

LR:jal;...

10/23/2012

1       **AN ACT** *to amend* 51.15 (3), (4) (b), (5) and (9) and 51.20 (2) (b), (7) (a) and (8) (bm)  
2           of the statutes; **relating to:** specifying that the 72-hour time period for emergency  
3           detention begins when an individual is taken into custody.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** Under current law, an individual may be held under an emergency detention for a period not to exceed 72 hours. Section 51.15, stats., is inconsistent when referring to when the 72-hour time period commences. This draft clarifies that the 72-hour time period commences when the individual is “taken into custody”, rather than when the individual arrives at or is taken to an emergency detention facility. This draft also specifies that a person is deemed to be “in custody” when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child or juvenile into custody. The draft also clarifies that upon arrival at the facility, the custody of the individual is transferred to the facility.

4       **SECTION 1.** 51.15 (3), (4) (b), (5) and (9) of the statutes are amended to read:

5       51.15 (3) CUSTODY. An individual is deemed to be in custody when the individual is  
6       under the physical control of the law enforcement officer or other person authorized to take  
7       a child into custody under ch. 48 or to take a juvenile into custody under ch. 938. Upon arrival  
8       at the facility, custody of the individual is transferred to the facility.

**NOTE:** Current law provides that an emergency detention facility has custody of an individual when the individual arrives at the facility. However, current law does not specify how it is determined who has custody of an individual before arrival at the facility. This amendment specifies that an individual is deemed to be “in custody” when the individual is under the physical control of the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938. Upon arrival at the facility, custody of the individual is transferred to the facility.

9       **(4) (b)** Upon delivery of the individual, the treatment director of the facility, or his or  
10       her designee, shall determine within 24 hours whether the individual shall be detained, or shall

1 be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and treatment are  
2 permitted under sub. (8), and shall either release the individual or detain him or her for a period  
3 not to exceed 72 hours after ~~delivery of the individual~~ is taken into custody, exclusive of  
4 Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee,  
5 determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the  
6 treatment director shall release the individual immediately, unless otherwise authorized by  
7 law. If the individual is detained, the treatment director or his or her designee may supplement  
8 in writing the statement filed by the law enforcement officer or other person, and shall  
9 designate whether the subject individual is believed to be mentally ill, developmentally  
10 disabled or drug dependent, if no designation was made by the law enforcement officer or  
11 other person. The director or designee may also include other specific information concerning  
12 his or her belief that the individual meets the standard for commitment. The treatment director  
13 or designee shall then promptly file the original statement together with any supplemental  
14 statement and notification of detention with the court having probate jurisdiction in the county  
15 in which the individual was taken into custody. The filing of the statement and notification  
16 has the same effect as a petition for commitment under s. 51.20.

**NOTE:** Current law provides that an individual may be detained under an emergency detention for a period not to exceed 72 hours after delivery of the individual. Presumably, this means after delivery of the individual to the emergency detention facility. This amendment specifies that an individual may be detained under an emergency detention for a period not to exceed 72 hours after the individual is taken into custody.

17 **(5) DETENTION PROCEDURE; OTHER COUNTIES.** In counties having a population of less than  
18 500,000, the law enforcement officer or other person authorized to take a child into custody  
19 under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of  
20 emergency detention that shall provide detailed specific information concerning the recent

1 overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and  
2 the names of persons observing or reporting the recent overt act, attempt, or threat to act or  
3 omission. The law enforcement officer or other person is not required to designate in the  
4 statement whether the subject individual is mentally ill, developmentally disabled, or drug  
5 dependent, but shall allege that he or she has cause to believe that the individual evidences one  
6 or more of these conditions. The statement of emergency detention shall be filed by the officer  
7 or other person with the detention facility at the time of admission, and with the court  
8 immediately thereafter. The filing of the statement has the same effect as a petition for  
9 commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a  
10 facility specified in sub. (2) determines that the grounds for detention no longer exist, he or  
11 she shall discharge the individual detained under this section. Unless a hearing is held under  
12 s. 51.20 (7) or 55.135, the subject individual may not be detained by the law enforcement  
13 officer or other person and the facility for more than a total of 72 hours after the individual  
14 is taken into custody, exclusive of Saturdays, Sundays, and legal holidays.

