

LC Staff Brief

Emergency Detention and the Treatment of Minors Under Wisconsin's Mental Health Statutes



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Emergency Detention and the Treatment of Minors Under Wisconsin's Mental Health Statutes

INTRODUCTION

This Staff Brief describes the parts of Chapter 51, Stats., the State Mental Health Act, that are relevant to the charge to the Special Committee on Review of Emergency Detention and Admission of Minors under Chapter 51.

- **Part I** describes the laws that relate to emergency detention.
- **Part II** describes the laws that relate to treatment of minors.

This Staff Brief was prepared by Laura Rose, Deputy Director, and Richard Sweet, Senior Staff Attorney, Legislative Council, staff for the Joint Legislative Council's Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51. The web site for that committee is <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

PART I

EMERGENCY DETENTION

The statutes that relate to emergency detention are primarily in s. 51.15, Stats., as set forth in ***Appendix 1***.

Basis for Detention

A law enforcement officer or a person who is authorized to take a child or juvenile into custody under ch. 48 or 938, Stats., may take an individual into custody if that person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled, and that the individual evidences any of the following:

- 51.15 **(1)** (a) 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) 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.
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.

The above standards are substantially similar to the first four standards of dangerousness under the involuntary commitment statutes. (s. 51.20, Stats.)

The person's belief must be based on a specific recent overt act or attempt or threat to act or omission by the individual that is: (1) observed by the officer or person; or (2) reliably reported to the officer or person by any other person.

In addition, if an individual has been admitted to an approved treatment facility under the statutes dealing with admission of adults or minors, or has been otherwise admitted to such a facility, the treatment director or his or her designee, if conditions exist for taking the individual into custody under s. 51.15 (1), may sign a statement of emergency detention and may detain the individual; or detain, evaluate, diagnose, and treat the individual. In that case, the treatment director must undertake all responsibilities that are required of a law enforcement officer under the statutes. The treatment director must promptly file the statement of emergency detention with the court having probate jurisdiction in the county of detention. (s. 51.15 (10), Stats.)

Law enforcement agencies are required to designate at least one officer authorized to take an individual into custody under emergency detention who will attend the in-service training on emergency detention and emergency protective placement offered by a county department of community programs if that department offers such an in-service training program.

Facilities for Detention

The law enforcement officer or other person authorized to take a child or juvenile into custody must transport the individual, or cause him or her to be transported, for detention if the department of community programs in the county in which the individual was taken into custody approves the need for detention and the need for evaluation, diagnosis, and treatment. The individual may be transported to any of the following facilities:

- A hospital that is approved by the Department of Health Services (DHS) as a detention facility or under contract with a county department, or an approved public treatment facility.
- A state center for the developmentally disabled.
- A state treatment facility.
- An approved private treatment facility, if the facility agrees to detain the individual. (s. 51.15 (2), Stats.)

The term "state treatment facility" is defined as any of the institutions operated by DHS for the purpose of providing diagnosis, care, or treatment for mental or emotional disturbance, developmental disability (DD), alcoholism, or drug dependency, and includes the mental health institutes operated by DHS. The term "treatment facility" is defined as any publicly or privately operated facility or unit of the facility providing treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons, including inpatient or outpatient treatment programs, community support programs, and rehabilitation programs. (s. 51.01 (15) and (19), Stats.)

Upon arrival at any of the above facilities, the individual is deemed to be in the custody of that facility.

Detention Procedure

Milwaukee County

In counties having a population of 500,000 or more (currently only Milwaukee County), the law enforcement officer or other specified person who may take a child or juvenile into custody must provide detailed specific information concerning the recent act, attempt, or threat to act, or omission on which the belief is based, and the names of the persons observing or reporting those actions. That person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but must allege that he or she has cause to believe that the individual evidences one or more of those conditions. The law enforcement officer or other person must deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual.

Upon delivery of the individual to the facility, the treatment director or his or her designee, must determine within 24 hours whether the individual is to be detained, or to be detained, evaluated, diagnosed, and treated, if those actions are permitted by the statutes. The treatment director or designee must either release the individual or detain him or her for a period not to exceed 72 hours after the delivery of the individual, excluding Saturdays, Sundays, and legal holidays. If the treatment director or designee determines that the individual is not eligible for involuntary commitment, the treatment director must release the individual immediately unless otherwise authorized by law.

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 and must designate whether the subject individual is believed to be mentally ill, developmentally disabled, or drug dependent, if this was not designated by the law enforcement officer or other person. The treatment director or designee may include other specific information concerning his or her belief that the individual meets the standards for involuntary commitment. The treatment director or designee must then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction. The filing of the statement and notification has the same effect as a petition for involuntary commitment under s. 51.20, Stats., the statute dealing with involuntary commitment. (s. 51.15 (4), Stats.)

Other Counties

In all other counties, the law enforcement officer or other person authorized to take a child or juvenile into custody must sign a statement of emergency detention that provides detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief is based and the names of persons observing or reporting the 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 must allege that he or she has cause to believe that the individual evidences one or more of these conditions. The statement of emergency detention must 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 involuntary commitment under s. 51.20, Stats.

When, upon the advice of the treatment staff, the director of the facility determines that the grounds for detention no longer exist, he or she must discharge the individual. Unless a hearing is held to determine probable cause for involuntary commitment or to determine whether the individual satisfies the statutes relating to emergency and temporary protective placement, the individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours excluding Saturdays, Sundays, and legal holidays. (s. 51.15 (5), Stats.)

Detention Period

A 1998 Wisconsin Court of Appeals decision addressed the issue of when the 72-hour period described above begins. In the case of *Matter of Delores M.*, 217 Wis. 2d 69, 577 N.W.2d 371 (Wis. App. 1998), the issue before the court was whether the 72-hour period is triggered when a person taken into custody is transported to a facility other than one designated by the county for purposes of emergency detention. In that case, Delores M.'s son contacted law enforcement and she was taken to St. Luke's Medical Center in Milwaukee, where she remained for more than 72 hours. Approximately 91 hours after she arrived at St. Luke's, Delores M. was taken to the Milwaukee County mental health complex. As described above under the section dealing with facilities, one of the types of facilities to which a person who is detained under the emergency detention statutes may be taken is "(a)n approved private treatment facility, if the facility agrees to detain the individual." Delores M. noted that the list of certified mental health, alcohol and other drug abuse (AODA) treatment facilities in Milwaukee County prepared by the predecessor agency to the DHS included St. Luke's. The Court of Appeals agreed that the 72-hour time period begins when a person is taken to any of the types of facilities at which emergency detention is permitted, but did not find "clearly erroneous" the trial court's finding that St. Luke's did not "agree to detain" her under s. 51.15, Stats. The Court of Appeals concluded as follows:

In sum, we conclude that the time limits established by s. 51.15, Stats., are triggered when a person taken into custody under that provision is transported to any of the facilities designated by s. 51.15 (2), irrespective of whether the facility to which the person has been brought is one specifically chosen by the county for the receipt of persons taken into custody under s. 51.15. [*Matter of Delores M.*, 577 N.W.2d, at 375.]

Intercounty Agreements

Counties are allowed to enter into contracts under which one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody in another county. The contracts must include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings by the county of detention concerning individuals taken into custody in the other county. In addition, it must include provisions to cover the cost of voluntary or involuntary services provided to the subject individual. When there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention and the notification must be filed with the court in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody. (s. 51.15 (7), Stats.)

Use of Other States' Facilities for Emergency Detention

Wisconsin law permits counties to contract with out-of-state facilities for emergency detentions of persons taken into custody by Wisconsin law enforcement officers. However, DHS must approve the contract.

Under s. 51.87 (8), Stats., an individual who is detained, committed, or placed on an involuntary basis under the emergency detention statute (s. 51.15, Stats.) and other statutes, may be confined and treated in another state pursuant to a contract authorized under s. 51.87, Stats. Court orders valid under the law of the sending state are granted recognition and reciprocity in the receiving state for individuals covered by such a contract to the extent that the court orders relate to confinement for treatment or care of a mental disability. These court orders are not subject to legal challenge in the courts of the receiving state. Persons who are detained, committed, or placed under the law of a sending state and who are transferred to a receiving state under this provision continue to be in the legal custody of the authority responsible for them under the law of the sending state. Except in emergencies, those persons may not

be transferred, removed, or furloughed from a facility of the receiving agency without the specific approval of the authority responsible for them under the law of the sending state.

DHS has developed a model contract addendum for interstate purchase of services. According to DHS, this contract has been utilized in the past for purchase of services between Wisconsin and the States of Michigan and Minnesota.

Rights and Duties During Detention

If an individual is detained under the emergency detention statutes, the director and staff of the treatment facility may evaluate, diagnose, and treat the individual during detention if the individual consents. The individual has the right to refuse medication and treatment as provided in the statutes setting forth patients' rights. The individual must be advised of that right by the director of the facility or his or her designee, and a report of any evaluation and diagnosis and of all treatment provided must be filed with the court. (s. 51.15 (8), Stats.)

At the time of detention, the individual must be informed by the director of the facility or designee, 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 an attorney provided at public expense, the right to remain silent, and that the individual's statements may be used as a basis for commitment. The individual must also be provided with a copy of the statement of emergency detention. (s. 51.15 (9), Stats.)

If an individual is released, the treatment director or designee, upon the individual's request, must arrange for the individual's transportation to the locality where he or she was taken into custody.

Liability and Penalties

Any person who acts in accordance with the emergency detention statutes, 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 the four standards in that statute, is not liable for any actions taken in good faith. The good faith of the person is presumed in any civil action. Whoever asserts that the person has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory, and convincing. This statute also applies to a director of a facility or 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. (s. 51.15 (11) and (11g), Stats.)

Whoever signs an emergency detention statement, knowing that the information in that statement is false, is guilty of a Class H felony. The penalties for a Class H felony are a fine not to exceed \$10,000, imprisonment not to exceed six years, or both. (s. 51.15 (12), Stats.)

PART II

MENTAL HEALTH TREATMENT OF MINORS

The requirements for mental health treatment of minors under age 18 differ both for inpatient and outpatient treatment and for older and younger minors. There are also different consent requirements for AODA treatment. This section of the Staff Brief will describe the various statutory provisions that apply in these different situations. These statutes are set forth in **Appendix 2**.

Consent Requirements: Inpatient Mental Health Treatment

Younger Minors (Under Age 14)

A parent who has legal custody, or the minor's guardian, must consent to admission for inpatient treatment for mental illness or DD of a minor under age 14. (s. 51.13 (1) (a), Stats.)

If a minor under age 14 seeks admission for inpatient treatment, but the parent or guardian cannot be found, or if there is no parent or guardian, someone on the minor's behalf may petition the children's court or juvenile court for approval of the admission. (s. 51.13 (1) (c) 2., Stats.)

Older Minors (Age 14 and Older)

Under s. 51.13 (1) (b), Stats., the application for admission of a minor who is age 14 or older for treatment for mental illness or DD shall be executed by **both** the minor and a parent who has legal custody of the minor or the minor's guardian, **unless** the parent refuses to execute the application or cannot be found, or there is no parent with legal custody. In that case, the minor, or someone acting on the minor's behalf may petition the children's court or juvenile court for approval of the admission. If after a hearing, the court determines that the parent's consent is being unreasonably withheld, or there is no parent with legal custody or the parent cannot be found, the court may approve the minor's admission without parent or guardian consent, provided the appropriate standards for treatment under s. 51.13 (4) (d), Stats., are met. (s. 51.13 (1) (c), Stats.)

If the minor refuses to execute the application, a parent who has legal custody of the minor or the minor's guardian may execute the application on the minor's behalf. (s. 51.13 (1) (b), Stats.)

Procedures: Inpatient Mental Health Treatment

Admission

A minor may be admitted to an inpatient treatment facility immediately upon the approval of the application for admission by the facility's treatment director or designee. If the county department is to be responsible for the cost of the minor's therapy and treatment, the county department director must also approve the application for admission.

An admission in the case of a minor whose parent cannot be found, where a minor has no parent or legal guardian, or where the parent of a minor age 14 or older refuses to consent, must be approved by the treatment director or designee within 14 days of the minor's admission. (s. 51.13 (1) (e), Stats.)

Standard for Approval of Admission

The approvals required above for the admission of a minor for inpatient treatment must be based on informed professional opinion that:

- The minor is in need of psychiatric services or services for DD or AODA.

- The treatment facility offers inpatient therapy or treatment that is appropriate for the minor's needs.
- That inpatient care in the facility is the least restrictive therapy or treatment consistent with the minor's needs. (s. 51.13 (1) (em), Stats.)

