



2003 SENATE BILL 387

January 14, 2004 - Introduced by Senators ROESSLER, A. LASEE and COWLES, cosponsored by Representatives JENSEN, HUNDERTMARK, LADWIG, KRAWCZYK, HINES, GUNDERSON, F. LASEE, WASSERMAN, TOWNSEND, SERATTI, PETROWSKI and TAYLOR. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT to repeal** 51.13 (1) (b) and 51.13 (1) (c) 2.; and **to amend** 51.13 (1) (a),
2 51.13 (1) (b), 51.13 (1) (c) 1., 51.13 (1) (c) 3., 51.13 (2) (a), 51.13 (2) (b), 51.13 (2)
3 (d), 51.13 (3) (b), 51.13 (3) (c), 51.13 (4) (d), 51.13 (4) (g) (intro.), 51.13 (4) (g) 1.,
4 51.13 (6) (a), 51.13 (7) (title), 51.13 (7) (a), 51.13 (7) (b), 51.13 (7) (c), 51.14 (3)
5 (a), 51.20 (16) (a), 51.30 (5) (a), 51.30 (5) (b) 1., 51.30 (5) (b) 2., 51.35 (3) (a), 51.35
6 (3) (b), 51.35 (3) (g) and 51.61 (6) of the statutes; **relating to:** eliminating the
7 distinction between a minor under 14 years of age and a minor 14 years of age
8 or older with regard to informed consent for treatment for mental illness,
9 transfer, discharge, and access to records.

Analysis by the Legislative Reference Bureau

Currently, the mental health laws distinguish between minors under 14 years of age and minors 14 years of age or older with regard to giving informed consent for outpatient treatment for mental illness or developmental disability; voluntary admission to and discharge from an inpatient facility for treatment and rehabilitation of mental illness or developmental disability; reexamination under, or modification or cancellation of, an involuntary commitment order for treatment for mental illness or developmental disability; transfer from a juvenile secured

SENATE BILL 387

correctional facility to an inpatient facility for treatment for mental illness or developmental disability; access and consent to the release of court records and treatment records; and informed consent for medication and treatment. No distinction exists between a minor under 14 years of age and a minor 14 years of age or older with regard to treatment for alcoholism or drug abuse. This bill eliminates the distinction between a minor under 14 years of age and a minor 14 years of age or older with regard to treatment for mental illness under the mental health laws.

Specifically, under current law, subject to certain exceptions, before a minor 14 years of age or older may receive outpatient treatment or general medication and treatment for mental illness or developmental disability, the written, informed consent of both the minor and the minor's parent or guardian is required. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, provide his or her written, informed consent, in addition to that of his or her parent or guardian, before he or she may receive outpatient treatment or general medication and treatment for mental illness.

Under current law, subject to certain exceptions, before a minor 14 years of age or older may be admitted voluntarily to an inpatient facility for treatment for mental illness or developmental disability, both the minor and the minor's parent who has legal custody of the minor or the minor's guardian must execute an application for voluntary admission to the facility. This bill eliminates the requirement that a minor 14 years of age or older execute the application for voluntary admission to an inpatient facility, along with his or her parent or guardian, before the minor may be admitted to the facility for treatment of mental illness.

Under current law, if a minor 14 years of age or older wishes to be admitted to an inpatient facility, but the minor's parent who has legal custody of the minor or the minor's guardian refuses to execute the application for admission or cannot be found, the minor may petition the court assigned to exercise jurisdiction under the children's code (juvenile court) for approval of the admission. This bill permits a minor under 14 years of age to petition the juvenile court for approval of his or her admission to an inpatient facility if the minor's parent or guardian refuses to execute the application for admission or cannot be found.