**NOTE:** Current law provides that an individual may not be detained under an emergency detention by the law enforcement officer or other person and the facility for more than a total of 72 hours exclusive of Saturdays, Sunday, and legal holidays. This amendment specifies that the individual may not be detained for more than a total of 72 hours after the individual is taken into custody, exclusive of Saturdays, Sundays, and legal holidays.

15 (9) NOTICE OF RIGHTS. At the time of ~~detention~~ that the individual is taken into custody,  
16 the individual shall be informed by the director of the facility or such person's designee, both  
17 orally and in writing, of his or her right to contact an attorney and a member of his or her  
18 immediate family, the right to have an attorney provided at public expense, as provided under  
19 s. 51.60, and the right to remain silent and that the individual's statements may be used as a

1 basis for commitment. The individual shall also be provided with a copy of the statement of  
2 emergency detention.

**NOTE:** Under current law, an individual must be informed at the time of emergency detention regarding the individual's rights as a person under an emergency detention. This amendment specifies that the individual must be informed of these rights at the time the individual is taken into custody.

3 **SECTION 2.** 51.20 (2) (b), (7) (a) and (8) (bm) of the statutes are amended to read:

4 51.20 (2) (b) If the subject individual is to be detained, a law enforcement officer shall  
5 present the subject individual with a notice of hearing, a copy of the petition and detention  
6 order and a written statement of the individual's right to an attorney, a jury trial if requested  
7 more than 48 hours prior to the final hearing, the standard upon which he or she may be  
8 committed under this section and the right to a hearing to determine probable cause for  
9 commitment within 72 hours after the individual ~~arrives at the facility~~ is taken into custody,  
10 excluding Saturdays, Sundays and legal holidays. The officer shall orally inform the  
11 individual that he or she is being ~~taken into custody~~ detained as the result of a petition and  
12 detention order issued under this chapter. If the individual is not to be detained, the law  
13 enforcement officer shall serve these documents on the subject individual and shall also orally  
14 inform the individual of these rights. The individual who is the subject of the petition, his or  
15 her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall  
16 receive notice of all proceedings under this section. The court may also designate other  
17 persons to receive notices of hearings and rights under this chapter. Any such notice may be  
18 given by telephone. The person giving telephone notice shall place in the case file a signed  
19 statement of the time notice was given and the person to whom he or she spoke. The notice  
20 of time and place of a hearing shall be served personally on the subject of the petition, and his

1 or her attorney, within a reasonable time prior to the hearing to determine probable cause for  
2 commitment.

3 (7) PROBABLE-CAUSE HEARING. (a) After the filing of the petition under sub. (1), if the  
4 subject individual is detained under s. 51.15 or this section the court shall hold a hearing to  
5 determine whether there is probable cause to believe the allegations made under sub. (1) (a)  
6 within 72 hours after the individual ~~arrives at the facility~~ is taken into custody, excluding  
7 Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her  
8 counsel the hearing may be postponed, but in no case may the postponement exceed 7 days  
9 from the date of detention.

NOTE: Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. This amendment specifies that the hearing must be held within 72 hours after the individual is taken into custody.

10 (8) (bm) If, within 90 days from the date of the waiver under par. (bg), the subject  
11 individual fails to comply with the settlement agreement approved by the court under par. (bg),  
12 the counsel designated under sub. (4) may file with the court a statement of the facts which  
13 constitute the basis for the belief that the subject individual is not in compliance. The  
14 statement shall be sworn to be true and may be based on the information and belief of the  
15 person filing the statement. Upon receipt of the statement of noncompliance, the court may  
16 issue an order to detain the subject individual pending the final disposition. If the subject  
17 individual is detained under this paragraph, the court shall hold a probable cause hearing  
18 within 72 hours from the time of ~~detention~~ that the person is taken into custody, excluding  
19 Saturdays, Sundays and legal holidays or, if the probable cause hearing was held prior to the  
20 approval of the settlement agreement under par. (bg), the court shall hold a final hearing within  
21 14 days from the time of detention. If a jury trial is requested later than 5 days after the time

1 of detention under this paragraph, but not less than 48 hours before the time of the final  
2 hearing, the final hearing shall be held within 21 days from the time of detention. The facts  
3 alleged as the basis for commitment prior to the waiver of the time periods for hearings under  
4 par. (bg) may be the basis for a finding of probable cause or a final disposition at a hearing  
5 under this paragraph.

**NOTE:** Under current law, an individual who is the subject of a petition for commitment may waive the required time periods for a probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody.