AN ACT ***to repeal*** 51.20 (13) (g) 2. and 51.20 (13) (g) 2m.; ***to renumber*** 51.20 (5); ***to amend*** 51.15 (1) (a) (intro.), 51.15 (1) (a) 3., 51.15 (1) (a) 4., 51.15 (2), 51.15 (4) (a), 51.15 (4) (b), 51.15 (5), 51.20 (1) (a) 2. c. and d., 51.20 (2) (b), 51.20 (2) (d), 51.20 (7) (a), 51.20 (8) (b), 51.20 (8) (bm) and (br) and 905.04 (4) (a); and ***to create*** 51.15 (4) (c) and 51.20 (5) (b) of the statutes; **relating to:** emergency detention, involuntary commitment, and privileged communications and information.

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's Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51.

The bill makes the following changes to Wisconsin laws dealing with emergency detention, involuntary commitment, and privilege communications and information:

1. Current law allows a law enforcement officer or other specified persons to take a person into custody on an emergency detention basis if certain criteria are met. In addition, current law provides that this may occur if the county department of community programs approves the need for detention. The bill modifies both of those statutes to include a determination "...that detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis...". [SECTIONS 1 and 4.]

2. Current law provides standards for emergency detention and involuntary commitment. The 3rd standard of dangerousness allows for commitment if there is a substantial probability of physical impairment or injury to himself or herself due to impaired judgment. The bill modifies this language to also include a substantial probability of physical impairment or injury to others. [SECTIONS 2 and 9.]

3. Under current law, emergency detention may occur in a hospital approved by the department of health services as a detention facility or under contract with the county department, an approved public treatment facility, a center for the developmentally disabled, a state treatment

facility, or an approved private treatment facility if the facility agrees to detain the individual. The bill consolidates the references to these facilities to provide that detention may occur in a treatment facility approved by the department or county department, if the facility agrees to detain the individual, or a state treatment facility. [SECTIONS 4, 11, and 15.]

4. Current law provides different procedures for emergency detention in counties with a population of 500,000 or more and those with a population of less than 500,000. The bill increases the population threshold to 750,000, so that those procedures will continue to apply only to Milwaukee County. [SECTIONS 5 and 8.]

5. Current law in counties with a population of 500,000 or more requires that the treatment director of the facility in which the person is detained, or his or her designee, must determine within 24 hours whether the person is to be detained. If the individual is detained, the treatment director or designee may supplement in writing the statement filed by the law enforcement officer or other person undertaking the emergency detention. The bill modifies this statute to provide that when calculating the 24 hours, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non−psychiatric medical conditions of the individual shall be excluded from the calculation. [SECTION 7.]

6. For a person who is detained, current law requires that a hearing be held within 72 hours, excluding Saturdays, Sundays, and legal holidays. Current law allows this to be extended at the request of the detained individual or his or her counsel, but in no case may postponement exceed 7 days from the date of detention. The bill provides 2 additional circumstances in which a postponement may be granted. Under the first circumstance, if the individual is in a facility and the director of the facility or designee determines that the individual cannot be safely moved due to a non−psychiatric medical condition or the hearing cannot be safely held at the facility, and if the individual or his or her attorney objects to holding the hearing at that facility (which is permitted under current law), the court may postpone the hearing. In the 2nd circumstance, if the individual is comatose or, in the opinion of the director of the facility or designee, otherwise incapable of being evaluated or participating in the hearing, the court may postpone the hearing. In either of these circumstances, the postponement may not exceed 7 days from the date of detention. [SECTIONS 13 and 14.]

7. Generally, current law provides that the first order of involuntary commitment is for up to 6 months, and all subsequent consecutive orders of commitment are for up to one year. However, current law provides

that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365−day period. The bill eliminates that provision with respect to persons committed under the 4th standard of dangerousness. [SECTION 17.]

8. Current law provides that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision. The bill repeals this provision. [SECTION 18.]

