1987 Senate Bill 351

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# 1987 Wisconsin Act 366

AN ACT *to amend* 51.10 (6), 51.13 (4) (h) 3, 51.15 (1) (a), 51.15 (5), 51.15 (11), 51.20 (1) (a) and (1m), 51.20 (7) (c) and (d), 51.20 (8) (a), 51.20 (8) (c), 51.20 (13) (a) 2, 51.20 (13) (dm), 51.35 (1) (a), 51.35 (5), 51.42 (3) (ar) 4. d, 51.45 (12) (d), 51.45 (13) (c), 51.59 (2), 51.61 (6), 51.67, 55.05 (2) (d), 55.06 (11) (a), 165.85 (4) (b) 1, 165.86 (2) (b), 609.05 (3), 880.07 (2), 880.33 (1) and 880.33 (2) (a) 1; *to repeal and recreate* 51.35 (1) (e), 51.35 (4m) and 51.61 (1) (g); and *to create* 51.15 (11m), 51.20 (7) (am), 51.20 (8) (bg), (bm) and (br), 51.20 (10) (e), 51.20 (13) (g) 2r, 55.06 (11) (d), 609.65, 880.01 (7m), 880.07 (1m), 880.33 (2) (d) and (e), 880.33 (4m), 880.34 (6) and 880.39 of the statutes, *relating to* emergency detention, involuntary civil commitment, guardianship, protective services, transfer and discharge of involuntarily committed persons, recommitment evaluations, incompetency to refuse medication, emergency protective placement, training in emergency detention and emergency protective placement procedures for law enforcement officers, a presumption of good faith of individuals initiating emergency detentions, codifying a standard of performance for guardians of the person, requiring health insurance coverage of services provided under a court order, requiring the department of health and social services to study the implementation of crisis intervention services, other mental health requirements and granting rule-making authority.

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

SECTION 1. 51.10 (6) of the statutes is amended to read:

51.10 (6) A person against whom a petition for involuntary commitment has been filed under s. 51.15 or 51.20 may agree to be admitted to an inpatient treatment facility under this section. The court may permit the person to become a voluntary patient or resident pursuant to this section upon signing an application for voluntary admission, if the director of the appropriate county department under s. 51.42 or 51.437 and the director of the facility to which the person will be admitted approve of the voluntary admission within 30 days of the admission. ~~The~~ Except as provided in s. 51.20 (8) (bg) or (bm), the court shall dismiss the proceedings under s. 51.20 30 days after the person's admission if the person is still a voluntary patient or resident or upon the discharge of the person by the treatment director of the facility or his or her designee, if that occurs first. For any person who is a voluntary patient or resident under this subsection, actions required under s. 51.35 (5) shall be initiated within 14 days of admission.

NOTE: The insertion, in s. 51.10 (6), of the cross-reference to s. 51.20 (8) (bg) and (bm) reflects the creation of those paragraphs by this bill. The insertion of the reference to an "inpatient treatment facility" is not a substantive change in the law.

SECTION 2. 51.13 (4) (h) 3 of the statutes is amended to read:

51.13 (4) (h) 3. If the minor is 14 years of age or older and appears to be developmentally disabled, proceed in the manner provided in s. 51.67 to determine whether the minor should receive protective placement or protective services, except that a minor shall not have a temporary guardian appointed if he or she has a parent or guardian.

NOTE: The insertion of the reference to protective services in s. 51.13 (4) (h) 3 reflects the amendment to s. 51.67 expressly authorizing a court to order the administration of psychotropic medication as a temporary protective service if the court converts a commitment proceeding to a proceeding for protective placement and makes the requisite findings.

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

51.15 (1) (a) 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:

1. A substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm;.

2. A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm on his or her part;.

3. A substantial probability of physical impairment or injury to himself or herself 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)~~;~~. 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.

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 can receive protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). 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.

NOTE: The amendments to s. 51.15 (1) (a) 3 and 4 by this bill modify the 3rd and 4th standards of dangerousness for the purposes of emergency detention.

The purposes of the amendments are to allow the detention of:

1. Individuals who would meet the 3rd or 4th standard of dangerousness except that reasonable provision for the individual's protection (or protection or treatment) is available in the community, in cases where the individual will not avail himself or herself of the services; and

2. Individuals who are incapable of obtaining food, shelter or other care on their own and would meet the 3rd or 4th standard but for food, shelter or other care provided in the community by family members or other persons who are not treatment facilities.

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 500,000, the law enforcement officer 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 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 holidays.

NOTE: The amendments to s. 51.15 (5) by this bill add language to remedy an internal inconsistency in that subsection and are not intended to be substantive amendments.

SECTION 5. 51.15 (11) of the statutes is amended to read:

51.15 (11) LIABILITY. Any individual acting in accordance with this section is not liable for any actions taken in good faith. The good faith of the individual shall be presumed in any civil action. Any person who asserts that the individual acting in accordance with this section has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory and convincing.

NOTE: Section 51.15 (11), amended by the bill, provides a statutory presumption of good faith on the part of individuals who are authorized to initiate emergency detention procedures and who follow the proper statutory procedures. This presumption applies to the statutory immunity from civil liability for good faith actions in performing emergency detentions available under current law. The presumption of good faith may be overcome only by proving to a reasonable certainty that the individual did not act in good faith by evidence that is clear, satisfactory and convincing (the highest burden of proof in a civil action).

SECTION 6. 51.15 (11m) of the statutes is created to read:

51.15 (11m) TRAINING. Law enforcement agencies shall designate at least one officer authorized to take an individual into custody under this section who shall attend the in-service training on emergency detention and emergency protective placement procedures offered by a county department of community programs under s. 51.42 (3) (ar) 4. d, if the county department of community programs serving the law enforcement agency's jurisdiction offers an in-service training program.

NOTE: Section 51.15 (11m), created by the bill, requires law enforcement agencies with officers authorized to take an individual into custody under s. 51.15, relating to emergency detention, to designate at least one officer to attend in-service training on emergency detention and emergency protective placement, if offered by the county department of community programs in the agency's jurisdiction.

SECTION 7. 51.20 (1) (a) and (1m) of the statutes are amended to read:

51.20 (1) (a) Except as provided in pars. (ab), (am) and (ar), every written petition for examination shall allege that all of the following apply to the subject individual to be examined:

1. ~~Is~~ The individual is mentally ill, drug dependent, or developmentally disabled and is a proper subject for treatment~~; and~~.

2. ~~Is~~ The individual is dangerous because ~~the individual~~ he or she does any of the following:

a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm~~;~~.

