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

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.

The bill makes the following changes to Wisconsin laws dealing with emergency detention, involuntary commitment, and privilege 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. In addition, current law provides that this may occur if the county department of community programs approves the need for detention. The bill modifies both of those statutes to include a determination "...that detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis...".

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.

3. The bill modifies the 4th standard of dangerousness for emergency detention to delete references to "drug dependency" to be consistent with the current 4th standard of dangerousness for purposes of involuntary commitment.

4. 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 modifies this to include only an approved treatment facility, if the facility agrees to detain the individual, or a state treatment facility.

5. Current law provides somewhat 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.

6. 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 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 an exception to the requirement to make a determination within 24 hours if the treatment director or designee finds that he or she is unable to make this determination because the detained individual is comatose or otherwise physically or mentally incapable of being evaluated.

7. For a person who is detained, current law requires that a hearing be held within 72 hours, excluding Saturdays, Sundays, and legal holidays. Current law allows this to be extended at the request of the detained individual or his or her counsel, but in no case may postponement exceed 7 days from the date of detention. The bill provides 2 additional circumstances in which a postponement may be granted. Under the first circumstance, if the individual is in a facility and the director of the facility or designee determines that the individual cannot be safely moved, and if the individual or his or her attorney objects to holding the hearing at that facility (which is permitted under current law), the court may postpone the hearing. In the 2nd circumstance, if the individual is comatose or, in the opinion of the director of the facility or designee, otherwise physically or mentally incapable of being evaluated or participating in the hearing, the court may postpone the hearing. In either of these circumstances, the postponement may not exceed 7 days from the date of detention.

8. Current law provides that involuntary commitment under the 4th and 5th standards of dangerousness apply only to persons who are mentally ill. However, while the introductory language to the standards states that

the 5th standard applies only to the mentally ill, it fails to state that the 4th standard applies only to the mentally ill. The bill corrects that provision.

9. 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.

10. 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.

11. 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 1. 51.15 (1) (a) (intro.) of the statutes is amended to read:

51.15 **(1)** (a) (intro.) A 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 may take an individual into custody if the officer or person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled, <u>that detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis,</u> and that the individual evidences any of the following:

SECTION 2. 51.15 (1) (a) 3. of the statutes is amended to read:

51.15 **(1)** (a) 3. A substantial probability of physical impairment or injury to himself or herself or others 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) or 938.13 (4). 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.

SECTION 3. 51.15 (1) (a) 4. of the statutes is amended to read:

51.15 **(1)** (a) 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 may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). 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.

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

51.15 **(2)** FACILITIES FOR DETENTION. 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 determines that detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis, and for evaluation, diagnosis, and treatment if permitted under sub. (8) ~~to any of the following facilities:~~.

~~(a) A hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, or an approved public treatment facility;~~

~~(b) A center for the developmentally disabled;~~

~~(c) A state treatment facility; or~~

~~(d) An~~ Detention may be only in an approved ~~private~~ treatment facility, if the facility agrees to detain the individual, or in a state treatment facility.

SECTION 5. 51.15 (4) (a) of the statutes is amended to read:

51.15 **(4)** (a) In counties having a population of ~~500,000~~ 750,000 or more, 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 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 the 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 law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

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

51.15 **(4)** (b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and treatment are permitted under sub. (8), ~~and~~ unless the treatment director or designee finds that he or she is unable to make this determination because the individual is comatose or otherwise physically or mentally incapable of being evaluated. The facility shall either release the individual or detain him or her for a period not to exceed 72 hours after delivery of the individual, exclusive of Saturdays, Sundays and legal holidays, except as provided in s. 51.20 (7) (a). If the treatment director, or his or her designee, determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer or other person, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation

was made by the law enforcement officer or other person. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

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 ~~500,000~~ 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) 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, exclusive of Saturdays, Sundays, and legal holidays, except as provided in s. 51.20 (7) (a).

