

LR:wu;

12/12/2011

1 **AN ACT** *to repeal* 51.13 (1) (c) 2. and 3.; *to renumber and amend* 51.13 (1) (c) 1.; *to*
2 *amend* 51.13 (1) (a) and (b), 51.13 (4) (a) (intro.) and 6., 51.13 (4) (d), 51.13 (4) (g)
3 (intro.) and 1. c., 51.13 (6) (a) 3. and 51.13 (7) (b) (title) and 1. to 3.; and *to create*
4 51.13 (1) (bm), 51.13 (1) (d) (title), 51.13 (1) (e) (title), 51.13 (1) (em) (title), 51.13
5 (3) (am) (title), 51.13 (3) (b) (title), 51.13 (3) (d) (title), 51.13 (3) (e) (title), 51.13 (4)
6 (b) (title), 51.13 (4) (c) (title), 51.13 (4) (e) (title), 51.13 (4) (f) (title), 51.13 (4) (g)
7 4., 51.13 (4) (h) (title), 51.13 (6) (a) (title), 51.13 (6) (b) (title), 51.13 (6) (c) (title),
8 51.13 (7) (a) (title) and 51.13 (7) (c) (title) of the statutes; **relating to:** admission of
9 minors for inpatient treatment.

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.

Under current law, s. 51.13, stats., governs inpatient mental health treatment of minors. Section 51.13 (4), stats., requires a petition to be filed for the review of an admission of a minor of any age for treatment of mental illness, alcoholism or drug abuse, or developmental disability. Included in the petition must be a notation of any statement made or conduct demonstrated by the minor in the presence of the director or staff of the facility indicating that inpatient treatment is against the minor's wishes.

Also, under current law, a minor may be admitted to an inpatient treatment facility without following the review procedures for diagnosis and evaluation or for dental, medical, or psychiatric services, for no longer than 12 days. A minor's parent or guardian must execute the application for short-term admission. However, if the minor is age 14 or older, the minor just join in the application if it is for mental health or developmental disability services or treatment. If the minor refuses to do so, then the parent or guardian may do so. In that case, the review

procedures outlined above apply, and the facility's treatment director must file a petition for review of the short-term admission.

An application for short-term admission must be reviewed by the facility's treatment director, who may approve it only if the treatment director determines that the admission provides the least restrictive means of providing the diagnosis or evaluation, or provision of dental, medical, or psychiatric services. The minor must be released at the end of the 12-day period unless a regular application for admission has been filed. Only one short-term admission under this procedure may be made every 120 days.

Finally, testimony provided to the special committee indicated that, in some areas of the state, there is little awareness of the ability of a parent of a minor age 14 or older to obtain treatment for the minor if the minor does not want treatment. In some cases, this lack of awareness has resulted in necessary treatment not being provided that could have prevented harm to a minor.

This bill draft does the following:

- Eliminates the need to file a petition for review of an admission of a minor under age 14 for treatment of mental illness, alcoholism or drug abuse, or developmental disability. Because under current law, parents have the authority to consent to inpatient admission for minors under age 14 without the minor joining in the petition, the committee recommended that the petition and hearing requirements in current law for minors under age 14 are unnecessary and should be eliminated. A petition would still be required if the minor wanted treatment but the parent refused; if a parent with legal custody or guardian cannot be found; or if there is no parent or guardian.
- Eliminates the need to file a petition for a minor age 14 to 17 who is voluntarily participating in inpatient treatment for mental illness. A petition would still have to be filed if the minor refused to join in the application, or if the parent with legal custody or guardian cannot be found, or there is no parent with legal custody or guardian. A petition would also still be required if the minor wanted treatment but the parent refused. It should be noted that a minor age 14 or older may request discharge from the inpatient facility at any time. If the request is denied, current law sets forth a procedure for determining the continued appropriateness of the admission. This provides protection of the minor's rights if the minor withdraws his or her consent to the treatment.
- Eliminates the petition requirement at the expiration of the 12-day time period if the admission was voluntary on the part of the minor and the parent.

- Eliminates the provision that allows for no more than one short-term (up to 12 days) voluntary admission of a minor every 120 days.
- Creates subsection and paragraph titles within s. 51.13 to provide guidance to the reader regarding the subject matter of the subsections and paragraphs and eliminates some redundant language in s. 51.13.