Under current law, a minor 14 years of age or older who is voluntarily admitted to an inpatient facility for treatment for mental illness or developmental disability may request that he or she be discharged from the facility and, subject to certain exceptions, must be discharged within 48 hours after submission of the request. A minor under 14 years of age, however, may be discharged on his or her request only after a hearing before the juvenile court to determine the continued appropriateness of the admission. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, who has been voluntarily admitted to an inpatient facility for treatment of mental illness be discharged within 48 hours after his or her request and instead requires the juvenile court to hold a hearing on such a request to determine the continued appropriateness of the admission, as is the case for minors under 14 years of age under current law. The bill retains the requirement

SENATE BILL 387

for discharge from an inpatient facility of a requesting minor 14 years of age or older who was voluntarily admitted for treatment of developmental disability.

Under current law, a minor 14 years of age or older who has been involuntarily committed for treatment for mental illness or developmental disability may, on his or her own petition or on the petition of a guardian, relative, friend, or person providing treatment under the commitment order, petition the juvenile court for an order that his or her mental condition be reexamined or for an order modifying or canceling his or her commitment. This bill eliminates the right of a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the admission application or cannot be found, to file his or her own petition for such a reexamination, modification, or cancellation of the minor's treatment for mental illness.

Under current law, a minor may be transferred from a juvenile secured correctional facility to an inpatient facility for treatment for mental illness or developmental disability if the juvenile court finds that the transfer is appropriate and consistent with the needs of the minor and, if the minor is 14 years of age or older, that the transfer is voluntary on the part of the minor. This bill eliminates the requirement that a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found, consent to being transferred from a juvenile correctional facility to an inpatient facility for treatment for mental illness. Under the bill, only the minor's parent or guardian need consent, as is the case for minors under 14 years of age under current law.

Under current law, a minor 14 years of age or older may have access to his or her court records and treatment records for treatment for mental illness or developmental disability on the same basis as an adult, but a minor under 14 years of age may have access to his or her court records only in the presence of his or her parent, guardian, counsel, or guardian ad litem or a judge and may have access to his or her treatment records only in the presence of his or her parent, guardian, counsel, or guardian ad litem or a staff member of the treatment facility. This bill limits access by a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found and except for a voluntarily admitted developmentally disabled minor, to his or her court records or treatment records except in the presence of a person whose presence is required under current law for a minor under 14 years of age.

Under current law, subject to certain exceptions, confidential information in the court records or treatment records for treatment for mental illness or developmental disability of a minor 14 years of age or older may be released on the consent of the minor without the consent of the minor's parent or guardian or a person in place of a parent. This bill eliminates the right of a minor 14 years of age or older, except for a minor whose parent or guardian refuses to execute the application for admission or cannot be found, to consent to the release of confidential information in his or her court records or treatment records for treatment for mental illness without the consent of his or her parent or guardian or a person in place of a parent.

SENATE BILL 387

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 51.13 (1) (a) of the statutes is amended to read:

2 51.13 (1) (a) Except as provided in par. (c) and s. 51.45 (2m), the application for
3 voluntary admission of a minor who is 14 years of age or older to an approved
4 inpatient treatment facility for the primary purpose of treatment for mental illness,
5 alcoholism, or drug abuse and the application for voluntary admission of a minor who
6 is under 14 years of age to an approved inpatient treatment facility for the primary
7 purpose of treatment for mental illness, developmental disability, alcoholism, or
8 drug abuse shall be executed by a parent who has legal custody of the minor or the
9 minor's guardian. Any statement or conduct by a minor who is the subject of an
10 application for voluntary admission under this paragraph indicating that the minor
11 does not agree to admission to the facility shall be noted on the face of the application
12 and shall be noted in the petition required by sub. (4).

13 **SECTION 2.** 51.13 (1) (b) of the statutes is amended to read:

14 51.13 (1) (b) The application for voluntary admission of a minor who is 14 years
15 of age or older to an approved inpatient treatment facility for the primary purpose
16 of treatment for ~~mental illness or~~ developmental disability shall be executed by the
17 minor and a parent who has legal custody of the minor or the minor's guardian,
18 except as provided in par. (c) 1.

19 **SECTION 3.** 51.13 (1) (c) 1. of the statutes is amended to read:

20 51.13 (1) (c) 1. If a minor ~~14 years of age or older~~ wishes to be admitted to an
21 approved inpatient treatment facility but a parent with legal custody or the guardian

SENATE BILL 387

1 refuses to execute the application for admission or cannot be found, or if there is no
2 parent with legal custody, the minor or a person acting on the minor's behalf may
3 petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the
4 county of residence of the parent or guardian for approval of the admission. A copy
5 of the petition and a notice of hearing shall be served upon the parent or guardian
6 at his or her last-known address. If, after a hearing, the court determines that the
7 consent of the parent or guardian is being unreasonably withheld, that the parent
8 or guardian cannot be found, or that there is no parent with legal custody, and that
9 the admission is proper under the standards prescribed in sub. (4) (d), the court shall
10 approve the minor's admission without the consent of the parent or guardian.

11 **SECTION 4.** 51.13 (1) (c) 2. of the statutes is repealed.

12 **SECTION 5.** 51.13 (1) (c) 3. of the statutes is amended to read:

13 51.13 (1) (c) 3. The court may, at the minor's request, temporarily approve the
14 admission pending hearing on the petition. If a hearing is held under subd. 1. ~~or 2.~~,
15 no review or hearing under sub. (4) is required.

16 **SECTION 6.** 51.13 (2) (a) of the statutes is amended to read:

17 51.13 (2) (a) A minor may be admitted to an inpatient treatment facility
18 without complying with the requirements of this section if the admission does not
19 involve the department or a county department under s. 51.42 or 51.437, or a contract
20 between a treatment facility and the department or a county department. The
21 application for voluntary admission of a minor who is 14 years of age or older to an
22 inpatient treatment facility for the primary purpose of treatment for mental illness,
23 alcoholism, or drug abuse and the application for voluntary admission of a minor who
24 is under 14 years of age to an inpatient treatment facility for the primary purpose
25 of treatment for mental illness, developmental disability, alcoholism, or drug abuse

SENATE BILL 387**SECTION 6**

1 shall be executed by a parent who has legal custody of the minor or by the minor's
2 guardian. The application for voluntary admission of a minor who is 14 years of age
3 or older to an inpatient treatment facility for the primary purpose of treatment for
4 ~~mental illness or developmental disability~~ shall be executed by the minor and a
5 parent who has legal custody of the minor or the minor's guardian.

6 **SECTION 7.** 51.13 (2) (b) of the statutes is amended to read:

7 51.13 (2) (b) Notwithstanding par. (a), any minor who is 14 years of age or older
8 and who is admitted to an inpatient treatment facility for the primary purpose of
9 treatment of ~~mental illness or developmental disability~~ has the right to be
10 discharged within 48 hours after his or her request, as provided in sub. (7) (b). At
11 the time of admission, any minor who is 14 years of age or older and who is admitted
12 to an inpatient treatment facility for the primary purpose of treatment for ~~mental~~
13 ~~illness or developmental disability~~, and the minor's parent or guardian, shall be
14 informed of this right orally and in writing by the director of the hospital or such
15 person's designee. This paragraph does not apply to individuals who receive services
16 in hospital emergency rooms.

17 **SECTION 8.** 51.13 (2) (d) of the statutes is amended to read:

18 51.13 (2) (d) Writing materials for use in requesting a discharge shall be made
19 available at all times to all minors who are 14 years of age or older and who are
20 admitted under this subsection for the primary purpose of treatment for ~~mental~~
21 ~~illness or developmental disability~~. The staff of the facility shall assist such minors
22 in preparing or submitting requests for discharge.

23 **SECTION 9.** 51.13 (3) (b) of the statutes is amended to read:

24 51.13 (3) (b) A minor 14 years of age or older who has been admitted to an
25 inpatient treatment facility for the primary purpose of treatment for ~~mental illness~~

SENATE BILL 387

1 or developmental disability, a minor who is voluntarily admitted under sub. (1) (c)
2 1. ~~or 2.~~, and the minor's parent or guardian shall also be informed by the director or
3 his or her designee, both orally and in writing, in easily understandable language,
4 of the minor's right to request discharge and to be discharged within 48 hours of the
5 request if no petition or statement is filed for emergency detention, emergency
6 commitment, involuntary commitment, or protective placement, and the minor's
7 right to consent to or refuse treatment as provided in s. 51.61 (6).

8 **SECTION 10.** 51.13 (3) (c) of the statutes is amended to read:

9 51.13 (3) (c) A minor 14 years of age or older, other than a minor specified under
10 par. (b), who has been admitted to an inpatient facility for the primary purpose of
11 treatment for mental illness, alcoholism, or drug abuse, a minor under 14 years of
12 age who has been admitted to an inpatient treatment facility for the primary purpose
13 of treatment for mental illness, developmental disability, alcoholism, or drug abuse,
14 and the minor's parent or guardian shall also be informed by the director or his or
15 her designee, both orally and in writing, in easily understandable language, of the
16 right of the parent or guardian to request the minor's discharge as provided in sub.
17 (7) (b) and of the minor's right to a hearing to determine continued appropriateness
18 of the admission as provided in sub. (7) (c).

19 **SECTION 11.** 51.13 (4) (d) of the statutes is amended to read:

20 51.13 (4) (d) Within 5 days after the filing of the petition, the court assigned
21 to exercise jurisdiction under chs. 48 and 938 shall determine, based on the
22 allegations of the petition and accompanying documents, whether there is a prima
23 facie showing that the minor is in need of psychiatric services, or services for
24 developmental disability, alcoholism, or drug abuse, that the treatment facility offers
25 inpatient therapy or treatment that is appropriate to the minor's needs and that

SENATE BILL 387**SECTION 11**

1 inpatient care in the treatment facility is the least restrictive therapy or treatment
2 consistent with the needs of the minor, and, if the minor is 14 years of age or older
3 and has been admitted to the treatment facility for the primary purpose of treatment
4 for ~~mental illness or developmental disability~~, whether the admission is voluntary
5 on the part of the minor. If such a showing is made, the court shall permit voluntary
6 admission. If the court is unable to make those determinations based on the petition
7 and accompanying documents, the court may dismiss the petition as provided in par.
8 (h); order additional information to be produced as necessary for the court to make
9 those determinations within 14 days after admission or application for admission,
10 whichever is sooner; or hold a hearing within 14 days after admission or application
11 for admission, whichever is sooner. If a notation of the minor's unwillingness
12 appears on the face of the petition, or if a hearing has been requested by the minor
13 or by the minor's counsel, parent, or guardian, the court shall hold a hearing to
14 review the admission within 14 days after admission or application for admission,
15 whichever is sooner, and shall appoint counsel to represent the minor if the minor
16 is unrepresented. If the court considers it necessary, the court shall also appoint a
17 guardian ad litem to represent the minor.

18 **SECTION 12.** 51.13 (4) (g) (intro.) of the statutes is amended to read:

19 51.13 (4) (g) (intro.) If the court finds that the minor is in need of psychiatric
20 services or services for developmental disability, alcoholism, or drug abuse in an
21 inpatient facility, that the inpatient facility to which the minor is admitted offers
22 therapy or treatment that is appropriate for the minor's needs and that is the least
23 restrictive therapy or treatment consistent with the minor's needs, and, in the case
24 of a minor 14 years of age or older who is being admitted for the primary purpose of
25 treatment for ~~mental illness or developmental disability~~, that the application is

SENATE BILL 387

1 voluntary on the part of the minor, the court shall permit voluntary admission. If the
2 court finds that the therapy or treatment in the inpatient facility to which the minor
3 is admitted is not appropriate or is not the least restrictive therapy or treatment
4 consistent with the minor's needs, the court may order placement in or transfer to
5 another more appropriate or less restrictive inpatient facility, except that the court
6 may not permit or order placement in or transfer to the northern or southern centers
7 for the developmentally disabled of a minor unless the department gives approval
8 for the placement or transfer, and if the order of the court is approved by all of the
9 following if applicable:

10 **SECTION 13.** 51.13 (4) (g) 1. of the statutes is amended to read:

11 51.13 (4) (g) 1. The minor if he or she is 14 years of age or older and is being
12 admitted for the primary purpose of treatment for ~~mental illness or~~ developmental
13 disability.

14 **SECTION 14.** 51.13 (6) (a) of the statutes is amended to read:

15 51.13 (6) (a) A minor may be admitted to an inpatient treatment facility
16 without review of the application under sub. (4) for diagnosis and evaluation or for
17 dental, medical, or psychiatric services for a period not to exceed 12 days. The
18 application for short-term admission of a minor shall be executed by the minor's
19 parent or guardian, and, if the minor is 14 years of age or older and is being admitted
20 for the primary purpose of diagnosis, evaluation, or services for ~~mental illness or~~
21 developmental disability, by the minor. A minor may not be readmitted to an
22 inpatient treatment facility for psychiatric services under this paragraph within 120
23 days of a previous admission under this paragraph.

24 **SECTION 15.** 51.13 (7) (title) of the statutes is amended to read:

25 51.13 (7) (title) DISCHARGE OR CONTINUED APPROPRIATENESS OF ADMISSION.

SENATE BILL 387**SECTION 16**

1 **SECTION 16.** 51.13 (7) (a) of the statutes is amended to read:

2 51.13 (7) (a) If a minor is admitted to an inpatient treatment facility while
3 under 14 years of age, and if upon reaching age 14 is in need of further inpatient care
4 and treatment primarily for ~~mental illness or~~ developmental disability, the director
5 of the facility shall request the minor and the minor's parent or guardian to execute
6 an application for voluntary admission. Such an application may be executed within
7 30 days prior to a minor's 14th birthday. If the application is executed, a petition for
8 review shall be filed in the manner prescribed in sub. (4), unless such a review has
9 been held within the last 120 days. If the application is not executed by the time of
10 the minor's 14th birthday, the minor shall be discharged unless a petition or
11 statement is filed for emergency detention, emergency commitment, involuntary
12 commitment, or protective placement by the end of the next day in which the court
13 transacts business.

14 **SECTION 17.** 51.13 (7) (b) of the statutes is amended to read:

15 51.13 (7) (b) Any minor 14 years of age or older who is voluntarily admitted
16 under this section for the primary purpose of treatment for ~~mental illness or~~
17 ~~developmental disability~~, and any minor who is voluntarily admitted under sub. (1)
18 (c) 1. ~~or 2.~~, may request discharge in writing. ~~In the case of a minor 14 years of age~~
19 ~~or older who is voluntarily admitted under this section for the primary purpose of~~
20 ~~treatment for alcoholism or drug abuse or a minor under 14 years of age who is~~
21 ~~voluntarily admitted under this section for the primary purpose of treatment for~~
22 ~~mental illness, developmental disability, alcoholism, or drug abuse~~ For all other
23 minors who are voluntarily admitted under this section, the parent or guardian of
24 the minor may make the request. Upon receipt of any form of written request for
25 discharge from a minor who is voluntarily admitted under this section for the

SENATE BILL 387

1 primary purpose of treatment for developmental disability or who is voluntarily
2 admitted under sub. (1) (c) 1., the director of the facility in which the minor is
3 admitted shall immediately notify the minor's parent or guardian, if available. The
4 minor shall be discharged within 48 hours after submission of the request, exclusive
5 of Saturdays, Sundays, and legal holidays, unless a petition or statement is filed for
6 emergency detention, emergency commitment, involuntary commitment, or
7 protective placement.

