s. 51.20 (13).

3. The number of, cost of and paying sources for days of inpatient mental health treatment that result from the commitments initiated under subd. 1. or ordered under subd. 2.

Vetoed 4. **The number of voluntary hospital admissions approved under s. 51.10 (1) or 51.13 (1) and the number of, cost of and paying sources for days of inpatient mental health treatment that result from the admissions.**
In Part

5. The number of persons who are receiving care and treatment under community support programs voluntarily or under commitments ordered under s. 51.20 (13).

6. The number of persons for whom guardians are appointed under s. 880.33 (4m).

7. The amount of court costs that are incurred because of emergency detentions for which statements are filed under s. 51.15 (4) or (5) or because of petitions filed under s. 51.20 (1).

**Vetoed
In Part**

(b) By the first day of the 7th month beginning after the effective date of this paragraph [revisor inserts date], and annually by that date for 3 years thereafter, the department shall submit a report to the legislature under s. 13.172 (2) on the information collected under par. (a).

SECTION 2. 51.10 (4) of the statutes is amended to read:

51.10 (4) The criteria for voluntary admission to an inpatient treatment facility shall be based on an evaluation that the applicant is mentally ill or developmentally disabled, or is an alcoholic or drug dependent and that the

* Section 991.11, WISCONSIN STATUTES 1993-94: 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 as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

person has the potential to benefit from inpatient care, treatment or therapy. An applicant is not required to meet ~~standards a standard~~ of dangerousness ~~as established in under~~ s. 51.20 (1) (a) 2, to be eligible for the benefits of voluntary treatment programs. An applicant may be admitted for the purpose of making a diagnostic evaluation.

SECTION 3. 51.10 (5) (c) of the statutes is amended to read:

51.10 (5) (c) Any patient or resident voluntarily admitted to an inpatient treatment facility shall be discharged on request, unless the treatment director or the treatment director's designee has reason to believe that the patient or resident is dangerous in accordance with ~~the standards provided a standard~~ under s. 51.20 (1) (a) 2. or (am) and files a statement of emergency detention under s. 51.15 with the court by the end of the next day in which the court transacts business. The patient or resident shall be notified immediately when such a statement is to be filed. Prior to the filing of a statement, the patient or resident may be detained only long enough for the staff of the facility to evaluate the individual's condition and to file the statement of emergency detention. This time period may not exceed the end of the next day in which the court transacts business. Once a statement is filed, a patient or resident may be detained as provided in s. 51.15 (1). The probable cause hearing required under s. 51.20 (7) shall be held within 72 hours after the request for discharge, excluding Saturdays, Sundays and legal holidays.

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

51.15 (1) (a) (intro.) A law enforcement officer or other person authorized to take a child into custody under ch. 48 may take an individual into custody if the officer or person has cause to believe that such individual is mentally ill, or, except as provided in subd. 5., is drug dependent or developmentally disabled, and that the individual evidences any of the following:

SECTION 5. 51.15 (1) (a) (intro.) of the statutes, as affected by 1995 Wisconsin Act ... (this act), is repealed and recreated to read:

51.15 (1) (a) (intro.) A law enforcement officer or other person authorized to take a child into custody under ch. 48 may take an individual into custody if the officer or person has cause to believe that such individual is mentally ill, drug dependent or developmentally disabled, and that the individual evidences any of the following:

SECTION 6. 51.15 (1) (a) 5. of the statutes is created to read:

51.15 (1) (a) 5. For an individual, other than an individual who is believed to be drug dependent or developmentally disabled, all of the following:

a. After the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, either incapability of expressing an under-

standing of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment.

b. A substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial under this subd. 5. b. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. 55.06. Food, shelter or other care that is provided to an individual who is substantially incapable of obtaining food, shelter or other care for himself or herself by any person other than a treatment facility does not constitute provision for the individual's care or treatment in the community reasonable under this subd. 5. b. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional or physical harm under this subd. 5. b.

c. This subdivision does not apply after the last day of the 59th month commencing after the effective date of this subdivision [revisor inserts date].

SECTION 7. 51.15 (1) (b) (intro.) of the statutes is amended to read:

51.15 (1) (b) (intro.) The officer's or other person's belief shall be based on any of the following:

SECTION 8. 51.15 (1) (b) 2. of the statutes is amended to read:

51.15 (1) (b) 2. 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, including any probation and parole agent authorized by the department of corrections to exercise control and supervision over a probationer or parolee.

SECTION 9. 51.15 (1) (c) of the statutes is created to read:

51.15 (1) (c) 1. If proposed detention or detention of an individual under par. (a) is based on par. (a) 5., the proposed detention or detention shall be reviewed and approved or disapproved by the attorney general or by his or her designee prior to or within 12 hours after the detention.

2. If the attorney general or his or her designee disapproves or fails to act with respect to a proposed detention under subd. 1., the individual may not be detained based on par. (a) 5. If the attorney general or his or her designee disapproves or fails to act with respect to a detention under subd. 1., the individual shall be released.

3. Subdivisions 1. and 2. do not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of par. (a) 5. or of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of par. (a) 5. or s. 51.20 (1) (a) 2. e.

Vetoed In Part 3m. If proposed detention or detention of an individual under par. (a) is based on par. (a) 5., the law enforcement officer or other person authorized to take a child into custody under ch. 48 or 938 shall consult with a mental health professional prior to detaining the individual.

4. This paragraph does not apply after the last day of the 59th month commencing after the effective date of this paragraph [revisor inserts date].

SECTION 10. 51.15 (2) (intro.) of the statutes is amended to read:

51.15 (2) FACILITIES FOR DETENTION. (intro.) The law enforcement officer or other person authorized to take a child into custody under ch. 48 shall transport the individual, or cause him or her to be transported, for detention and for treatment if permitted under sub. (8) to any of the following facilities:

SECTION 11. 51.15 (4) of the statutes is amended to read:

51.15 (4) DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 shall sign a statement of emergency detention which 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 the 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 if sub. (1) (a) 1., 2., 3. or 4. is believed or mental illness, if sub. (1) (a) 5. is believed. The law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

(b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained and treated, if treatment is permitted under sub. (8), and shall either release the individual or detain him or her for a period not to exceed 72 hours after delivery of the individual, exclusive of Satur-

days, Sundays and legal holidays. If the treatment director, or his or her designee, determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer or other person, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer or other person. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together 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 the statement and notification has the same effect as a petition for commitment under s. 51.20.

SECTION 12. 51.15 (4) (a) of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.15 (4) (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 shall sign a statement of emergency detention which 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 the persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer 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 law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

SECTION 13. 51.15 (5) of the statutes is amended to read:

51.15 (5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 shall sign a statement of emergency detention which 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 if sub. (1) (a) 1., 2., 3. or 4. is believed or mental illness, if sub. (1) (a) 5. is believed. 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 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) 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 55.06 (11) (b), 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, exclusive of Saturdays, Sundays and legal holidays.

SECTION 14. 51.15 (5) of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.15 (5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 shall sign a statement of emergency detention which 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 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 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 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) 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 55.06 (11) (b), the subject individual may not be detained by the law enforcement officer and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and legal holidays.

SECTION 15. 51.20 (1) (a) 1. of the statutes is amended to read:

51.20 (1) (a) 1. The individual is mentally ill or, except as provided under subd. 2. e., drug dependent, or developmentally disabled and is a proper subject for treatment.

SECTION 16. 51.20 (1) (a) 1. of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.20 (1) (a) 1. The individual is mentally ill, drug dependent or developmentally disabled and is a proper subject for treatment.

SECTION 17. 51.20 (1) (a) 2. e. of the statutes is created to read:

51.20 (1) (a) 2. e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. 55.06. Food, shelter or other care that is provided to an individual who is substantially incapable of obtaining food, shelter or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2. e. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional or physical harm under this subd. 2.e. This subd. 2. e. does not apply after the last day of the 59th month commencing after the effective date of this subd. 2. e. [revisor inserts date].

SECTION 18. 51.20 (1) (ad) of the statutes is created to read:

51.20 (1) (ad) 1. If a petition under par. (a) is based on par. (a) 2. e., the petition shall be reviewed and approved by the attorney general or by his or her designee

prior to or within 12 hours after the time that it is filed. If the attorney general or his or her designee disapproves or fails to act with respect to the petition, the petition may not be filed. If the attorney general or his or her designee disapproves or fails to act with respect to a petition under this subdivision within 12 hours after the time that it is filed, the individual, if detained under the petition, shall be released and the petition is void.

2. Subdivision 1. does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of par. (a) 2. e. has been challenged, has upheld the constitutionality of par. (a) 2. e.

3. This paragraph does not apply after the last day of the 59th month commencing after the effective date of this paragraph [revisor inserts date].

SECTION 19. 51.20 (1) (am) of the statutes is amended to read:

51.20 (1) (am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section or s. 971.17 or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions under par. (a) 2. c. or e. or recent behavior under par. (a) 2. d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act or a pattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

SECTION 20. 51.20 (1) (am) of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.20 (1) (am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section or s. 971.17 or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., a pattern of recent acts or omissions under par. (a) 2. c. or recent behavior under par. (a) 2. d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act or a pattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

SECTION 21. 51.20 (7) (d) of the statutes is amended to read:

51.20 (7) (d) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 880.07 (1m) (c) and (cm) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and

participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of chronic mental illness, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual. A finding by the court that there is probable cause to believe that the subject individual meets the commitment standard under sub. (1) (a) 2. e. constitutes a finding that the individual is not competent to refuse medication or treatment under this paragraph.

SECTION 22. 51.20 (7) (d) of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.20 (7) (d) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 880.07 (1m) (c) and (cm) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of chronic mental illness, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual.

SECTION 22m. 51.20 (10) (cm) of the statutes is created to read:

51.20 (10) (cm) 1. Prior to or at the final hearing, for individuals for whom a petition is filed under sub. (1) (a) 2. e., the county department under s. 51.42 or 51.437 shall furnish to the court and the subject individual an initial recommended written treatment plan that contains the goals of treatment, the type of treatment to be provided and the expected providers. The treatment plan shall address the individual's needs for inpatient care, residential services, community support services, medication and its monitoring, case management, and other services to enable the person to live in the community upon release

from an inpatient facility. The treatment plan shall contain information concerning the availability of the needed services and community treatment providers' acceptance of the individual into their programs. The treatment plan is only a recommendation and is not subject to approval or disapproval by the court. Failure to furnish a treatment plan under this subdivision does not constitute grounds for dismissal of the petition unless the failure is made in bad faith.

2. This paragraph does not apply after the last day of the 59th month commencing after the effective date of this subdivision [revisor inserts date].

SECTION 23. 51.20 (13) (dm) of the statutes is amended to read:

51.20 (13) (dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the county department under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician, subject to the individual's right to refuse medication under s. 51.61 (1) (g) and (h), and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. A finding by the court that the allegations under sub. (1) (a) 2. e. are proven constitutes a finding that the individual is not competent to refuse medication or treatment. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4).

SECTION 24. 51.20 (13) (dm) of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.20 (13) (dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the county department under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions

being that the individual shall take medication as prescribed by a physician, subject to the individual's right to refuse medication under s. 51.61 (1) (g) and (h), and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4).

SECTION 25. 51.20 (13) (g) 2d. of the statutes is created to read:

51.20 (13) (g) 2d. a. Except as provided in subd. 2d. b., after the 30th day after an order of commitment under par. (a) 3. to 5. following proof of the allegations under sub. (1) (a) 2. e., the subject individual may, under the order, be treated only on an outpatient basis.

b. If a subject individual who is committed under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. e., and who is being treated on an outpatient basis violates a condition of treatment that is established by the court or a county department under s. 51.42, the county department or the department may transfer the subject individual under s. 51.35 (1) (e) to an inpatient facility or to an inpatient treatment program of a treatment facility for a period not to exceed 30 days.

c. This subdivision does not apply after the last day of the 59th month commencing after the effective date of this subdivision [revisor inserts date].

SECTION 26. 51.35 (2) of the statutes is amended to read:

51.35 (2) **TRANSFER OF CERTAIN DEVELOPMENTALLY DISABLED PATIENTS.** The department may authorize a transfer of a patient from a center for the developmentally disabled to a state treatment facility if ~~such~~ the patient is mentally ill and exhibits conduct which constitutes a danger as ~~defined~~ described in s. 51.20 (1) (a) 2. to himself or herself or to others in the treatment facility where he or she is present. The department shall file a statement of emergency detention with the committing court within 24 hours after receiving ~~such~~ the person for emergency detention. The statement shall conform to the requirements specified in s. 51.15 (4).