1 **SECTION 1.** 51.13 (1) (a) and (b) of the statutes are amended to read:

2 51.13 (1) (title) ADMISSION FOR TREATMENT OF MENTAL ILLNESS, DEVELOPMENT DISABILITY,

3 ALCOHOLISM, OR DRUG ABUSE. (a) Minors under 14 years of age. Except as provided in par.

4 (c) and ss. 51.45 (2m) and 51.47, the application for admission of a minor who is 14 years of

5 age or older to an approved inpatient treatment facility for the primary purpose of treatment

6 for alcoholism or drug abuse and the application for admission of a minor who is under 14

7 years of age to an approved inpatient treatment facility for the primary purpose of treatment

8 for mental illness, developmental disability, alcoholism, or drug abuse shall be executed by

9 a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct

10 by a minor who is the subject of an application for admission under this paragraph indicating

11 that the minor does not agree to admission to the facility shall be noted on the face of the

12 application and shall be noted in the petition required by sub. (4).

13 (b) (title) Minors 14 years of age or older: mental illness or developmental disability.

14 The application for admission of a minor who is 14 years of age or older to an approved

15 inpatient treatment facility for the primary purpose of treatment for mental illness or

16 developmental disability shall be executed by the minor and a parent who has legal custody

17 of the minor or the minor's guardian, except as provided in par. (c) 1., except that, if, If the

18 minor refuses to execute the application, a parent who has legal custody of the minor or the

19 minor's guardian may execute the application on the minor's behalf, and the petition shall be

20 filed as required under sub. (4).

21 **SECTION 2.** 51.13 (1) (bm) of the statutes is created to read:

1 51.13 (1) (bm) *Minors 14 years of age or older: alcoholism or drug abuse treatment.*
2 Except as provided in par. (c) and ss. 51.42 (2m) and 51.47, the application for admission of
3 a minor who is 14 years of age or older to an approved inpatient facility for the primary purpose
4 of treatment for alcoholism or drug abuse shall be executed by a parent who has legal custody
5 of the minor or the minor's guardian. Any statement or conduct by a minor who is the subject
6 of an application for admission under this paragraph indicating that the minor does not agree
7 to admission to the facility shall be noted on the face of the application and shall be noted in
8 the petition required under sub. (4).

 COMMENT: Should a petition and court review be required if a minor age
 14 or older indicates unwillingness to agree to inpatient alcohol and
 other drug abuse (AODA) treatment? If not, is there any situation where
 a petition and court review is necessary for inpatient AODA treatment?

9 **SECTION 3.** 51.13 (1) (c) 1. of the statutes is renumbered 51.13 (1) (c) and amended to
10 read:

11 51.13 (1) (c) (title) Minor's parent or guardian will not consent to treatment; minor has
12 no parent or guardian; or minor's parent or guardian cannot be found. If a minor 14 years
13 of age or older wishes to be admitted to an approved inpatient treatment facility but a parent
14 with legal custody or the guardian refuses to execute the application for admission or cannot
15 be found, or if there is no parent with legal custody or guardian, or if the parent with legal
16 custody or guardian of a minor 14 years of age or older refuses to execute the application, the
17 minor or a person acting on the minor's behalf may petition the court assigned to exercise
18 jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for
19 approval of the admission. A copy of the petition and a notice of hearing shall be served upon
20 the parent or guardian at his or her last-known address. If, after a hearing, the court determines
21 that the consent of the parent or guardian is being unreasonably withheld, that the parent or

1 guardian cannot be found, or that there is no parent with legal custody, and that the admission
2 is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's
3 admission without the consent of the parent or guardian under sub. (4). The court may, at the
4 minor's request, temporarily approve the admission pending hearing on the petition, if such
5 a hearing is required under sub. (4).

6 **SECTION 4.** 51.13 (1) (c) 2. and 3. of the statutes are repealed.