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. In this ~~subparagraph~~ subd. 2. b, if the petition is filed under a court order under s. 48.30 (5) (c) 1, a finding by the court exercising jurisdiction under ch. 48 that the child committed the act or acts alleged in the petition under s. 48.12 or 48.13 (12) may be used to prove that the child exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm~~;~~.

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. The probability of physical impairment or injury is not substantial under this ~~subparagraph~~ 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 is appropriate for protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this ~~subparagraph; or~~ 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.

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, 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. No substantial probability of harm under this ~~subparagraph~~ subd. 2. d 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 ~~can receive~~ is appropriate for protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). 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 ~~subparagraph~~ subd. 2. d. 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 treatment or protection available in the community under this subd. 2. d.

(1m) ALTERNATE GROUNDS FOR COMMITMENT. For purposes of subs. (2) to (9), the requirement of finding probable cause to believe the allegations in sub. (1) (a) or (am) may be satisfied by finding probable cause to believe that the individual satisfies sub. (1) (a) 1 and evidences such impaired judgment, manifested by evidence of a recent act or omission, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury may not be deemed substantial under this subsection 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 the services or if the individual is appropriate for protective placement under s. 55.06. The individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subsection. 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 subsection.

NOTE: The amendments to s. 51.20 (1) (a) 2. c and d and (1m) by this bill modify: (1) the 3rd and 4th standards of dangerousness for the purposes of commitment; and (2) the alternative standard which may be used for finding probable cause for commitment and for detention pending the final hearing.

The purposes of the amendments are to allow the commitment of:

1. Individuals who would meet the 3rd or 4th standard or the alternative standard except that reasonable provision for their protection (or protection or treatment) is available in the community, in cases where the individual will not avail himself or herself of the services; and

2. Individuals who are incapable of obtaining food, shelter or other care on their own and would meet the 3rd or 4th standard or the alternative standard but for food, shelter or other care provided in the community by family members or other persons who are not treatment facilities.

SECTION 7m. 51.20 (7) (am) of the statutes is created to read:

51.20 (7) (am) A subject individual may not be examined, evaluated or treated for a nervous or mental disorder pursuant to a court order under this subsection unless the court first attempts to determine whether the person is an enrolled participant of a health maintenance organization, limited service health organization or preferred provider plan, as defined in s. 609.01, and, if so, notifies the organization or plan that the subject individual is in need of examination, evaluation or treatment for a nervous or mental disorder.

SECTION 8. 51.20 (7) (c) and (d) of the statutes are amended to read:

51.20 (7) (c) If the court determines that there is probable cause to believe ~~such~~ the allegations made under sub. (1), it shall schedule the matter for a hearing within 14 days from the time of detention of the subject individual, except as provided in sub. (8) (bg) or (bm) or (11) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time of detention of the subject individual. If the subject individual is not detained under s. 51.15 or this section or is an inmate of a state prison, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment. In the event that the subject individual fails to appear for the hearing to determine probable cause for commitment, the court may issue an order for the subject individual's detention and shall hold the hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, from the time that the individual is detained.

(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 ~~emergency~~ 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. The court may order psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe 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.

NOTE: The amendment to s. 51.20 (7) (c), relating to the time period for a final commitment hearing, adds a cross-reference to the new negotiated settlement procedures under s. 51.20 (8) (bg) and (bm), as created by this bill. Those procedures result in a waiver of the requirement that a final hearing be held within 14 days from the time an individual is detained pending a final order in a commitment proceeding.

The amendment to s. 51.20 (7) (d), relating to the conversion of an involuntary commitment proceeding to a guardianship and protective placement or services proceeding, provides that the court may order psychotropic medication as a temporary protective service, for a period not to exceed 30 days, for persons who are incompetent to refuse the psychotropic medication due to chronic mental illness. The standard for determining an individual's incompetency to refuse psychotropic medication is the same as the standard under s. 51.61 (1) (g), relating to court-ordered medication during the period between probable cause and final hearings in a commitment proceeding.

Other amendments to s. 51.20 (7) (d) also make it consistent with s. 51.67.

The limitation, under ss. 51.20 (7) (d) and 51.67, as amended by this bill, on the use of temporary guardianships for court-ordered psychotropic medication to persons with chronic mental illness corresponds to the limitation on the use of limited guardianships for this purpose under ss. 880.01 (7m) and 880.07 (1m), as created by this bill.

SECTION 9. 51.20 (8) (a) of the statutes is amended to read:

51.20 (8) (a) If it is shown that there is probable cause to believe the allegations under sub. (1), the court may release the subject individual pending the full hearing and the individual has the right to receive treatment services, on a voluntary basis, from the county department under s. 51.42 or 51.437, or from the department. The court may issue an order stating the conditions under which the subject individual may be released from detention pending the final hearing. If acceptance of treatment is made a condition of ~~such~~ the release, the subject individual may elect to accept the conditions or choose detention pending the hearing. The court order may state the action to be taken upon information of breach of ~~such~~ the conditions. A final hearing must be held within 30 days of ~~such~~ the order, if the subject individual is released. Any detention under this paragraph invokes time limitations specified in sub. (7) (c), beginning with the time of ~~such~~ the detention. The right to receive treatment voluntarily or accept treatment as a condition of release under this paragraph does not apply to an individual for whom a probable cause finding has been made, under s. 51.61 (1) (g), that he or she is not competent

to refuse medication, to the extent that the treatment includes medication.

NOTE: Currently, s. 51.20 (8) (a) allows the voluntary or conditional treatment of the subject of a commitment proceeding who is released during the period between the probable cause hearing and the final hearing. The amendment to s. 51.20 (8) (a) creates an exception which prohibits the voluntary or conditional treatment of such persons for whom probable cause of incompetency to refuse medication has been found under s. 51.61 (1) (g).

SECTION 10. 51.20 (8) (bg), (bm) and (br) of the statutes are created to read:

51.20 (8) (bg) The subject individual, or the individual's legal counsel with the individual's consent, may waive the time periods under s. 51.10 or this section for the probable cause hearing or the final hearing, or both, for a period not to exceed 90 days from the date of the waiver, if the individual and the counsel designated under sub. (4) agree at any time after the commencement of the proceedings that the individual shall obtain treatment under a settlement agreement. The settlement agreement shall be in writing, shall be approved by the court and shall include a treatment plan that provides for treatment in the least restrictive manner consistent with the needs of the subject individual. Either party may request the court to modify the treatment plan at any time during the 90-day period. The court shall designate the appropriate county department under s. 51.42 or 51.437 to monitor the individual's treatment under, and compliance with, the settlement agreement. If the individual fails to comply with the treatment according to the agreement, the designated county department shall notify the counsel designated under sub. (4) and the subject's counsel of the individual's noncompliance.

(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 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. 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. 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: The creation of s. 51.20 (8) (bg), (bm) and (br) creates procedures for the use of negotiated settlements in commitment cases.

Under these procedures, the subject individual or the individual's counsel may waive various time periods within which probable cause and final hearings are required to be held, for up to 90 days from the date of the waiver, under the following conditions:

1. The individual becomes a voluntary patient, on either an inpatient or outpatient basis, under a court-approved agreement reached between the individual, by his or her counsel and the counsel representing the interests of the public.

2. The settlement agreement includes a treatment plan. The plan shall be approved by the court and either party may request modifications to it at any time during the course of treatment under the agreement.

3. The court designates the appropriate county department to monitor the individual's treatment under, and compliance with, the agreement.

If the individual fails to comply with the agreement, he or she may be detained. Detention invokes new time periods for probable cause and final hearings. The subject individual or the individual's counsel may request a hearing on the issue of the individual's noncompliance with the agreement.

SECTION 11. 51.20 (8) (c) of the statutes is amended to read:

51.20 (8) (c) During detention a physician may order the administration of such ~~medications and therapies~~ medication or treatment as ~~are~~ is permitted under s. 51.61 (1) (g) and (h). The subject individual may consent to treatment but only after he or she has been informed of his or her right to refuse treatment and has signed a written consent to such treatment, except that an individual for whom, under s. 51.61 (1) (g), a probable cause finding has been made that he or she is not competent to refuse medication may not consent to medication under this paragraph. A report of all treatment which is provided, along with any written consent, shall be filed with the court by the director of the treatment facility in which the subject individual is detained, or his or her designee.

NOTE: Currently, s. 51.20 (8) (c) permits the voluntary and conditional treatment of persons detained during the period

between the probable cause hearing and the final hearing. The amendment to s. 51.20 (8) (c) creates an exception which prohibits voluntary or conditional medication for persons for whom probable cause of incompetency to refuse medication has been found under s. 51.61 (1) (g).

SECTION 11m. 51.20 (10) (e) of the statutes is created to read:

51.20 (10) (e) At the request of the subject individual or his or her counsel the final hearing under par. (c) may be postponed, but in no case may the postponement exceed 7 calendar days from the date established by the court under this subsection for the final hearing.

SECTION 12. 51.20 (13) (a) 2 of the statutes is amended to read:

51.20 (13) (a) 2. If the subject individual is an adult, or is a minor aged 14 years or more who is developmentally disabled, proceed under s. 51.67 to determine whether the subject individual should receive protective placement or protective services; or

NOTE: The insertion of the reference to protective services in s. 51.20 (13) (a) 2 reflects the amendment to s. 51.67, authorizing a court to order the administration of psychotropic medications as a temporary protective service if the court converts a commitment proceeding to a proceeding for protective placement and makes the requisite findings.

SECTION 12m. 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. 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 13. 51.20 (13) (g) 2r of the statutes is created to read:

51.20 (13) (g) 2r. Twenty-one days prior to expiration of the period of commitment under subd. 1, 2, 2g or 2m, the department, if the individual is committed to the department, or the county department to which an individual is committed shall file an evaluation of the individual and the recommendation of the department or county department regarding the individual's recommitment with the committing court and provide a copy of the evaluation and recommendation to the individual's counsel and the counsel designated under sub. (4). If the date for filing an evaluation and recommendation under this subdivision falls on a Saturday, Sunday or legal holiday, the date which is not a Saturday, Sunday or legal holiday and which most closely precedes the evaluation and recommendation filing date shall be the filing date. A failure of the department or the county department to which an individual is committed to file an evaluation and recommendation under this subdivision does not affect the jurisdiction of the court over a petition for recommitment.

NOTE: Section 51.20 (13) (g) 2r, created by this bill, requires DHSS or the county department to which a person is committed to file an evaluation of the person with the committing court, counsel for the person and the representative of the interests of the public 21 days prior to the expiration of the individual's commitment period. The evaluation shall include a recommendation regarding the individual's recommitment.

The new subdivision further provides that failure to file the evaluation and recommendation does not affect the jurisdiction of the court over a petition for recommitment.

SECTION 13m. 51.35 (1) (a) of the statutes is amended to read:

51.35 (1) (a) The department or the county department under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a facility under its supervision or operating under an agreement with it, between treatment facilities or from a facility into the community if such transfer is consistent with reasonable medical and clinical judgment and consistent with s. 51.22 (5). The transfer shall be made in accordance with par. (e). Terms and conditions which will benefit the patient or resident may be imposed as part of a transfer to a less restrictive treatment alternative. A patient or resident who is committed to the department or a county department under s. 51.42 or 51.437 may be required to take medications and receive treatment, subject to the right of the patient or resident to refuse medication and treatment under s. 51.61 (1) (g) and (h), through a community support program as a term or condition of a transfer. The patient or resident shall be informed at the time of transfer of the consequences of violating such terms and conditions, including possible transfer back to a facility which imposes a greater restriction on personal freedom of the patient or resident.

SECTION 14. 51.35 (1) (e) of the statutes is repealed and recreated to read:

51.35 (1) (e) 1. Whenever any transfer between different treatment facilities results in a greater restriction of personal freedom for the patient and whenever the patient is transferred from outpatient to inpatient status, the department or the county department specified under par. (a) shall inform the patient both orally

and in writing of his or her right to contact an attorney and a member of his or her immediate family, the right to have counsel provided at public expense, as provided under s. 967.06 and ch. 977, if the patient is indigent, and the right to petition a court in the county in which the patient is located or the committing court for a review of the transfer.

2. In addition to the rights and requirements specified in subd. 1, within 24 hours after any transfer which results in a greater restriction of personal freedom for the patient for a period of more than 5 days or any transfer from outpatient to inpatient status for a period of more than 5 days and if the transfer is due to an alleged violation of a condition of a transfer to less restrictive treatment, the department or the county department specified under par. (a) shall ensure that the patient is provided a written statement of the reasons for the transfer and the facts supporting the transfer and oral and written notice of all of the following:

a. The requirements and rights under subds. 3 to 5.

b. The patient's right to counsel.

c. The patient's right to have counsel provided at public expense, as provided under s. 967.06 and ch. 977, if the patient is indigent.

d. The rights of the patient's counsel to investigate the facts specified in the written statement of reasons for the transfer, to consult with the patient prior to the patient's waiving a hearing under subd. 3, to represent the patient at all proceedings on issues relating to the transfer, and to take any legal steps necessary to challenge the transfer.