SECTION 8. 51.20 (1) (a) 1. of the statutes is amended to read:

51.20 **(1)** (a) 1. The individual is mentally ill or, except as provided under subd. 2. d. and e., drug dependent or developmentally disabled and is a proper subject for treatment.

SECTION 9. 51.20 (1) (a) 2. c. of the statutes is amended to read:

51.20 **(1)** (a) 2. 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 or others. The probability of physical impairment or injury is not substantial under this 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 may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this 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.

SECTION 10. 51.20 (2) (b) of the statutes is amended to read:

51.20 **(2)** (b) If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be

committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays, except as provided in sub. (7) (a). The officer shall orally inform the individual that he or she is being taken into custody as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. Any such notice may be given by telephone. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.

SECTION 11. 51.20 (2) (d) of the statutes is amended to read:

51.20 **(2)** (d) Placement shall be made in ~~a hospital that is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in~~ an approved ~~private~~ treatment facility, if the facility agrees to detain the subject individual, or in a state treatment facility. Upon arrival at the facility, the individual is considered to be in the custody of the facility.

SECTION 12. 51.20 (7) (a) of the statutes is amended to read:

51.20 **(7)** (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention. If the individual is in a facility and the director of the facility or his or her designee determines that the individual cannot be safely moved, and if the individual or his or her attorney objects under sub. (5) to holding a hearing under this subsection at that facility, the court may postpone the hearing, but in no case may the postponement exceed 7 days from the date of detention. If the individual is comatose or, in the opinion of the director of the facility or his or her designee, otherwise physically or mentally incapable of being evaluated or participating in the hearing under this subsection, the court may postpone the hearing, but in no case may the postponement exceed 7 days from the date of detention.

> **NOTE**: The reference to sub. (5) is to s. 51.20 (5), which states as follows:
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> "51.20 (5) HEARING REQUIREMENTS. The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross−examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (11). The parent or guardian of a minor who is the subject of a hearing shall have the right to participate in the hearing and to be represented by counsel. All proceedings under this chapter shall be reported as provided in SCR 71.01. **The court may determine to hold a hearing under this section at the institution at which the individual is detained, whether or not located in the same county as the court with which the petition was filed, unless the individual or his or her attorney objects.**". [Emphasis added.]

SECTION 13. 51.20 (8) (b) of the statutes is amended to read:

51.20 **(8)** (b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (7) (c). Detention may be in ~~a hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in~~ an approved ~~private~~ treatment facility if the facility agrees to detain the subject individual, or in a state treatment facility.

SECTION 14. 51.20 (8) (bm) and (br) of the statutes are amended to read:

51.20 **(8)** (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, except as provided in sub. (7) (a) 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, except as provided in sub. (7) (a). 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, except as provided in sub. (7) (a). 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.

SECTION 15. 51.20 (13) (g) 2. of the statutes is repealed.

NOTE: Section 51.20 (13) (g) 2. applies to persons involuntarily committed based on the 4th standard of dangerousness and states as follows:

"51.20 (13) (g) 2. Any commitment ordered under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. d., may not continue longer than 45 days in any 365−day period.".

SECTION 16. 51.20 (13) (g) 2m. of the statutes is repealed.

NOTE: Section 51.20 (13) (g) 2m. states as follows:

"51.20 (13) (g) 2m. In addition to the provisions under subds. 1. and 2., no commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date of release on parole or extended supervision, as determined under s. 302.11 or 302.113, whichever is applicable.".

SECTION 17. 905.04 (4) (a) of the statutes is amended to read:

905.04 **(4)** (a) *Proceedings for ~~hospitalization~~ commitment, guardianship, protective services, or protective placement or for control, care, or treatment of a sexually violent person.* There is no privilege under this rule as to communications and information relevant to an issue in probable cause or final proceedings to ~~hospitalize~~ commit the patient for mental illness under s. 51.20, to appoint a guardian in this state, for court−ordered protective services or protective placement, for review of guardianship, protective services, or protective placement orders, or for control, care, or treatment of a sexually violent person under ch. 980, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist, or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

(END)