7 **SECTION 5.** 51.13 (1) (d) (title) of the statutes is created to read:

8 51.13 (1) (d) *Other petition filed.*

9 **SECTION 6.** 51.13 (1) (e) (title) of the statutes is created to read:

10 51.13 (1) (e) *Admission on approval of application.*

11 **SECTION 7.** 51.13 (1) (em) (title) of the statutes is created to read:

12 51.13 (1) (em) *Standards for approval of admission.*

13 **SECTION 8.** 51.13 (3) (am) (title) of the statutes is created to read:

14 51.13 (3) (am) *Rights.*

15 **SECTION 9.** 51.13 (3) (b) (title) of the statutes is created to read:

16 51.13 (3) (b) *Rights to request discharge.*

17 **SECTION 10.** 51.13 (3) (d) (title) of the statutes is created to read:

18 51.13 (3) (d) *Explanation of rights.*

19 **SECTION 11.** 51.13 (3) (e) (title) of the statutes is created to read:

20 51.13 (3) (e) *Availability of writing materials.*

21 **SECTION 12.** 51.13 (4) (a) (intro.) and 6. of the statutes are amended to read:

22 51.13 (4) (title) PETITION REQUIREMENT; REVIEW PROCEDURE. (a) (intro.) (title) When
23 petition filed. Within 3 days after the admission of a minor under sub. (1) (b), or within 3 days
24 after an application is executed for admission of the minor, whichever occurs first, the

1 treatment director of the facility or the center for the developmentally disabled to which the
2 minor is admitted, or his or her designee ~~or, in the case of a center for the developmentally~~
3 ~~disabled, the director of the center or his or her designee~~, shall file a verified petition for review
4 of the admission in the court assigned to exercise jurisdiction under chs. 48 and 938 in the
5 county in which the facility is located, provided the minor is 14 years of age or older and
6 refuses to join in the application; if the minor wants treatment and the minor's parent with legal
7 custody or guardian refuses to join in the application; there is no parent with legal custody or
8 guardian; or the parent with legal custody or guardian cannot be found. If the parent or
9 guardian is not the petitioner, a copy of the petition and a notice of hearing shall be served on
10 the parent or guardian at his or her last known address. A copy of the application for admission
11 and of any relevant professional evaluations shall be attached to the petition. The petition shall
12 contain all of the following:

13 6. Notation of any ~~statement made or conduct demonstrated by the minor in the presence~~
14 ~~of the director or staff of the facility indicating that inpatient treatment is against the wishes~~
15 ~~of the minor~~ refusal of the minor 14 years of age or older to join in the application.

16 **SECTION 13.** 51.13 (4) (b) (title) of the statutes is created to read:

17 51.13 (4) (b) *Removal of petition.*

18 **SECTION 14.** 51.13 (4) (c) (title) of the statutes is created to read:

19 51.13 (4) (c) *Copy of petition.*

20 **SECTION 15.** 51.13 (4) (d) of the statutes is amended to read:

21 51.13 (4) (d) (title) *Criteria for approving admission.* Within 5 days after the filing of
22 the petition, the court assigned to exercise jurisdiction under chs. 48 and 938 shall determine,
23 based on the allegations of the petition and accompanying documents, whether there is a prima
24 facie showing that the minor is in need of psychiatric services, or services for developmental

1 disability, alcoholism, or drug abuse, whether the treatment facility offers inpatient therapy
2 or treatment that is appropriate to the minor's needs; whether inpatient care in the treatment
3 facility is the least restrictive therapy or treatment consistent with the needs of the minor; and,
4 if the minor is 14 years of age or older and has been admitted to the treatment facility for the
5 primary purpose of treatment for mental illness or developmental disability, whether the
6 admission was made under an application executed by the minor and the minor's parent or
7 guardian. If such a showing is made, the court shall permit admission. If the court is unable
8 to make those determinations based on the petition and accompanying documents, the court
9 may dismiss the petition as provided in par. (h); order additional information, including an
10 independent evaluation, to be produced as necessary for the court to make those
11 determinations within 7 days, exclusive of weekends and legal holidays, after admission or
12 application for admission, whichever is sooner; or hold a hearing within 7 days, exclusive of
13 weekends and legal holidays, after admission or application for admission, whichever is
14 sooner. ~~If a notation of the minor's unwillingness appears on the face of the petition, if the~~
15 admission was made under an application executed by the minor's parent or guardian despite
16 the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel,
17 parent, or guardian, the court shall order an independent evaluation of the minor and hold a
18 hearing to review the admission, within 7 days, exclusive of weekends and legal holidays, after
19 admission or application for admission, whichever is sooner, and shall appoint counsel to
20 represent the minor if the minor is unrepresented. If the court considers it necessary, the court
21 shall also appoint a guardian ad litem to represent the minor. The minor shall be informed
22 about how to contact the state protection and advocacy agency designated under s. 51.62 (2)
23 (a).