3. Within 10 days after the transfer specified in subd. 2, a hearing shall be held on whether the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient, and on whether the patient violated a condition of a transfer to less restrictive treatment that resulted in a transfer under subd. 2. The hearing shall be held before a hearing officer designated by the director of the facility to which the patient has been transferred. The hearing officer may not be a person who has had direct responsibility for making treatment decisions for or providing treatment to the subject individual. The patient may appear at the hearing, either personally or by counsel, and may present and cross-examine witnesses and present documentary evidence. The hearing may be waived by the patient only after consultation with counsel. Any waiver made shall be in writing and witnessed by the patient's counsel.

4. The department or the county department seeking the transfer has the burden of proving, by a preponderance of the evidence, that the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient, and that the patient violated a condition of a transfer to less restrictive treatment that resulted in a transfer under subd. 2. Hearsay evidence is admissible if the hearing officer makes a determination that the evidence is reliable. Hearsay evidence may not be the sole basis for the decision of the hearing officer.

5. The hearing officer shall, as soon as possible after the hearing, issue a written statement setting forth his or her decision, the reasons for the decision and the facts upon which the decision is based. Within 30 days after the date on which the statement is issued, the patient or the department or the county department seeking the transfer may appeal the decision to a court in the county in which the facility to which the patient has been transferred is located or to the committing court.

6. This paragraph does not apply to a return to a more restrictive facility if the return occurs within 7 days after a temporary transfer from that facility and the return was part of a previously established plan of which the patient was notified at the time of the temporary transfer. This paragraph does not apply to a return of an inmate to a state treatment facility under s. 51.20 (13) (cm).

NOTE: The repeal and recreation of s. 51.35 (1) (e) by this bill creates procedural rights in addition to those in current law for persons who are transferred between facilities or from outpatient to inpatient status and applies these rights to patients who, due to an alleged violation of a condition of a transfer to less restrictive treatment: (1) are transferred to a more restrictive facility for longer than 5 days; or (2) are transferred from outpatient to inpatient status for more than 5 days. These rights include:

1. The right to a written statement of the reasons and the factual basis for the transfer, to be provided within 24 hours after the transfer has occurred.

2. Notice, both oral and written, of the rights under items 3 to 7, below, within 24 hours after the transfer has occurred.

3. The right to a hearing, before a hearing officer, on the issues of whether the patient violated any conditions of a conditional transfer to a less restrictive setting that resulted in a transfer to a more restrictive setting and whether the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient.

4. The rights of the patient's counsel to investigate the facts specified in the written statement of reasons for the transfer; to consult with the patient prior to the patient's waiving a hearing on the transfer; to represent the patient at all proceedings on the issues relating to the transfer; and to take any legal steps necessary to challenge the transfer.

5. The right to a written statement of the hearing officer's decision, setting forth the reasoning and the facts on which the decision is based.

6. The right to appeal the decision of the hearing officer to the court where the facility to which the patient has been transferred is located or to the committing court. The department or the county department seeking the transfer may also appeal the decision.

7. The right to counsel. If the patient is indigent, he or she has the right to counsel provided at public expense.

These rights do *not* apply to patients temporarily transferred to a less restrictive facility for a period of 7 days or less, and subsequently transferred back to the more restrictive facility, where the initial transfer was part of an established plan of which the patient was notified at the time of the temporary transfer.

SECTION 15. 51.35 (4m) of the statutes is repealed and recreated to read:

51.35 (4m) TRANSFER OR DISCHARGE OF PERSONS WITH CHRONIC MENTAL ILLNESS. The department or county department under s. 51.42 or any person authorized to discharge or transfer patients under this section shall, prior to the discharge of a patient with chronic mental illness from an inpatient facility, or prior to the transfer of a patient with chronic mental illness from inpatient to outpatient status, with the patient's permission if the patient is a voluntary patient, do all of the following:

(a) Refer the patient to the county department under s. 51.42 which is responsible for the patient's care for referral to a community support program in the county to which the patient will be discharged or transferred for evaluation of the need for and feasibility of the provision of community-based services and of the need for and feasibility of the provision of aftercare services.

(b) Assist the patient in applying for any public assistance for which he or she may qualify.

NOTE: The repeal and recreation of s. 51.35 (4m) adds the requirement that the department, or the county department under s. 51.42 or other person having authority to transfer or discharge a chronically mentally ill patient, assist the patient in applying for any public assistance for which he or she may qualify.

SECTION 16. 51.35 (5) of the statutes is amended to read:

51.35 (5) RESIDENTIAL LIVING ARRANGEMENTS; TRANSITIONARY SERVICES. The department and any person, director or board authorized to discharge or transfer patients ~~pursuant to~~ under this section shall ensure that a proper residential living arrangement and the necessary transitionary services are available and provided for the patient being discharged or transferred. Under this subsection, a proper residential living arrangement may not include a shelter facility, as defined under s. 46.97 (1) (d), unless the discharge or transfer to the shelter facility is made on an emergency basis for a period not to exceed 10 days.

NOTE: The amendment of s. 51.35 (5) provides that proper living arrangements for chronically mentally ill patients who have been transferred or discharged from an inpatient treatment facility may not include shelter facilities which provide temporary lodging for homeless individuals or families. An exception allows these facilities to be used for emergency placements for these patients for periods not to exceed 10 days.

SECTION 17. 51.42 (3) (ar) 4. d of the statutes is amended to read:

51.42 (3) (ar) 4. d. Related research and staff in-service training, including periodic training on emergency detention procedures under s. 51.15 and emergency protective placement procedures under s. 55.06 (11), for individuals within the jurisdiction of the county department of community programs who are authorized to take persons into custody under ss. 51.15 and 55.06 (11). In developing in-service training on emergency detention and emergency protective placement procedures, the county department of community programs shall consult the county department of developmental disabilities services under s. 51.437 in counties where these departments are separate.

NOTE: The amendment to s. 51.42 (3) (ar) 4. d requires county departments of community programs, within the limits of available state and federal funds and of county funds appropriated to match state funds, to offer periodic in-service training on emergency detention and emergency protective placement procedures to individuals authorized to initiate emergency detentions and emergency protective placements.

In developing this in-service training, county departments of community programs are required to consult with county departments of developmental disabilities services in counties where these departments are separate.

SECTION 17g. 51.45 (12) (d) of the statutes is amended to read:

51.45 (12) (d) Upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication ~~which would render him or her unable adequately to prepare a defense~~ under s. 51.61 (6), the exact time and place of the preliminary hearing under sub. (13) (d), and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the patient's immediate family if they can be located and may be deferred until the patient's incapacitated condition, if any, has subsided to the point where the patient is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the patient may be questioned to determine immediate medical needs. The patient may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under par. (e).