8 **SECTION 18.** 51.13 (7) (c) of the statutes is amended to read:

9 51.13 (7) (c) Any minor ~~14 years of age or older~~ who is voluntarily admitted
10 under this section ~~for the primary purpose of treatment for alcoholism or drug abuse,~~
11 ~~and who is not discharged under par. (b),~~ and any minor under 14 years of age who
12 ~~is voluntarily admitted under this section for the primary purpose of treatment for~~
13 ~~mental illness, developmental disability, alcoholism, or drug abuse,~~ and who is not
14 discharged under par. (b), may submit a written request to the court for a hearing
15 to determine the continued appropriateness of the admission. If the director or staff
16 of the inpatient treatment facility to which a minor described in this paragraph is
17 admitted observes conduct by the minor that demonstrates an unwillingness to
18 remain at the facility, including ~~but not limited to~~ a written expression of opinion or
19 unauthorized absence, the director shall file a written request with the court to
20 determine the continued appropriateness of the admission. A request that is made
21 personally by a minor under this paragraph shall be signed by the minor but need
22 not be written or composed by the minor. A request for a hearing under this
23 paragraph that is received by staff or the director of the facility in which the ~~child~~
24 minor is admitted shall be filed with the court by the director. The court shall order
25 a hearing upon request if no hearing concerning the minor's admission has been held

SENATE BILL 387**SECTION 18**

1 within 120 days ~~after~~ before receipt of the request. The court shall appoint counsel
2 and, if the court considers it necessary, a guardian ad litem to represent the minor
3 ~~and if.~~ If a hearing is held, the court shall hold the hearing within 14 days after
4 receipt of the request, unless the parties agree to a longer period. After the hearing,
5 the court shall ~~make disposition~~ dispose of the matter in the manner provided in sub.
6 (4).

7 **SECTION 19.** 51.14 (3) (a) of the statutes is amended to read:

8 51.14 (3) (a) ~~Either a~~ A minor 14 years of age or older ~~or his or her parent or~~
9 ~~guardian, other than a minor who is voluntarily admitted under s. 51.13 (1) (c) 1.,~~
10 may petition the mental health review officer in the county in which the parent or
11 guardian has residence for a review of a refusal of ~~either the minor or his or her~~
12 parent or guardian to provide the informed consent for outpatient mental health
13 treatment required under s. 51.61 (6). The parent or guardian of a minor 14 years
14 of age or older who is voluntarily admitted under this section for the primary purpose
15 of treatment for developmental disability may petition the mental health review
16 officer in the county in which the parent or guardian has residence for a review of a
17 refusal of the minor to provide the informed consent for outpatient mental health
18 treatment required under s. 51.61 (6).

19 **SECTION 20.** 51.20 (16) (a) of the statutes is amended to read:

20 51.20 (16) (a) ~~Except in the case of alcoholic commitments for a commitment~~
21 ~~under s. 51.45 (13) and except for a minor other than a minor committed for~~
22 treatment of developmental disability, any patient who is involuntarily committed
23 for treatment under this chapter, may on the patient's own verified petition, ~~except~~
24 ~~in the case of a minor who is under 14 years of age, or on the verified petition of the~~
25 patient's guardian, relative, friend, or any person providing treatment under the

SENATE BILL 387

1 order of commitment, request a reexamination or request the court to modify or
2 cancel an order of commitment.

3 **SECTION 21.** 51.30 (5) (a) of the statutes is amended to read:

4 51.30 (5) (a) *Consent for release of information.* The parent, guardian, or person
5 in the place of a parent of a minor or the guardian of an adult adjudged incompetent
6 under ch. 880 may consent to the release of confidential information in court or
7 treatment records. A minor who is aged 14 or more and voluntarily admitted under
8 s. 51.13 (1) (b) for the primary purpose of treatment for developmental disability or
9 voluntarily admitted under s. 51.13 (1) (c) 1. may consent to the release of
10 confidential information in court or treatment records without the consent of the
11 minor's parent, guardian, or person in the place of a parent. Consent under this
12 paragraph must conform to the requirements of sub. (2).

13 **SECTION 22.** 51.30 (5) (b) 1. of the statutes is amended to read:

14 51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent
15 under ch. 880 shall have access to the individual's court and treatment records at all
16 times. The parent, guardian, or person in the place of a parent of a developmentally
17 disabled minor shall have access to the minor's court and treatment records at all
18 times except in the case of a minor aged 14 or older who files a written objection to
19 such access with the custodian of the records. The parent, guardian, or person in the
20 place of a parent of other minors shall have the same rights of access as provided to
21 subject individuals under this section, other than under subd. 2.

22 **SECTION 23.** 51.30 (5) (b) 2. of the statutes is amended to read:

23 51.30 (5) (b) 2. A minor ~~upon reaching the age of~~ who is aged 14 or older and
24 voluntarily admitted under s. 51.13 (1) (b) for the primary purpose of treatment for
25 developmental disability or voluntarily admitted under s. 51.13 (1) (c) 1. shall have

SENATE BILL 387**SECTION 23**

1 access to his or her own court and treatment records, as provided in this section. ~~A~~
2 ~~minor under the age of 14~~ All other minors shall have access to court records but only
3 in the presence of parent, guardian, counsel, guardian ad litem, or judge and shall
4 have access to treatment records as provided in this section but only in the presence
5 of parent, guardian, counsel, guardian ad litem, or staff member of the treatment
6 facility.

7 **SECTION 24.** 51.35 (3) (a) of the statutes is amended to read:

8 51.35 (3) (a) A licensed psychologist of a secured correctional facility, a secured
9 child caring institution, or a secured group home, or a licensed physician of the
10 department of corrections, who has reason to believe that any individual confined in
11 the secured correctional facility, secured child caring institution, or secured group
12 home is, in his or her opinion, in need of services for developmental disability,
13 alcoholism, or drug dependency or in need of psychiatric services, and who has
14 obtained voluntary consent to make a transfer for treatment, shall make a report,
15 in writing, to the superintendent of the secured correctional facility, secured child
16 caring institution, or secured group home, stating the nature and basis of the belief
17 and verifying the consent. In the case of a minor age 14 or older who is in need of
18 services for developmental disability ~~or who is in need of psychiatric services~~, the
19 minor and the minor's parent or guardian shall consent unless the minor is admitted
20 under s. 51.13 (1) (c) 1. In the case of a minor age 14 or older who is in need of
21 psychiatric services or services for alcoholism or drug dependency or a minor under
22 the age of 14 who is in need of services for developmental disability, alcoholism, or
23 drug dependency or in need of psychiatric services, only the minor's parent or
24 guardian need consent unless the minor is admitted under s. 51.13 (1) (c). The
25 superintendent shall inform, orally and in writing, the minor and the minor's parent

SENATE BILL 387

1 or guardian, that transfer is being considered and shall inform them of the basis for
2 the request and their rights as provided in s. 51.13 (3). If the department of
3 corrections, upon review of a request for transfer, determines that transfer is
4 appropriate, that department shall immediately notify the department of health and
5 family services and, if the department of health and family services consents, the
6 department of corrections may immediately transfer the individual. The
7 department of health and family services shall file a petition under s. 51.13 (4) (a)
8 in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county
9 where the treatment facility is located.

10 **SECTION 25.** 51.35 (3) (b) of the statutes is amended to read:

11 51.35 (3) (b) The court assigned to exercise jurisdiction under chs. 48 and 938
12 shall determine, based on the allegations of the petition and accompanying
13 documents, whether the transfer of the minor to an inpatient facility is appropriate
14 and consistent with the needs of the minor and, if the minor is 14 years of age or older
15 and is being transferred for the purpose of receiving services for developmental
16 disability or psychiatric services, whether the transfer is voluntary on the part of the
17 minor. If the court is unable to make those determinations based on the petition and
18 accompanying documents, the court may order additional information to be
19 produced as necessary to make those determinations within 14 days after admission,
20 or the court may hold a hearing within 14 days after admission. If a notation of the
21 minor's unwillingness appears on the face of the petition, or if a hearing has been
22 requested by the minor or by the minor's counsel, guardian ad litem, parent, or
23 guardian, the court shall hold a hearing and appoint counsel or a guardian ad litem
24 for the minor as provided in s. 51.13 (4) (d). At the conclusion of the hearing, the court
25 shall approve or disapprove the request for transfer. If the minor is under the

SENATE BILL 387**SECTION 25**

1 continuing jurisdiction of the court of another county, the court may order the case
2 transferred together with all appropriate records to that court.

3 **SECTION 26.** 51.35 (3) (g) of the statutes is amended to read:

4 51.35 (3) (g) A minor 14 years of age or older who is transferred to a treatment
5 facility under par. (a) for the purpose of receiving services for developmental
6 disability ~~or psychiatric services~~ may request in writing a return to the secured
7 correctional facility, secured child caring institution, or secured group home. In the
8 case of a minor 14 years of age or older who is transferred to a treatment facility
9 under par. (a) for the purpose of receiving services for alcoholism or drug dependency
10 or psychiatric services or a minor under 14 years of age, who is transferred to a
11 treatment facility under par. (a) for the purpose of receiving services for
12 developmental disability, alcoholism, or drug dependency, or psychiatric services,
13 the parent or guardian may make the request. Upon receipt of a request for return
14 from a minor 14 years of age or older, the director shall immediately notify the
15 minor's parent or guardian. The minor shall be returned to the secured correctional
16 facility, secured child caring institution, or secured group home within 48 hours after
17 submission of the request unless a petition or statement is filed for emergency
18 detention, emergency commitment, involuntary commitment, or protective
19 placement.

20 **SECTION 27.** 51.61 (6) of the statutes is amended to read:

21 51.61 (6) Subject to the rights of patients provided under this chapter, the
22 department, county departments under s. 51.42 or 51.437, and any agency providing
23 services under an agreement with the department or those county departments have
24 the right to use customary and usual treatment techniques and procedures in a
25 reasonable and appropriate manner in the treatment of patients who are receiving

SENATE BILL 387

1 services under the mental health system, for the purpose of ameliorating the
2 conditions for which the patients were admitted to the system. The written,
3 informed consent of any patient shall first be obtained, unless the person has been
4 found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the
5 person is a minor 14 years of age or older who is receiving services for mental illness,
6 alcoholism, or drug abuse or a minor under 14 years of age who is receiving services
7 for mental illness, developmental disability, alcoholism, or drug abuse. In the case
8 of a minor, the written, informed consent of the parent or guardian is required, except
9 as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If
10 the minor is 14 years of age or older and is receiving services for ~~mental illness or~~
11 ~~developmental disability,~~ the written, informed consent of the minor and the minor's
12 parent or guardian is required. A refusal of either ~~a minor 14 years of age or older~~
13 ~~or the minor's parent or guardian of a minor 14 years of age or older~~ to provide
14 written, informed consent for admission to an approved inpatient treatment facility
15 is reviewable under s. 51.13 (1) (c) 1. and a A refusal of either a minor 14 years of
16 age or older or the minor's the parent or guardian of a minor 14 years of age or older,
17 other than a minor voluntarily admitted under s. 51.13 (1) (c) 1., or the refusal of a
18 minor 14 years of age or older who is voluntarily admitted under this section for the
19 primary purpose of treatment for developmental disability, to provide written,
20 informed consent for outpatient mental health treatment is reviewable under s.
21 51.14.

SECTION 28. Initial applicability.

22
23 (1) This act first applies to individuals who are receiving treatment in an
24 approved inpatient treatment facility, or who are receiving outpatient mental health
25 treatment, on the effective date of this subsection, regardless of whether admission

SENATE BILL 387

SECTION 28

1 to the inpatient facility or outpatient program occurred or was sought prior to the
2 effective date of this subsection.

3 **SECTION 29. Effective date.**

4 (1) This act takes effect on the first day of the 2nd month beginning after
5 publication.

6 (END)