9. Current law provides that a patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, among the patient and various specified health care providers, including physicians, psychologists, social workers, marriage and family therapists, and professional counselors. Current law also provides that there is no privilege for communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness or various other types of proceedings. The bill modifies this exception to the privilege statute to substitute "commitment" for "hospitalization" and to refer to "probable cause or final proceedings" to commit the patient for mental illness under s. 51.20. [SECTION 19.]

SECTION 1. 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 or to take a juvenile into custody under ch. 938 may take an individual into custody if the officer or person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled, that detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis, and that the individual evidences any of the following:

NOTE: The amendments to s. 51.15 (1) (a) (intro.) [SECTION 1], and to s. 51.15 (2) (intro.) [see SECTION 3], add a criterion that must be met before a person is taken into custody, or before the county department approves an emergency detention. Under the amendment, the law enforcement officer or county department must determine that "detention is the least

restrictive alternative because the individual is resistant to professional help or is too high risk to be safely assisted on a voluntary basis".

SECTION 2. 51.15 (1) (a) 3. of the statutes is amended to read:

51.15 **(1)** (a) 3. A substantial probability of physical impairment or injury to himself or herself or others due to impaired judgment, as manifested by evidence of a recent act or omission. The probability of physical impairment or injury is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community under this subdivision.

NOTE: This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial probability of an injury or impairment ***to others*** due to an individual's impaired judgment.

SECTION 3. 51.15 (1) (a) 4. of the statutes is amended to read:

51.15 **(1)** (a) 4. Behavior manifested by a recent act or omission that, due to mental illness ~~or drug dependency~~, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness ~~or drug dependency~~. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail

himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision. Food, shelter or other care provided to an individual who is substantially incapable of providing the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subdivision.

COMMENT: This SECTION amends the 4th standard of dangerousness for emergency detentions to delete references to drug dependency, which makes this 4th standard consistent with the 4th standard of dangerousness for commitment under s. 51.20 (1) (a) 2. d.

SECTION 4. 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 determines that detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis, and for evaluation, diagnosis, and treatment if permitted under sub. (8) ~~to any of the following facilities:~~.

~~(a) A hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, or an approved public treatment facility;~~

~~(b) A center for the developmentally disabled;~~

~~(c) A state treatment facility; or~~

~~(d) An approved private~~ Detention may be only in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or in a state treatment facility.

NOTE: The amendment consolidates references to the types of facilities that may be used for emergency detention. Under the amendment, a person may be detained in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or in a state treatment facility. Section 51.01 (19), stats., defines a "treatment facility" as "a publicly or privately operated treatment facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs".

Section 51.01 (15), stats., defines "state treatment facility" as "any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes".

SECTION 5. 51.15 (4) (a) of the statutes is amended to read:

51.15 **(4)** (a) In counties having a population of ~~500,000~~ 750,000 or more, 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 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. 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.

NOTE: Emergency detention procedures for Milwaukee County differ from the procedures in the rest of the state. This amendment raises the reference to the Milwaukee County population threshold to 750,000, to ensure that Dane County, the only other Wisconsin county whose population is approaching 500,000, is not made subject to these special procedures.

SECTION 6. 51.15 (4) (b) of the statutes is amended to read:

51.15 **(4)** (b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours, except as provided in par. (c), whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and treatment are 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 Saturdays, Sundays and legal holidays, except as provided in s. 51.20 (5) (b) or (7) (a). 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.

NOTE: This amendment tolls the 24−hour time period for the treatment director's determination, if the subject individual must be evaluated and treated for non−psychiatric medical conditions, as provided in s. 51.15 (4) (c) [see SECTION 6]. Also, the amendments to this statute reference 2 situations where the time for emergency detention might exceed 72 hours, as provided in s. 51.20 (5) (b) and (7) (a). [SECTIONS 13 and 14 of the draft.)