SECTION 17m. 51.45 (13) (c) of the statutes is amended to read:

51.45 (13) (c) Effective and timely notice of the preliminary hearing, together with a copy of the petition and supporting affidavits under par. (a), shall be given to the person unless he or she has been taken into custody under par. (b), the spouse or legal guardian if the person is incompetent, the person's counsel and the petitioner. The notice shall include a written statement of the person's right to an attorney, the right to trial by jury, the right to be examined by a physician, and the standard under which he or she may be committed under this section. If the person is taken into

custody under par. (b), upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication ~~which would render him or her unable adequately to prepare a defense~~ under s. 51.61 (6), the exact time and place of the preliminary hearing under par. (d), the right to trial by jury, the right to be examined by a physician and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the person's immediate family if they can be located and may be deferred until the person's incapacitated condition, if any, has subsided to the point where the person is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the person may be questioned to determine immediate medical needs. The person may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under this subsection. A copy of the petition and all supporting affidavits shall be given to the person at the time notice of rights is given under this paragraph by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

SECTION 17r. 51.59 (2) of the statutes is amended to read:

51.59 (2) This section does not authorize an individual who has been involuntarily committed or detained under this chapter to refuse treatment during such commitment or detention, except as provided under s. 51.61 (1) (g) and (h).

SECTION 18. 51.61 (1) (g) of the statutes is repealed and recreated to read:

51.61 (1) (g) Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to refuse all medication and treatment except as ordered by the court under subd. 2, or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).

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 and whether the medication 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 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.

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 makes a determination, following a hearing, that the person is not competent to refuse medication or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the patient or others. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

4. For purposes of a determination under subd. 2 or 3, an individual is not competent to refuse medication if, because of mental illness, developmental disability, alcoholism or drug dependence, 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.

NOTE [does not reflect Senate Amendment 5]: The repeal and recreation of s. 51.61 (1) (g) requires a court, at or after the probable causing hearing but prior to the final commitment order, upon the motion of any interested person, to make a determination on whether there is probable cause to believe that the subject meets the standards for court-ordered medication. Currently, the court is authorized, but not required, to make such findings.

The repeal and recreation also clarifies that an order for medication based on a finding that there is probable cause to believe that the person is incompetent to refuse medication is valid only until a final hearing is held and a commitment order is issued or the case is dismissed, unless the court specifies a shorter period.

SECTION 18m. 51.61 (6) of the statutes is amended to read:

51.61 (6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437 and any agency providing services under an agreement with the department or such county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under

the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient ~~who was voluntarily admitted~~ shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g). In the case of a minor, the written, informed consent of the parent or guardian is required, and if the minor is aged 14 or over, the written, informed consent of the minor and the minor's parent or guardian is required.

SECTION 19. 51.67 of the statutes is amended to read:

**51.67 Alternate procedure; protective services.** If, after hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and 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. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe 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. If the court orders temporary protective placement for an individual under the age of 22 years in a center for the developmentally disabled, this placement may be made only at the central center for the developmentally disabled unless the department authorizes the placement or transfer to the northern or southern center for the developmentally disabled. Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available.

NOTE: The amendment of s. 51.67, relating to the conversion of an involuntary commitment proceeding to a guardianship and protective placement or protective services proceeding, provides that the court may order psychotropic medication as a temporary protective service for persons who are incompetent to refuse the medication due to chronic mental illness. The standard for determining an individual's incompetency to refuse psychotropic medication is based on s. 51.61 (1) (g), relating to court-ordered medication during the period between the probable cause and final hearings in a commitment proceeding.

The limitation under s. 51.67, as affected by this bill, on the use of temporary guardianships for court-ordered psychotropic medication to persons with chronic mental illness corresponds to the limitation on the use of limited guardianships for this purpose under ss. 880.01 (7m) and 880.07 (1m) (intro.), as created by this bill.

SECTION 20. 55.05 (2) (d) of the statutes is amended to read:

55.05 (2) (d) The court may order ~~such~~ protective services for ~~a person who is determined to be incompetent~~ an individual for whom a determination of incompetency is made under s. 880.33 if the ~~person~~ individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. The court may order psychotropic medication as a protective service under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m).

NOTE: The amendment of s. 55.05 (2) (d), relating to court-ordered protective services, provides that a court may order protective services for an incompetent person who will present a substantial risk of physical harm to others.

The amendment also clarifies that a court may order psychotropic medication as a protective service only if a determination of incompetency is made for the person under s. 880.33 (4m).

SECTION 21. 55.06 (11) (a) of the statutes is amended to read:

55.06 (11) (a) If from personal observation of a sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a board designated under s. 55.02 or an agency designated by it it appears probable that an individual will suffer irreparable injury or death or will present a substantial risk of serious physical harm to others as a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities if not immediately placed, the person making the observation may take into custody and transport the individual to an appropriate medical or protective placement facility. The person making placement shall prepare a statement at the time of detention providing specific factual information concerning the person's observations and the basis for emergency placement. The statement shall be filed with the director of the facility and shall also be filed with any petition under sub. (2). At the time of placement the individual shall be informed by the director of the facility or the director's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense, as provided under s. 967.06 and ch. 977, if the individual is indigent. The director or designee shall also provide the individual with a copy of the statement by the person making emergency placement.

NOTE: The amendment of s. 55.06 (11) (a) allows a person who presents a substantial risk of serious physical harm to others to be taken into custody under an emergency protective placement. Risk of harm to others is not currently included as a basis for an emergency protective placement;

only a probability of irreparable injury to or death of self is cause for emergency protective placement.

The language added to s. 55.06 (11) (a) by this bill is similar to one of the current standards, under s. 55.06 (2) (c), for permanent protective placement.

SECTION 22. 55.06 (11) (d) of the statutes is created to read:

55.06 (11) (d) A law enforcement agency, fire department, county department designated under s. 55.02 or an agency designated by that county department shall designate at least one employe authorized to take an individual into custody under this subsection who shall attend the in-service training on emergency detention and emergency protective placement offered by a county department of community programs under s. 51.42 (3) (ar) 4. d, if the county department of community programs serving the designated employe's jurisdiction offers an in-service training program.

NOTE: Section 55.06 (11) (d), created by the bill, requires specified agencies or departments with employes authorized to take an individual into custody under s. 55.06 (11), relating to emergency protective placement, to designate at least one employe to attend in-service training on emergency detention and emergency protective placement, if offered by the county department of community programs in the designated employe's jurisdiction.