24 **SECTION 16.** 51.13 (4) (e) (title) of the statutes is created to read:

1 51.13 (4) (e) *Notice of hearing.*

2 **SECTION 17.** 51.13 (4) (f) (title) of the statutes is created to read:

3 51.13 (4) (f) *Rules, records, and findings.*

4 **SECTION 18.** 51.13 (4) (g) (intro.) and 1. c. of the statutes are amended to read:

5 51.13 (4) (g) (intro.) (title) Approval of admission. If the court finds, under a hearing
6 under par. (d), that the minor is in need of psychiatric services or services for developmental
7 disability, alcoholism, or drug abuse in an inpatient facility, that the inpatient facility to which
8 the minor is admitted offers therapy or treatment that is appropriate for the minor's needs and
9 that is the least restrictive therapy or treatment consistent with the minor's needs, the court
10 shall permit admission. If the court finds that the therapy or treatment in the inpatient facility
11 to which the minor is admitted is not appropriate or is not the least restrictive therapy or
12 treatment consistent with the minor's needs, the court may order placement in or transfer to
13 another more appropriate or less restrictive inpatient facility, if the placement or transfer is
14 first approved by all of the following, ~~except that placement in or transfer to a center for the~~
15 ~~developmentally disabled shall first be approved by all of the following and the department:~~

16 1. c. For a minor admitted under sub. (1) (c) ~~1. or 2.~~, the minor.

17 **SECTION 19.** 51.13 (4) (g) 4. of the statutes is created to read:

18 51.13 (4) (g) 4. The department, if the placement or transfer is to a center for the
19 developmentally disabled.

20 **SECTION 20.** 51.13 (4) (h) (title) of the statutes is created to read:

21 51.13 (4) (h) *Actions if petition not approved.*

22 **SECTION 21.** 51.13 (6) (a) (title) of the statutes is created to read:

23 51.13 (6) (a) *Admission procedure.*

24 **SECTION 22.** 51.13 (6) (a) 3. of the statutes is amended to read:

1 51.13 (6) (a) 3. A If a minor 14 years of age or older who refused to execute the
2 application under subd. 2, is admitted after court review under sub. (4) (d), the minor may not
3 be readmitted to an inpatient treatment facility for psychiatric services under this paragraph
4 within 120 days of a previous admission under this paragraph.

5 **SECTION 23.** 51.13 (6) (b) (title) of the statutes is created to read:

6 51.13 (6) (b) *Review and acceptance of application.*

7 **SECTION 24.** 51.13 (6) (c) (title) of the statutes is created to read:

8 51.13 (6) (c) *Release.*

9 **SECTION 25.** 51.13 (7) (a) (title) of the statutes is created to read:

10 51.13 (7) (a) *Minor reaches age 14 during admission.*

11 **SECTION 26.** 51.13 (7) (b) (title) and 1. to 3. of the statutes are amended to read:

12 51.13 (7) (b) (title) Discharge procedure. 1. Any minor who is voluntarily admitted
13 under sub. (1) (c) ~~1. or 2.~~, may request discharge in writing.

14 2. For a minor 14 years of age or older who is admitted under sub. (1) ~~(a) or (b)~~ (bm)
15 for the primary purpose of treatment for alcoholism or drug abuse or a minor under 14 years
16 of age who is admitted under sub. (1) ~~(a) or (b)~~ for the primary purpose of treatment for mental
17 illness, developmental disability, alcoholism, or drug abuse, the parent or guardian of the
18 minor may request discharge in writing.

19 3. For a minor 14 years of age or older who is admitted under sub. (1) ~~(a) or (b)~~ for the
20 primary purpose of treatment for mental illness or developmental disability, the minor and the
21 minor's parent or guardian may request discharge in writing. If the parent or guardian of the
22 minor refuses to request discharge and if the director of the facility to which the minor is
23 admitted or his or her designee avers, in writing, that the minor is in need of psychiatric
24 services or services for developmental disability, that the facility's therapy or treatment is

1 appropriate to the minor's needs, and that inpatient care in the treatment facility is the least
2 restrictive therapy or treatment consistent with the needs of the minor, the minor may not be
3 discharged under this paragraph.

4 **SECTION 27.** 51.13 (7) (c) (title) of the statutes is created to read:

5 51.13 (7) (c) *Request for hearing when not discharged.*

6 (END)