



2013 ASSEMBLY BILL 360

September 13, 2013 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Corrections.

1 **AN ACT to repeal** 51.15 (2) (a), (b) and (c), 51.20 (13) (g) 2. and 51.20 (13) (g) 2m.;
2 **to renumber and amend** 51.15 (1) (a); **to consolidate, renumber and**
3 **amend** 51.15 (2) (intro.) and (d); **to amend** 51.15 (1) (title), 51.15 (3), 51.15 (4)
4 (a), 51.15 (4) (b), 51.15 (5) and (9), 51.20 (1) (a) 2. c., 51.20 (2) (b), 51.20 (2) (d),
5 51.20 (7) and (8) (b) and (bm), 51.20 (13) (g) 1., 51.20 (13) (g) 2r. and 905.04 (4)
6 (a); and **to create** 51.15 (1) (ag) and 51.15 (4) (c) of the statutes; **relating to:**
7 emergency detention, involuntary commitment, and privileged
8 communications and information.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in
the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint
Legislative Council's Special Committee on Review of Emergency Detention and
Admission of Minors Under Chapter 51.

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The bill makes the following changes to Wisconsin laws dealing with emergency detention, involuntary commitment, and privileged communications and information:

1. Current law allows a law enforcement officer or other specified persons to take a person into custody on an emergency detention basis if certain criteria are met. The bill modifies this statute to require a determination "...that taking the person into custody is the least restrictive alternative appropriate to the person's needs." [SECTION 2.]

2. Current law provides standards for emergency detention and involuntary commitment. The 3rd standard of dangerousness allows for commitment if there is a substantial probability of physical impairment or injury to himself or herself due to impaired judgment. The bill modifies this language to also include a substantial probability of physical impairment or injury to others. [SECTIONS 2 and 11.]

3. Under current law, an emergency detention of an individual under the 4th standard of dangerousness must be due to the individual's mental illness or drug dependency, which results in the individual's inability to satisfy certain basic needs which will result in death or serious harm to the individual. The bill deletes the reference to drug dependency from the 4th standard of emergency detention, to make this standard consistent with the 4th standard for involuntary commitment. [SECTION 2.]

4. The bill creates a "purpose" statement for the emergency detention statute. The statement says that the purpose of emergency detention is to provide, on an emergency basis, treatment by the least restrictive means possible, to individuals who meet all of the following criteria: (a) are mentally ill, drug dependent, or developmentally disabled; (b) evidence one of the statutory standards of dangerousness; and (c) are reasonably believed to be unable or unwilling to cooperate with voluntary treatment. [SECTION 3.]

5. The bill provides that the county department may approve an emergency detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others. [SECTION 4.]

6. Under current law, emergency detention may occur in a hospital approved by the department of health services as a detention facility or under contract with the county department, an approved public treatment facility, a center for the developmentally disabled, a state treatment facility, or an approved private treatment facility if the facility agrees to detain the individual. The bill consolidates the references to these facilities to provide that detention may occur in a treatment facility approved by the department or county department, if the facility agrees to detain the individual, or a state treatment facility. [SECTIONS 4, 13, and 14.]

7. Current law provides that upon arrival at an emergency detention facility, the custody of the individual who is the subject of an emergency detention is transferred to the facility. However, current law does not specify when custody begins prior to the individual's arrival at a facility. The bill provides that an individual is deemed to be in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child or juvenile into custody, for the purposes of emergency detention. [SECTION 6.]

8. Current law provides different procedures for emergency detention in counties with a population of 500,000 or more and those with a population of less than 500,000. The bill increases the population threshold to 750,000, so that those procedures will continue to apply only to Milwaukee County. [SECTIONS 7 and 10.]

9. Current law in counties with a population of 500,000 or more requires that the treatment director of the facility in which the person is detained, or his or her designee, must determine within 24 hours whether the person is to be detained. If the individual

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is detained, the treatment director or designee may supplement in writing the statement filed by the law enforcement officer or other person undertaking the emergency detention. The bill modifies this statute to provide that when calculating the 24 hours, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual shall be excluded from the calculation. [SECTIONS 8 and 9.]

10. Current law provides that an individual must be informed of his or her rights, by the director of the emergency detention facility, at the time of detention. The bill amends this provision to state that the individual must be informed of his or her rights at the time of the individual's arrival at the emergency detention facility. [SECTION 10.]

11. Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. This bill amends this provision to specify that the hearing must be held within 72 hours after the individual is taken into custody.

Also under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours. This amendment provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody. [SECTION 14.]

12. Generally, current law provides that the first order of involuntary commitment is for up to 6 months, and all subsequent consecutive orders of commitment are for up to one year. However, current law provides that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365-day period. The bill eliminates that provision with respect to persons committed under the 4th standard of dangerousness. [SECTION 16.]

13. Current law provides that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision. The bill repeals this provision. [SECTION 17.]

14. Current law provides that a patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, among the patient and various specified health care providers, including physicians, psychologists, social workers, marriage and family therapists, and professional counselors. Current law also provides that there is no privilege for communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness or various other types of proceedings. The bill modifies this exception to the privilege statute to substitute "commitment" for "hospitalization" and to refer to "probable cause or final proceedings" to commit the patient for mental illness under s. 51.20. [SECTION 19.]

1 **SECTION 1.** 51.15 (1) (title) of the statutes is amended to read:

2 51.15 (1) (title) BASIS FOR DETENTION; PURPOSE.

3 **SECTION 2.** 51.15 (1) (a) of the statutes is renumbered 51.15 (1) (ar) and 51.15

4 (1) (ar) (intro.), 3. and 4., as renumbered, are amended to read: