



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1074/P2  
TJD:jld:rs

DOA:.....Hutter, BB0391 – Standardization of emergency detention across counties; require crisis assessment

**FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION**

**AN ACT ...; relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES**

Currently, a law enforcement officer or certain other persons, in counties other than Milwaukee County, may take an individual into custody for emergency detention if the officer or other person has cause to believe that the individual is mentally ill, drug dependent, or developmentally disabled, and that the individual shows other evidence of the standards for emergency detention. The county department of community programs in the county in which the individual was taken into custody must approve the need for detention, and for evaluation, diagnosis, and treatment if permitted, before the law enforcement officer or other person delivers the individual to the detention facility. In Milwaukee County, currently, the law enforcement officer or other person must sign a statement of emergency detention and delivers the statement of emergency detention along with the individual to the detention facility. The treatment director of the facility must determine whether the individual is detained or detained, evaluated, diagnosed, and treated. After a detention of up to 72 hours, the treatment director determines whether the individual is eligible for involuntary commitment. If involuntary commitment is appropriate, the treatment director files the statement of detention with the court.

Currently, a pilot program in Milwaukee County grants authority for a treatment director or treatment director designee to take an individual into custody for emergency detention under the same standards as a law enforcement officer. In the pilot program, "treatment director" also includes a physician or psychologist who is an employee of or contractor of the Milwaukee County Behavioral Health Division and who actively assumes clinical responsibility for providing emergency care. Once a treatment director takes an individual into custody for emergency detention under the pilot program, the procedure is similar to that of other emergency detentions in Milwaukee County.

This bill eliminates the emergency detention procedure and the pilot program in Milwaukee County and applies the existing procedure for emergency detentions in other counties to Milwaukee County. The bill adds that a physician who has completed a residency in psychiatry, a psychologist, or a licensed mental health professional must perform a crisis assessment on the individual and agree with the need for detention in order for the county department to approve the detention.

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

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

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

51.15 (2) FACILITIES FOR DETENTION. 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 transport the individual, or cause him or her to be transported, for detention, if the county department of community programs in the county in which the individual was taken into custody approves the need for detention, and for evaluation, diagnosis, and treatment if permitted under sub. (8). The county department may approve the detention only if a physician who has completed a residency in psychiatry, a psychologist licensed under ch. 455, or a mental health professional has performed a crisis assessment on the individual and agrees with the need for detention and the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove the substantial probability of physical harm,

impairment, or injury to himself, herself, or others. Detention may only be in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or a state treatment facility.

**SECTION 2.** 51.15 (4) of the statutes is repealed.

**SECTION 3.** 51.15 (4m) of the statutes is repealed.

**SECTION 4.** 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 750,000, the~~ 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 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 55.135, 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 5.** 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) and sub. (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 6.** 51.15 (12) of the statutes is amended to read:

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

**SECTION 7.** 51.20 (4) (c) of the statutes is amended to read:

51.20 (4) (c) Paragraph (b) does not apply to a petition originating under s. 51.15 (4), (5), or (10).

**SECTION 8.** 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 the patient is mentally ill and exhibits conduct which constitutes a danger as 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 the person for emergency detention. The statement shall conform to the requirements specified in s. 51.15 (4) (5).

**SECTION 9.** 51.35 (3) (e) of the statutes is amended to read:

51.35 (3) (e) The department of corrections may authorize emergency transfer of an individual from a juvenile correctional facility or a secured residential care center for children and youth to a state treatment facility if there is cause to believe that the individual has a mental illness, drug dependency, or developmental disability and exhibits conduct that constitutes a danger as described under s. 51.20 (1) (a) 2. a., b., c., or d. to the individual or to others, has a mental illness, 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 custodian of the sending juvenile correctional facility or secured residential care center for children and youth 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 services 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 juvenile correctional facility or secured residential care center for children and youth 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 individual may be released without the approval of the court that directed confinement in the juvenile correctional facility or secured residential care center for children and youth.

**SECTION 10.** 51.37 (5) (b) of the statutes is amended 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. 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 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 11.** 971.14 (6) (b) of the statutes is amended to read:

971.14 **(6)** (b) When the court discharges a defendant from commitment under par. (a), it may order that the defendant be taken immediately into custody by a law enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an approved public treatment facility under s. 51.45 (2) (c), or an appropriate medical or protective placement facility. Thereafter, detention of the defendant shall be governed by s. 51.15, 51.45 (11), or 55.135, as appropriate. The district attorney or corporation counsel may prepare a statement meeting the requirements of s. 51.15 ~~(4) or (5)~~, 51.45 (13) (a), or 55.135 based on the allegations of the criminal complaint and the evidence in the case. This statement shall be given to the director of the facility to which the defendant is delivered and filed with the branch of circuit court assigned to exercise criminal jurisdiction in the county in which the criminal charges are pending, where it shall suffice, without corroboration by other petitioners, as a petition for commitment under s. 51.20 or 51.45 (13) or a petition for protective placement under s. 55.075. This section does not restrict the power of the branch of circuit court in which the petition is filed to transfer the matter to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the county. Days spent in commitment or protective placement pursuant to a petition under this paragraph shall not be deemed days spent in custody under s. 973.155.

**SECTION 9418. Effective dates; Health Services.**

(1) **EMERGENCY DETENTION STANDARDIZATION; CRISIS ASSESSMENTS.** The treatment of sections 51.15 (2), (4), (4m), (5), (7), and (12), 51.20 (4) (c), 51.35 (2) and (3) (e), 51.37 (5) (b), and 971.14 (6) (b) of the statutes takes effect on July 1, 2016.

**(END)**