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

51.15 **(4)** (c) When calculating the 24 hours under par. (b) in which a treatment director determines whether an individual should be detained, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non−psychiatric medical conditions of the individual shall be excluded from the calculation.

NOTE: See the NOTE to SECTION 6.

SECTION 8. 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~~ 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 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, exclusive of Saturdays, Sundays, and legal holidays, except as provided in s. 51.20 (5) (b) or (7) (a).

NOTE: These amendments: (1) provide that this emergency detention procedure applies in counties with a population less than 750,000; and (2) reference 2 situations where the time for emergency detention might exceed 72 hours, as provided in s. 51.02 (5) (b) and (7) (a). [SECTIONS 13 and 14 of the draft.]

SECTION 9. 51.20 (1) (a) 2. c. and d. of the statutes are amended to read:

51.20 **(1)** (a) 2. c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself or others. The probability of physical impairment or injury is not substantial under this subd. 2. c. if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subd. 2. c. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2. c.

COMMENT: See the NOTE to SECTION 2.

SECTION 10. 51.20 (2) (b) of the statutes is amended to read:

51.20 **(2)** (b) If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays, except as provided in sub. (5) (b) or (7) (a). The officer shall orally inform the individual that he or she is being taken into custody as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. Any such notice may be given by telephone. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.

NOTE: This amendment references 2 situations where the time for emergency detention might exceed 72 hours, as provided in s. 51.20 (5) (b) and (7) (a). [SECTIONS 13 and 14 of the draft.]

SECTION 11. 51.20 (2) (d) of the statutes is amended to read:

51.20 **(2)** (d) Placement shall be made in a ~~hospital that is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in an approved private~~ treatment facility approved by the department or the county department, if the facility agrees to detain the subject individual, or in a state treatment facility. Upon arrival at the facility, the individual is considered to be in the custody of the facility.

NOTE: The amendments to this statute reflect the changes in SECTION 4 of the draft.

SECTION 12. 51.20 (5) of the statutes is renumbered 51.20 (5) (a).

SECTION 13. 51.20 (5) (b) of the statutes is created to read:

51.20 **(5)** (b) The court may, upon motion and after hearing, postpone the hearing for no more than 7 days from the date of the subject individual's detention if the subject individual or his or her attorney objects to holding a hearing at the institution and one or both of the following conditions exist:

1. That the subject individual cannot be safely removed to the court due to a non−psychiatric medical condition.

2. That the hearing cannot be safely held at the institution where the subject individual is being detained.

NOTE: Under current law, hearings under ch. 51, stats., must conform to the essentials of due process and fair treatment. However, the court is permitted to hold a hearing at the institution at which the person who is the subject of the detention or commitment proceeding is being detained, whether or not the institution is located in the same county as the court where the petition was filed, unless the individual or his or her attorney objects.

This draft authorizes the court to postpone a hearing for no more than 7 days from the date of a subject individual's detention in an institution if

the subject individual or his or her attorney objects to holding the hearing at the institution, provided that the subject individual cannot be safely moved to the court due to a non−psychiatric medical condition; the hearing cannot be safely held at the institution where the subject individual is being detained; or both.

SECTION 14. 51.20 (7) (a) of the statutes is amended to read:

51.20 **(7)** (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention. If the individual is comatose or, in the opinion of the director of the facility or his or her designee, otherwise incapable due to a non−psychiatric medical condition, of being evaluated or participating in the hearing under this subsection, the court may postpone the hearing, but in no case may the postponement exceed 7 days from the date of detention.

NOTE: This amendment provides that the probable cause hearing may be postponed if the subject individual is comatose or otherwise incapable of being evaluated or participating in the hearing. The postponement may not exceed 7 days from the date of detention.

SECTION 15. 51.20 (8) (b) of the statutes is amended to read:

51.20 **(8)** (b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (7) (c). Detention may be in a ~~hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the~~

~~requirements of s. 51.06 (3), state treatment facility, or in an approved private~~ treatment facility approved by the department or the county department if the facility agrees to detain the subject individual, or in a state treatment facility.