SECTION 27. 51.35 (3) (c) and (e) of the statutes are amended to read:

51.35 (3) (c) A licensed psychologist of a juvenile correctional facility or a licensed physician of the department of corrections, who has reason to believe that any

individual confined in the facility is, in his or her opinion, is mentally ill, drug dependent or developmentally disabled, and is dangerous as defined described in s. 51.20 (1) (a) 2., ~~a., b., c. or d.~~ is mentally ill, is dangerous and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as ~~defined~~ described in s. 51.45 (13) (a) 1. and 2., shall file a written report with the superintendent of the facility, stating the nature and basis of the belief. If the superintendent, upon review of the allegations in the report, determines that transfer is appropriate, he or she shall file a petition according to s. 51.20 or 51.45 in the court assigned to exercise jurisdiction under ch. 48 of the county where the correctional facility is located. The court shall hold a hearing according to procedures provided in s. 51.20 or 51.45 (13).

(e) The department may authorize emergency transfer of an individual from a juvenile correctional facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as ~~defined in~~ described under s. 51.20 (1) (a) 2. ~~a., b., c. or d.~~ to the individual or to others, is mentally ill, is dangerous and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department shall file the statement or petition with the court within 24 hours after the subject individual is received for detention or commitment. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the procedure provided in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the correctional facility.

SECTION 28. 51.35 (3) (c) and (e) of the statutes, as affected by 1995 Wisconsin Act ... (this act), are repealed and recreated to read:

51.35 (3) (c) A licensed psychologist of a juvenile correctional facility or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the facility, in his or her opinion, is mentally ill, drug dependent or developmentally disabled and is dangerous as described in s. 51.20 (1) (a) 2., or is an alcoholic and is dangerous as described in s. 51.45 (13) (a) 1. and 2., shall file a written report with the superintendent of the facility, stating the nature and basis of the belief. If the superintendent, upon review of the allegations in the report, determines that transfer is appropriate, he or she shall file a petition according to s. 51.20 or 51.45

in the court assigned to exercise jurisdiction under ch. 48 of the county where the correctional facility is located. The court shall hold a hearing according to procedures provided in s. 51.20 or 51.45 (13).

(e) The department may authorize emergency transfer of an individual from a juvenile correctional facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as described under s. 51.20 (1) (a) 2. to the individual or to others, or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department shall file the statement or petition with the court within 24 hours after the subject individual is received for detention or commitment. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the procedure provided in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the correctional facility.

SECTION 29. 51.37 (5) (a) and (b) of the statutes are amended to read:

51.37 (5) (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department of corrections reports in writing to the officer in charge of a jail or institution that any prisoner is, in his or her opinion, mentally ill, drug dependent, or developmentally disabled and is appropriate for treatment as ~~provided~~ described in s. 51.20 (1), or is an alcoholic and is dangerous as ~~provided~~ described in s. 51.45 (13) (a) 1. and 2.; or that the prisoner is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in need of psychiatric or psychological treatment, and that the prisoner voluntarily consents to a transfer for treatment, the officer shall make a written report to the department of corrections which may transfer the prisoner if a voluntary application is made and the department of health and social services consents. If voluntary application is not made, the department of corrections may file a petition for involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent by a prisoner in an institution designated under sub. (3) or s. 51.37 (2), 1983 stats., shall be included as part of the individual's sentence.

(b) The department of corrections may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and

exhibits conduct which constitutes a danger as ~~defined~~ described in s. 51.20 (1) (a) 2. a., b., c. or d. of physical harm to himself or herself or to others, or is mentally ill and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health and social services shall file the statement or petition with the court within 24 hours after receiving the subject individual for detention. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the institution.

SECTION 30. 51.37 (5) (b) of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.37 (5) (b) The department of corrections may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as described in s. 51.20 (1) (a) 2. of physical harm to himself or herself or to others, or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health and social services shall file the statement or petition with the court within 24 hours after receiving the subject individual for detention. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the institution.

SECTION 30g. 51.61 (1) (g) 2. of the statutes is amended to read:

51.61 (1) (g) 2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, other than for a subject individual

who is alleged to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

SECTION 30h. 51.61 (1) (g) 2. of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.61 (1) (g) 2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

SECTION 31. 51.61 (1) (g) 3. of the statutes is amended to read:

51.61 (1) (g) 3. Following a final commitment order, other than for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a

situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

SECTION 32. 51.61 (1) (g) 3. of the statutes, as affected by 1995 Wisconsin Act (this act), is repealed and recreated to read:

51.61 (1) (g) 3. Following a final commitment order, have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

SECTION 33. 51.61 (1) (g) 3m. of the statutes is created to read:

51.61 (1) (g) 3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. This subdivision does not apply after the last day of the 59th month commencing after the effective date of this subdivision [revisor inserts date].

SECTION 34. 165.017 of the statutes is created to read:
165.017 Review of certain detentions or petitions for commitment. (1) The attorney general or his or her

designee shall review and approve or disapprove all proposed emergency detentions or emergency detentions of individuals as specified under s. 51.15 (1) (c) 1.

(2) The attorney general or his or her designee shall review and approve or disapprove all proposed petitions or petitions for commitment of individuals as specified under s. 51.20 (1) (ad) 1.

(3) Subsection (1) does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of s. 51.15 (1) (a) 5. or of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of s. 51.15 (1) (a) 5. or s. 51.20 (1) (a) 2. e.

(4) Subsection (2) does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of s. 51.20 (1) (a) 2. e.

(5) This section does not apply after the last day of the 59th month commencing after the effective date of this subsection [revisor inserts date].

SECTION 35. Nonstatutory provisions; health and social services.

(1) REPORT. The department of health and social services shall prepare a report summarizing the number of individuals transferred to a state treatment facility under sections 51.35 (2) and (3) (e) and 51.37 (5) (b) of the statutes, and submit the report to the legislature in the manner provided under section 13.172 (2) of the statutes by the first day of the 28th month beginning after the effective date of this subsection.

Vetoed In Part (2) REPORT; DATA COLLECTION. **By February 15, 1996,** the department of health and social services shall submit to the joint committee on finance a report on the costs of implementing the data collection requirements under section 51.03 (3) of the statutes, as created by this act. The report shall include information on all of the following:

- (a) The estimated costs of collecting and analyzing the data.
- (b) How the requirements under section 51.03 (3) of the statutes, as created by this act, could be modified to reduce these costs.
- (c) The extent to which current staff and other resources in the department could be reallocated to meet

the requirements under section 51.03 (3) of the statutes, as created by this act.

SECTION 35m. Nonstatutory provisions; justice.

(1) REVIEW OF CERTAIN EMERGENCY DETENTIONS AND CERTAIN PETITIONS. The authorized FTE positions for the department of justice are increased by 1.5 GPR project positions to review and approve or disapprove certain proposed emergency detentions or emergency detentions, as required under section 51.15 (1) (c) 1. and 2. of the statutes, as created by this act, and certain proposed petitions, or petitions, as required under section 51.20 (1) (ad) 1. of the statutes, as created by this act, for the period beginning on July 1, 1996, and ending on June 30, 1998, to be funded from the appropriation under section 20.455 (1) (a) of the statutes.

SECTION 35n. Appropriation changes; justice.

(1) REVIEW OF CERTAIN EMERGENCY DETENTIONS AND CERTAIN PETITIONS. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of justice under section 20.455 (1) (a) of the statutes, as affected by the acts of 1995, the dollar amount is increased by \$80,200 for fiscal year 1996–97 to fund 1.5 FTE GPR project positions authorized under SECTION 35m (1) of this act.

SECTION 36. Initial applicability.

(1) This act first applies to the taking of a child or adult into custody under section 51.15 (1) of the statutes on the effective date of this subsection, to proceedings in which a petition is filed under section 51.20 (1) of the statutes on the effective date of this subsection and to proceedings in which an application for extension of a commitment has been made under section 51.20 (13) (g) 3. of the statutes on the effective date of this subsection.

SECTION 37. Effective dates. This act takes effect on the first day of the 7th month beginning after publication, except as follows:

(1) The repeal and recreation of sections 51.15 (1) (a) (intro.), (4) (a) and (5), 51.20 (1) (a) 1. and (am), (7) (d) and (13) (dm), 51.35 (3) (c) and (e), 51.37 (5) (b) and 51.61 (1) (g) 2. and 3. of the statutes takes effect on the first day of the 67th month beginning after publication.

(2) The treatment of section 51.03 (3) of the statutes takes effect on the first day of the 4th month beginning after publication.