SECTION 23. 165.85 (4) (b) 1 of the statutes is amended to read:

165.85 (4) (b) 1. No person may be appointed as a law enforcement officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of law enforcement training approved by the board and has been certified by the board as being qualified to be a law enforcement officer. The program shall include at least 240 hours of training. The board shall promulgate a rule under ch. 227 providing a specific curriculum for a conventional 240-hour preparatory program and a competency-based variation of the program which may not exceed 320 hours. The rule shall ensure that there is an adequate amount of training to enable the person to deal effectively with domestic abuse incidents. The training under this subdivision shall include training on emergency detention standards and procedures under s. 51.15, emergency protective placement standards and procedures under s. 55.06 (11) and information on mental health and developmental disabilities agencies and other resources which may be available to assist the officer in interpreting the emergency detention and emergency protective placement standards, making emergency detentions and emergency protective placements and locating appropriate facilities for the emergency detentions and emergency protective placements of persons. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. The total period during which a person may serve as a law enforcement officer on a temporary or probationary basis without completing a preparatory program of law enforcement training approved by the board shall not exceed 2 years, except that the board shall permit part-time law enforcement officers to serve on a temporary or probationary basis without completing a program of law enforcement training approved by the board to a period not exceeding 6 years. For purposes of this section, a part-time law enforcement officer is a law enforcement officer who routinely works not more than one-half the normal annual work hours of a full-time employe of the employing agency or unit of government. Law enforcement training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

NOTE: The amendment to s. 165.85 (4) (b) 1 provides that preparatory training courses for law enforcement officers must include training on emergency detention procedures and standards under s. 51.15, emergency protective placement procedures and standards under s. 55.06 (11) and information on mental health and developmental disabilities agencies and other resources which may be available to assist the officer in interpreting the emergency detention and emergency protective placement standards, making an emergency detention or emergency protective placement and locating an appropriate facility for the emergency detention or emergency protective placement.

SECTION 24. 165.86 (2) (b) of the statutes is amended to read:

165.86 (2) (b) Organize a program of training, which shall encourage utilization of existing facilities and programs through cooperation with federal, state and local agencies and institutions presently active in this field. Priority shall be given to the establishment of the statewide preparatory training program described in sub. (1), but the department shall cooperate in the creation and operation of in-service, advanced and special courses, including courses relating to emergency detention of persons under s. 51.15 and emergency protective placement under s. 55.06 (11), which meet the curriculum standards recommended by the board. The department may satisfy the requirement for cooperating in the development of in-service courses relating to emergency detention and emergency protective placement by cooperating with county departments of community programs in the development of these courses under s. 51.42 (3) (ar) 4. d. The department shall keep appropriate records of all such training courses given in the state and the results thereof in terms of persons attending, agencies represented, and, where applicable, individual grades given.

NOTE: The amendment of s. 165.86 (2) (b) requires DOJ to cooperate in the development of in-service, advanced and special courses relating to emergency detention of persons under s. 51.15 and emergency protective placement of persons under s. 55.06 (11). DOJ may satisfy this requirement by cooperating with county departments of community programs in the development of in-service courses on emergency detention and emergency protective placement, as required under s. 51.42 (3) (ar) 4. d.

SECTION 25. 609.05 (3) of the statutes is amended to read:

609.05 (3) ~~A~~ Except as provided in s. 609.65, a health care plan under sub. (1) may require an enrolled participant to obtain a referral from the primary provider designated under sub. (2) to another selected provider prior to obtaining health care services from the other selected provider.

NOTE: The amendment of s. 609.05 (3) reflects the creation of s. 609.65 by this bill.

SECTION 26. 609.65 of the statutes is created to read:

**609.65 Coverage for court-ordered services for the mentally ill.** (1) If an enrolled participant of a health maintenance organization, limited service health organization or preferred provider plan is examined, evaluated or treated for a nervous or mental disorder pursuant to an emergency detention under s. 51.15, a commitment or a court order under s. 51.20 or 880.33 (4m), then, notwithstanding the limitations regarding selected providers, primary providers and referrals under ss. 609.01 (2) to (4) and 609.05 (3), the health maintenance organization, limited service health organization or preferred provider plan shall do all of the following:

(a) If the provider performing the examination, evaluation or treatment has a provider agreement with the health maintenance organization, limited service health organization or preferred provider plan which covers the provision of that service to the enrolled participant, make the service available to the enrolled participant in accordance with the terms of the health care plan and the provider agreement.

(b) If the provider performing the examination, evaluation or treatment does not have a provider agreement with the health maintenance organization, limited service health organization or preferred provider plan which covers the provision of that service to the enrolled participant, reimburse the provider for the examination, evaluation or treatment of the enrolled participant in an amount not to exceed the maximum reimbursement for the service under the medical assistance program under ss. 49.45 to 49.47, if any of the following applies:

1. The service is provided pursuant to a commitment or a court order, except that reimbursement is not required under this subdivision if the health maintenance organization, limited service health organization or preferred provider plan could have provided the service through a provider with whom it has a provider agreement.

2. The service is provided pursuant to an emergency detention under s. 51.15 or on an emergency basis to a person who is committed under s. 51.20 and the provider notifies the health maintenance organization, limited service health organization or preferred provider plan within 72 hours after the initial provision of the service.

(2) If after receiving notice under sub. (1) (b) 2 the health maintenance organization, limited service health organization or preferred provider plan arranges for services to be provided by a provider with whom it has a provider agreement, the health maintenance organization, limited service health organization or preferred provider plan is not required to reimburse a provider under sub. (1) (b) 2 for any services provided after arrangements are made under this subsection.

(3) A health maintenance organization, limited service health organization or preferred provider plan is only required to make available, or make reimbursement for, an examination, evaluation or treatment under sub. (1) to the extent that the health maintenance organization, limited service health organization or preferred provider plan would have made the medically necessary service available to the enrolled participant or reimbursed the provider for the service if any referrals required under s. 609.05 (3) had been made and the service had been performed by a provider selected by the health maintenance organization, limited service health organization or preferred provider plan.