NOTE: See the NOTE to SECTION 4.

SECTION 16. 51.20 (8) (bm) and (br) of the statutes are amended to read:

51.20 **(8)** (bm) If, within 90 days from the date of the waiver under par. (bg), the subject individual fails to comply with the settlement agreement approved by the court under par. (bg), the counsel designated under sub. (4) may file with the court a statement of the facts which constitute the basis for the belief that the subject individual is not in compliance. The statement shall be sworn to be true and may be based on the information and belief of the person filing the statement. Upon receipt of the statement of noncompliance, the court may issue an order to detain the subject individual pending the final disposition. If the subject individual is detained under this paragraph, the court shall hold a probable cause hearing within 72 hours from the time of detention, excluding Saturdays, Sundays and legal holidays, except as provided in sub. (5) (b) or (7) (a) or, if the probable cause hearing was held prior to the approval of the settlement agreement under par. (bg), the court shall hold a final hearing within 14 days from the time of detention. If a jury trial is requested later than 5 days after the time of detention under this paragraph, but not less than 48 hours before the time of the final hearing, the final hearing shall be held within 21 days from the time of detention. The facts alleged as the basis for commitment prior to the waiver of the time periods for hearings under par. (bg) may be the basis for a finding of probable cause or a final disposition at a hearing under this paragraph.

(br) Upon the motion of the subject individual, the court shall hold a hearing on the issue of noncompliance with the settlement agreement within 72 hours from the time the motion for

a hearing under this paragraph is filed with the court, excluding Saturdays, Sundays and legal holidays, except as provided in sub. (5) (b) or (7) (a). The hearing under this paragraph may be held as part of the probable cause or final hearing if the probable cause or final hearing is held within 72 hours from the time the motion is filed with the court, excluding Saturdays, Sundays and legal holidays, except as provided in sub. (5) (b) or (7) (a). At a hearing on the issue of noncompliance with the agreement, the written statement of noncompliance submitted under par. (bm) shall be prima facie evidence that a violation of the conditions of the agreement has occurred. If the subject individual denies any of the facts as stated in the statement, he or she has the burden of proving that the facts are false by a preponderance of the evidence.

NOTE: These amendments provide for postponement of a hearing on noncompliance with a settlement agreement, which normally must be held within 72 hours of the subject individual's detention, to be postponed for not more than 7 days if the individual is comatose or otherwise capable of being evaluated or participating in the hearing due to a non−psychiatric medical condition.

SECTION 17. 51.20 (13) (g) 2. of the statutes is repealed.

NOTE: Section 51.20 (13) (g) 2. applies to persons involuntarily committed based on the 4th standard of dangerousness and states as follows:

"51.20 (13) (g) 2. Any commitment ordered under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. d., may not continue longer than 45 days in any 365−day period.".

SECTION 18. 51.20 (13) (g) 2m. of the statutes is repealed.

NOTE: Section 51.20 (13) (g) 2m. states as follows:

"51.20 (13) (g) 2m. In addition to the provisions under subds. 1. and 2., no commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date of release on parole or extended supervision, as determined under s. 302.11 or 302.113, whichever is applicable.".

SECTION 19. 905.04 (4) (a) of the statutes is amended to read:

905.04 **(4)** (a) *Proceedings for ~~hospitalization~~ commitment, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in probable cause or final proceedings to ~~hospitalize~~ commit the patient for mental illness under s. 51.20, to appoint a guardian in this state, for court−ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of ~~hospitalization~~ commitment, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

NOTE: This amendment changes a reference from "hospitalization" to "commitment", in the statute that provides that there is no evidentiary privilege as to communications and information relevant to an issue in probable cause or final proceedings in a commitment proceeding under s. 51.20, stats.

(END)