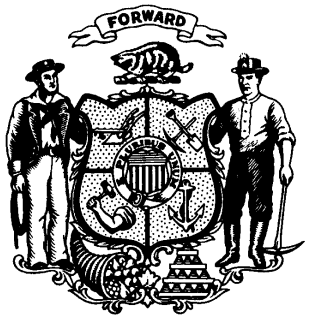
State of Wisconsin



Date of enactment: **March 7, 2018**
2017 Assembly Bill 538 Date of publication*: **March 8, 2018**

2017 WISCONSIN ACT 140

AN ACT ***to renumber and amend*** 51.15 (2); ***to amend*** 48.207 (1) (h), 48.207 (1m) (d), 51.15 (2) (title), 51.15 (4m) (c), 51.15 (5), 51.15 (11), 51.15 (11g), 51.20 (16) (e), 322.0767 (1) (e), 322.0767 (1) (f), 938.207 (1) (h), 971.14 (6) (b) and 971.17 (3) (e); and ***to create*** 51.15 (2) (b), 51.17 and 146.816 (2) (b) 4. of the statutes; **relating to:** transfer for emergency detention and warning of dangerousness.

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

SECTION 1. 48.207 (1) (h) of the statutes is amended to read:

48.207 **(1)** (h) A place ~~listed~~ specified in s. 51.15 (2) (d) if the child is held under s. 48.20 (5).

SECTION 2. 48.207 (1m) (d) of the statutes is amended to read:

48.207 **(1m)** (d) A place ~~listed~~ specified in s. 51.15 (2) (d) if the adult expectant mother is held under s. 48.203 (4).

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

51.15 **(2)** (title) FACILITIES FOR DETENTION; TRANSPORT; APPROVAL.

SECTION 4. 51.15 (2) of the statutes is renumbered 51.15 (2) (a) and amended to read:

51.15 **(2)** (a) ~~The~~ Subject to par. (b), the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall transport the individual, or cause him or her to be transported, for detention, if the county department of community programs in the county in which the individual was taken into custody approves the need for detention, and for evaluation, diagnosis, and treatment if permitted under sub. (8).

(c) The county department may approve the detention only if a physician who has completed a residency in psychiatry, a psychologist licensed under ch. 455, or a mental health professional, as determined by the department, has performed a crisis assessment on the individual and agrees with the need for detention and the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove the substantial probability of physical harm, impairment, or injury to himself, herself, or others. For purposes of this ~~subsection~~ paragraph, a crisis assessment may be conducted in person, by telephone, or by telemedicine or video conferencing technology.

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

SECTION 5. 51.15 (2) (b) of the statutes is created to read:

51.15 **(2)** (b) If an individual is in a hospital's emergency department, the law enforcement officer or other

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

person as described under par. (a) may not transport the individual for detention until a hospital employee or medical staff member who is treating the individual determines that the transfer of the individual to the detention facility is medically appropriate and communicates that determination to the law enforcement officer or other person.

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

51.15 **(4m)** (c) *Facilities for detention.* The treatment director or treatment director designee shall transport the individual, or cause him or her to be transported, for detention to any of the facilities described in sub. (2) (d) and shall approve evaluation, diagnosis, and treatment if permitted under sub. (8).

SECTION 7. 51.15 (5) of the statutes is amended to read:

51.15 **(5)** DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 750,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention that shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The statement of emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) (d) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.135, the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours after the individual is taken into custody for the purposes of emergency detention, exclusive of Saturdays, Sundays, and legal holidays.

SECTION 8. 51.15 (11) of the statutes is amended to read:

51.15 **(11)** LIABILITY. Any individual who acts in accordance with this section, including making a determination that an individual has or does not have mental illness or evidences or does not evidence a substantial probability of harm under sub. (1) (ar) 1., 2., 3., or 4. or a determination under sub. (2) (b) that the transfer of an individual is medically appropriate, is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that the individual who acts 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.

SECTION 9. 51.15 (11g) of the statutes is amended to read:

51.15 **(11g)** OTHER LIABILITY. Subsection (11) applies to a director of a facility, as specified in sub. (2) (d), or his or her designee, who under a court order evaluates, diagnoses or treats an individual who is confined in a jail, if the individual consents to the evaluation, diagnosis or treatment.