NOTE [does not reflect Senate Amendment 1]: The creation of s. 609.65 requires a health maintenance organization, limited service health organization or preferred provider plan to make available, or make reimbursement for, examinations, evaluations or treatment of its enrolled participants who are examined, evaluated or treated pursuant to an emergency detention, a commitment or a court order in a commitment proceeding, or a court order in a proceeding for guardianship and protective services, regardless of whether there has been a referral from a primary provider. Under the bill:

1. If the examination, evaluation or treatment is performed by a provider with whom the organization or plan has a provider agreement covering the provision of the service to the enrolled participant, the organization or plan shall make the service available to the participant pursuant to the terms of the health care plan covering the participant and the agreement between the organization or plan and the provider; or

2. If the examination, evaluation or treatment is performed by a provider who does not have a provider agreement with the organization or plan, the organization or plan shall reimburse the provider for the examination, evaluation or treatment. For emergency services, the organization or plan is only required to make such reimbursement if it is notified within 72 hours after the initial provision of the service. If it then arranges for the service to be provided through its own providers, it is not required to make reimbursement for subsequent services. For nonemergency services, the organization or plan is not required to make reimbursement if it could have provided the service through its own provider arrangements.

These requirements only apply to the extent that the organization or plan would have provided the service to the participant if any required referrals from the primary provider had been obtained and the service had been performed by a provider selected by the organization or plan.

SECTION 27. 880.01 (7m) of the statutes is created to read:

880.01 (7m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in s. 51.01 (3g), a person is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alterna-

tives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the person.

NOTE: The creation of s. 880.01 (7m) adds a definition of "not competent to refuse psychotropic medication" to ch. 880. The definition is based on the definition of "not competent to refuse medication" in s. 51.61 (1) (g).

SECTION 28. 880.07 (1m) of the statutes is created to read:

880.07 (1m) If the petition under sub. (1) alleges that the person is not competent to refuse psychotropic medication, the petition shall allege all of the following:

(a) That the person is likely to respond positively to psychotropic medication.

(b) That as a result of the person's failure to take medication the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community under this paragraph.

(c) That unless protective services, including medication, are provided the person will incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others.

(d) That the person has attained the age of 18 years.

NOTE: The creation of s. 880.07 (1m) by this bill adds new standards for the appointment of a guardian for the purpose of consenting to psychotropic medication.

Under current law, all petitions for guardianship must allege incompetency, spendthrift habits or the minority of the proposed ward. Under the bill, when incompetency to refuse psychotropic medication due to chronic mental illness is alleged, the petition must also allege that:

1. The person has a history of responding positively to psychotropic medication;

2. As a result of the person's failure to take medication, the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community;

3. Unless protective services, including medication, are provided, the person will incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others; and

4. The person has attained the age of 18 years.

SECTION 29. 880.07 (2) of the statutes is amended to read:

880.07 (2) A petition for guardianship may also include an application for protective placement ~~pursuant to~~ or protective services or both under ch. 55.

NOTE: The amendment of s. 880.07 (2) clarifies that a petition for guardianship may include a petition for protective services, in addition to or in place of a petition for protective placement, under ch. 55.

SECTION 30. 880.33 (1) of the statutes is amended to read:

880.33 (1) Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. A copy of ~~such~~ the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

NOTE: Under current law, a licensed physician or licensed psychologist, or both, is required to examine the person alleged to be incompetent and to furnish a written report to the court, the person, the guardian ad litem and the person's legal counsel, if any. The person has no right to a warning that his or her statements may be used as a basis of a finding of incompetency, nor does the person have the right to remain silent during the examination.

Under the bill, prior to the examination of a person alleged to be not competent to refuse psychotropic medication, the person shall be informed that his or her statements during the examination may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication, and that he or she has a right to remain silent during the examination. This warning establishes a presumption that the person understands that he or she need not speak to the examiner. These provisions are based on similar provisions of ch. 51, relating to civil commitment.

SECTION 31. 880.33 (2) (a) 1 of the statutes is amended to read:

880.33 (2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.096 (3) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psy-

chologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

NOTE: The amendment of s. 880.33 (2) (a) 1 specifies that a court shall, in all cases, require that the subject of a petition for guardianship for the purpose of court-ordered medication be represented by full legal counsel and requires the subject of such proceedings to request a jury trial at least 48 hours prior to the time set for the hearing.

Also, see s. 880.33 (2) (d), as created by this bill, relating to delaying the hearing for up to 14 days from the date of a demand for a jury trial.

SECTION 32. 880.33 (2) (d) and (e) of the statutes are created to read:

880.33 (2) (d) The hearing on a petition which contains allegations under s. 880.07 (1m) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by a court under s. 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under s. 880.33 (4m) has the effect of filing a petition under s. 880.07 (1m).

(e) Every hearing on a petition under s. 880.07 (1m) shall be open, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

NOTE: Section 880.33 (2) (d), created by this bill, specifies that whenever a petition for guardianship for the purpose of court-ordered medication is filed or a civil commitment proceeding is converted to a proceeding for guardianship for the purposes of court-ordered medication a hearing in the guardianship proceeding shall be held within 30 days of either the filing of the petition or the conversion. If a jury trial is demanded, the hearing date may be delayed for up to 14 days after the date of the demand for a jury trial or 30 days after the filing of the petition, whichever is later.

Section 880.33 (2) (e), created by this bill, specifies that every hearing on a petition for a guardianship for the purposes of court-ordered medication shall be open, unless a closed hearing is requested by the proposed ward or his or her attorney with the ward's consent. This provision is similar to s. 51.20 (12), relating to civil commitment hearings.

SECTION 33. 880.33 (4m) of the statutes is created to read:

880.33 (4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1, and approve, disapprove or modify the plan.

3. Order protective services under ch. 55.

4. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

NOTE: Section 880.33 (4m), as created by this bill, requires the court to appoint a guardian for a person if it finds, after hearing, that the person is not competent to refuse psychotropic medication and that the allegations in the petition under s. 880.07 (1m) are proven by clear and convincing evidence. The guardian has the power to consent to or refuse psychotropic medication on behalf of the person as provided in the court order.

Under s. 880.33 (4m) (b), whenever the court makes a finding of incompetency to refuse psychotropic medication and appoints a guardian, the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive; review the plan submitted by the county department, and either approve, disapprove or modify the plan; order protective services under ch. 55; and order the appropriate county department to ensure that protective services are provided to the person in accordance with the approved treatment plan.

SECTION 34. 880.34 (6) of the statutes is created to read:

880.34 (6) (a) If the court appoints a guardian under s. 880.33 (4m) (a), the court shall do all of the following:

1. Order the county department responsible for ensuring that the person receives appropriate protective services to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication under ch. 55 in effect on the effective date of this subdivision .... [revisor inserts date], shall be reviewed within one year after the effective date of this subdivision .... [revisor inserts date], and annually thereafter. The evaluation shall include recommendations for discharge or changes in the treatment plan or services, if appropriate.