SECTION 10. 51.17 of the statutes is created to read:

51.17 Warning of dangerousness. (1) DEFINITION. In this section, "health care provider" has the meaning given in s. 146.81 (1).

(2) AUTHORIZATION. Any health care provider, as permitted by s. 146.816 (2) (b) 4., and any law enforcement officer may make a disclosure of information evidencing that an individual poses a substantial probability of serious bodily harm to any other person in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

(3) DUTY; HEALTH CARE PROVIDERS. (a) Any health care provider that reasonably believes an individual has a substantial probability of harm to himself or herself or to another person under s. 51.15 (1) (ar) 1., 2., 3., or 4. fulfills any duty to warn a 3rd party by doing any of the following:

1. Contacting a law enforcement officer regarding the individual and disclosing knowledge of potential evidence of a substantial probability of harm under s. 51.15 (1) (ar) 1., 2., 3., or 4.

2. Contacting the county department that the health care provider reasonably believes is responsible for approving the need for emergency detention of the individual under s. 51.15 (2) and disclosing knowledge of potential evidence of a substantial probability of harm under s. 51.15 (1) (ar) 1., 2., 3., or 4.

3. If the health care provider is an agent of the county department that is responsible for approving the need for emergency detention under s. 51.15 (2) and is authorized by that county department to approve or disapprove the need for emergency detention under s. 51.15 (2), approving the emergency detention of the individual.

4. Taking any other action that a reasonable health care provider would consider as fulfilling the duty to warn a 3rd party of substantial probability of harm.

(b) If an individual is not in custody of a facility under s. 51.15 (3) and is not voluntarily admitted to a inpatient psychiatric unit, a health care provider that takes any of the actions under par. (a) has no further duty to any person to seek involuntary treatment, emergency detention, emergency stabilization, or commitment of the individ-

ual; to physically restrain or isolate the individual; to prevent the individual from leaving the hospital; or to provide treatment or medication without the individual's consent.

(4) LIABILITY. Any person or health care provider that acts in accordance with this section is not civilly or criminally liable for actions taken in good faith. The good faith of the actor shall be presumed in a civil action. Whoever asserts that the individual who acts in accordance has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory, and convincing.

SECTION 11. 51.20 (16) (e) of the statutes is amended to read:

51.20 **(16)** (e) If the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (9) (a). For the purposes of the examination and observation, the court may order the patient confined in any place designated in s. 51.15 (2) (d).

SECTION 12. 146.816 (2) (b) 4. of the statutes is created to read:

146.816 **(2)** (b) 4. For purposes of disclosing information about a patient in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

SECTION 13. 322.0767 (1) (e) of the statutes is amended to read:

322.0767 **(1)** (e) If the court−martial determines under par. (a) or (d) that the person is not likely to become competent to proceed, the court−martial may order that the person be delivered to a facility under s. 51.15 (2) (d), an approved public treatment facility under s. 51.45 (2), or an appropriate medical or protective placement facility.

SECTION 14. 322.0767 (1) (f) of the statutes is amended to read:

322.0767 **(1)** (f) If the person is discharged from the military forces while subject to a commitment order under par. (a), the court−martial shall suspend or terminate the commitment order and may order that the person be delivered to a facility under s. 51.15 (2) (d), an approved public treatment facility under s. 51.45 (2), or an appropriate medical or protective placement facility.

SECTION 15. 938.207 (1) (h) of the statutes is amended to read:

938.207 **(1)** (h) A place ~~listed~~ specified in s. 51.15 (2) (d) if the juvenile is held under s. 938.20 (5).

SECTION 16. 971.14 (6) (b) of the statutes is amended to read:

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

SECTION 17. 971.17 (3) (e) of the statutes is amended to read:

971.17 **(3)** (e) An order for conditional release places the person in the custody and control of the department of health services. A conditionally released person is subject to the conditions set by the court and to the rules of the department of health services. Before a person is conditionally released by the court under this subsection, the court shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal department or county sheriff submits to the court a written statement waiving the right to be notified. If the department of health services alleges that a released person has violated any condition or rule, or that the safety of the person or others requires that conditional release be revoked, he or she may be taken into custody under the rules of the department. The department of health services shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays, and legal holidays. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department of health services may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2) (d). The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of the person

or others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution under s. 51.37 (3) until the expiration of the commitment or until again conditionally released under this section.