2. Annually, appoint a guardian ad litem to meet with the person and to review the evaluations under subd. 1. The guardian ad litem shall inform the person and the guardian of all of the following:

a. The person's right to representation by full legal counsel under par. (b).

b. The right to an independent evaluation under par. (d) of the person's need for a guardian for the

purpose of consenting to or refusing medication and need for and appropriateness of the current treatment or services.

c. The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing medication and protective services and the need for and appropriateness of the current treatment or services.

(b) The court shall ensure that the person is represented by full legal counsel if requested by the person, the guardian or the guardian ad litem.

(c) The guardian ad litem shall file with the court a written report stating the guardian ad litem's conclusions with respect to all of the following:

1. Whether an independent evaluation should be conducted under par. (d).

2. Whether the person continues to be a proper subject for guardianship and protective services.

3. Whether a change in the treatment plan or services is warranted.

4. Whether the person or the guardian requests a change in status, treatment plan or services.

5. Whether a hearing should be held on the continued need for guardianship and protective services.

(d) Following review of the evaluation under par. (a) 1 and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship and protective services or the appropriateness of the treatment plan or protective services, if requested by the person, the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

(e) The court shall order a hearing under this subsection upon request of the person, the guardian, the guardian ad litem or any interested person. The court may hold a hearing under this subsection on its own motion.

(f) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court:

1. Order continuation of the guardianship and protective services order, without modification.

2. Order continuation of the guardianship, with modification of the protective services order.

3. Terminate the guardianship and protective services order.

NOTE: Section 880.34 (6), created by this bill, establishes a procedure for an annual review of the status of a person under a guardianship and protective services order under s. 880.33 (4m). The review, performed by the county department responsible for ensuring that the person receives protective services, shall occur at least once every 12 months from the date of appointment. Guardianship and protective services orders for psychotropic medication in effect on the effective date of the bill shall be reviewed within one year after the effective date of the bill. The review shall include recommendations for termination of the guardianship or, if continued, any recommendations for treatment plan changes, if appropriate.

Under s. 880.34 (6), a guardian ad litem must be appointed for the person at the time of review. The guardian ad litem has the responsibility to inform the person of his or her rights in the review process, which include the right to presentation by full legal counsel, if requested; the right to an independent evaluation; and the right to a hearing for review of the guardianship and protective services order. The guardian ad litem shall also file a written report with the court with a recommendation as to the continued appropriateness of the guardianship and protective services order.

A hearing for review of the guardianship and protective services order may be held if requested by the person subject to the guardianship, the limited guardian, the guardian ad litem or any interested person, or upon the court's own motion. After a hearing or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court, the court shall order continuation of the guardianship, without modification; order continuation of the guardianship, with modification; or terminate the guardianship.

SECTION 35. 880.39 of the statutes is created to read:

**880.39 Guardianship of person; exemption from civil liability.** Any guardian of the person is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

NOTE: Section 880.39, created by this bill, codifies the standard of performance applicable to guardians of the person articulated by the Wisconsin Supreme Court in *In re Guardianship of Bose*, 39 Wis. 2d 80, 158 N.W. 2d 337 (1968). The bill provides an exemption from civil liability for acts or omissions of a guardian of the person (as opposed to a guardian of the estate) which are in compliance with this standard of performance.

SECTION 36. **Nonstatutory provisions; health and social services.** (1) The department of health and social services shall study the implementation and continuing operation of crisis intervention services by county departments under section 51.42 of the statutes. The study shall include an examination of all of the following:

(a) The amount of county, state and federal funds available for crisis intervention services since July 1, 1984.

(b) The types of crisis intervention services for which the counties have used the funds.

(c) The number of persons served annually by crisis intervention services in each county.

(d) The estimated cost, per county, of expanding crisis intervention services to meet the estimated need in the county.

(2) The department of health and social services shall submit a report of the findings of the study under subsection (1) to the chief clerk of each house of the legislature, for distribution to the members of the appropriate standing committees in each house, not later than January 1, 1989.

NOTE: The nonstatutory provision created by this bill that requires DHSS to conduct a study of the implementation and

continuing operation of crisis intervention services by the county departments.

SECTION 37. **Initial applicability.** (1) The treatment of sections 51.10 (6) and 51.20 (7) (c) and (8) (bg), (bm) and (br) of the statutes first applies to settlement agreements filed on the effective date of this subsection.

(2) The treatment of sections 51.15 (1) (a) 3 and 4 and (11) and 51.20 (1) (a) 2. c and d and (1m) of the statutes first applies to emergency detentions initiated, under section 51.15 of the statutes, on the effective date of this subsection and to commitment proceedings in which an application for an extension of a commitment is made, under section 51.20 (1) or (13) (g) 3 of the statutes, on the effective date of this subsection.

(3) The treatment of sections 51.20 (7) (d), 51.67, 55.05 (2) (d), 880.01 (7m), 880.07 (1m) and (2) and 880.33 (1), (2) (a) 1, (d) and (e) and (4m) of the statutes first applies to petitions filed under chapter 51 of the statutes and petitions filed under section 880.07 (1m) of the statutes on the effective date of this subsection.

(4) The treatment of sections 51.20 (8) (a) and (c) and 51.61 (1) (g) of the statutes first applies to commitment proceedings in which the petition for commitment is filed or the emergency detention occurs on the first day of the 4th month after the effective date of this subsection.

(5) The treatment of section 51.20 (13) (g) 2r of the statutes first applies to commitments which expire on the first day of the 3rd month beginning after the effective date of this subsection.

(6) The treatment of section 51.35 (1) (e), (4m) and (5) of the statutes first applies to transfers or discharges occurring on the effective date of this subsection.

(7) The treatment of section 55.06 (11) (a) of the statutes first applies to emergency protective placements initiated on the effective date of this subsection.

(8) The treatment of section 165.85 (4) (b) 1 of the statutes first applies to law enforcement officer training that is provided on the first day of the 6th month after the effective date of this subsection.

(9) The treatment of sections 609.05 (3) and 609.65 of the statutes first applies to examinations, evaluations or treatment provided under a health care plan first issued or renewed on the first day of the 2nd month beginning after the effective date of this subsection.

(10) The treatment of section 880.34 (6) of the statutes first applies to orders for guardianships and protective services, including psychotropic medication issued under chapter 55 of the statutes, which are in effect on the effective date of this subsection.

(11) The treatment of section 880.39 of the statutes first applies to acts or omissions occurring on the effective date of this subsection.

SECTION 38. **Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 51.15 (11m), 51.42 (3) (ar) 4. d and 165.86 (2) (b) of the statutes takes effect on the first day of the 6th month beginning after publication.