Notice of Rights

Prior to or as soon as possible after admission of a minor under age 14 who is admitted by a parent or guardian, or a minor age 14 or older where the minor refuses to consent to admission, the treatment director must inform the minor, and the minor's parent or guardian (if available) both orally and in writing of the procedure for review of the admission, if review is sought. The treatment director must also provide information on the standards a court must apply in reviewing the admission, and the minor's rights to the following:

- An independent evaluation, if the court orders one.
- Information on how to contact the state protection and advocacy agency.
- A hearing, on request.
- Appointed counsel if a hearing is held.
- To request discharge.
- A hearing to determine the continued appropriateness of the admission. (s. 51.13 (3) (am), Stats.)

In the case of voluntary admissions of minors under s. 51.13 (1) (c) 1. or 2., Stats., the minor, and the minor's parent or guardian if available, must be informed about the minor's or the parent's right to request discharge and to be discharged within 48 hours of the request. (s. 51.13 (3) (b), Stats.) On admission, all minors, and their parents or guardians, must be informed of patient rights under s. 51.61, Stats.

Review Procedure

The facility treatment director must file, in children's or juvenile court in the county where the facility is located, a petition for review of a minor's admission. The petition must be filed within three days of the admission or the execution of the application for admission, whichever occurs first.

Within five days after filing the petition, the court must determine if there is a *prima facie* showing of the following:

- Whether the minor is in need of the treatment.
- Whether the facility offers treatment appropriate to the minor's needs.
- Whether the care in the facility is the least restrictive consistent with the minor's needs.
- If the minor is age 14 or older, whether the admission was executed by the minor and the minor's parent or guardian.

If such a showing is made, the court must permit the admission. If the court is unable to make these determinations, the court may dismiss the petition; order additional information to enable the court to make a determination within seven days (exclusive of weekends or holidays); or hold a hearing within seven days (exclusive of weekends or holidays).

If the application for admission notes a minor's unwillingness to be admitted, despite the minor's age, or if the application for admission of a minor age 14 or older was made by the parent or guardian despite the minor's refusal, or there has been a request for a hearing, the court must order an independent evaluation of the minor and hold a hearing to review the admission. The hearing must be held within seven days of the admission or application, whichever is earlier (exclusive of weekends and holidays). The court must appoint counsel for the minor and, if it considers it necessary, a guardian ad litem. The minor must also be informed about how to contact the state protection and advocacy agency.

Notice of a hearing must be provided to the minor, the minor's parents or guardian, the minor's counsel, the guardian ad litem, and any other interested party at least 96 hours before the hearing. The civil rules of evidence govern these hearings. (s. 51.13 (4) (d) to (f), Stats.)

Court Order

The court must permit admission if the court finds that:

- The minor is in need of services in an inpatient facility.
- The inpatient facility offers therapy or treatment that is appropriate for the minor's needs.
- The treatment is the least restrictive consistent with the minor's needs.

The court may order placement or transfer to another more appropriate or less restrictive inpatient facility, if required approvals are obtained.

If the court does not permit the admission, it must do one of the following:

- Dismiss the petition and order the minor released.
- Order the petition to be treated as one for involuntary commitment.
- If the minor is age 14 or older and appears to be developmentally disabled, proceed under s. 51.67, Stats., to determine if the minor should receive protective placement or services.
- If there is reason to believe the minor is in need of protection or services under ch. 48 or 938, Stats., authorize the filing of a petition under one of those chapters. (s. 51.13 (4) (h), Stats.)

Short-Term Admissions

A minor may be admitted to an inpatient treatment facility without following the review procedures outlined above, for diagnosis and evaluation or for dental, medical, or psychiatric services, for no longer than 12 days. A minor's parent or guardian must execute the application for short-term admission. However, if the minor is age 14 or older, the minor must join in the application if it is for mental health or DD services or treatment. If the minor refuses to do so, then the parent or guardian may do so; and the review procedures outlined above apply, and the facility's treatment director must file a petition for review of the short-term admission.

An application for short-term admission must be reviewed by the facility's treatment director, who may approve it only if the treatment director determines that the admission provides the least restrictive means of providing the diagnosis or evaluation, or provision of dental, medical, or psychiatric services.

The minor must be released at the end of the 12-day period unless a regular application for admission has been filed. Only one short-term admission under this procedure may be made every 120 days. (s. 51.13 (6), Stats.)

Discharge or Continued Appropriateness of Admission

This section describes the process for a minor's discharge from a facility. The requirements vary, depending on how the minor was admitted to the facility.

Minor Turns 14 While in the Facility

If a minor is under age 14 when admitted to a facility and turns 14 while in the facility, and the minor still needs treatment, the director of the facility must request the minor and the minor's parent or guardian to file an application for admission of the minor. If the minor refuses, the parent or guardian may apply on the minor's behalf. This application must be filed within 30 days before the minor's 14th birthday. The application for admission is subject to the procedures that are applicable to admission of a minor age 14 and older. There must be a review if no review has been held within the past 120 days. If the application is not filed, then the minor must be discharged from the facility unless another type of application for admission or commitment has been filed.

Minor Admitted Upon Own Petition When a Parent or Guardian Cannot be Found

If a minor is admitted to a facility upon the minor's own application in a situation where the minor's parent or guardian cannot be found, or there is not a parent or guardian with legal custody, then the minor may request discharge in writing at any time. This provision also applies to minors age 14 or older who applied for admission on their own behalf when the parent or guardian refused to join in the application.

Minor Admitted While Under Age 14

If a minor is admitted to a facility for treatment (mental health, DD, or AODA) while under age 14, the minor's parent or guardian may request discharge at any time.

Minor Admitted While Age 14 or Older

If a minor age 14 or older is admitted for AODA treatment, the parent or guardian may request discharge at any time. If a minor is admitted to a facility for treatment for mental health or DD, while age 14 or older, then the minor, together with the minor's parent or guardian, may request discharge in writing. If the parent refuses to join in the request, and the facility director states in writing that the minor needs treatment, the facility provides appropriate treatment, and the treatment provided is the least restrictive treatment consistent with the minor's needs, then the minor may not be discharged.

The statute also sets forth procedures for review of a denial of a minor's discharge, in order to determine the continued appropriateness of the admission. (s. 51.13 (7), Stats.)

Consent Requirements: Outpatient Mental Health Treatment

Younger Minors (Under Age 14)

A parent with legal custody, or the minor's guardian, may consent to outpatient treatment for mental illness on the behalf of a minor under age 14. There are no special statutory provisions governing this consent and treatment.

Older Minors (Age 14 and Older)

If a minor age 14 or older seeks outpatient treatment for mental illness or DD, and the parent refuses or is unable to join in consent, the minor or someone acting on the minor's behalf may file a petition in children's court or juvenile court for review of the parent's refusal or inability. If the parent seeks treatment for the minor and the minor refuses to consent, the treatment director of the outpatient facility shall file a petition for review of the informed consent on behalf of the minor. (s. 51.14 (3) (a), Stats.)

Review Procedure: Outpatient Mental Health Treatment

Section 51.14, Stats., provides a procedure to review a refusal of a minor age 14 or older to provide informed consent for outpatient mental health treatment. The procedure is also available to review a refusal or inability of a parent to provide informed consent for a minor's outpatient mental health treatment. Outpatient mental health treatment means treatment and social services for mental illness, except 24-hour care, treatment, and custody.

A review is commenced by filing a petition with the designated mental health review officer (MHRO) in the children's or juvenile court in the parent or guardian's county of residence.

Within 21 days after the petition's filing, the MHRO must hold a hearing on the parent or guardian's refusal to provide informed consent, or of the provision of informed consent by the parent or guardian despite the minor's refusal to do so. A 96-hour advance notice of the hearing must be provided.

Following the hearing, the MHRO may order outpatient mental health treatment for the minor despite the parent or guardian's refusal to provide informed consent, or their provision of informed consent despite the minor's refusal. All of the following findings must be made:

- The informed consent of the parent or guardian is unreasonably withheld or the refusal of the minor to provide informed consent is unreasonable.
- The minor is in need of treatment.
- The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.
- The proposed treatment is in the best interests of the minor.

Judicial review of an MHRO decision is available if a petition for review is filed within 21 days after the issuance of the decision. The court may order treatment notwithstanding a refusal to provide informed consent provided that the same findings are made that the MHRO was required to make. A person aggrieved by the court's decision may appeal to the court of appeals.

Consent Requirements: AODA

Younger Minors (Under Age 14)

Inpatient: Under s. 51.13 (1) (a), Stats., an application of admission of a minor under age 14 to an approved inpatient treatment facility for the primary purpose of treatment for AODA must be executed by a parent who has legal custody of the minor, or the minor's guardian.

Other treatment: Under s. 51.47 (1), Stats., for a minor under 12 years of age, AODA services may be provided without obtaining the consent of or notifying the minor's parent or guardian, but **only if** a parent with legal custody or guardian of the minor under 12 years of age cannot be found or there is no parent with legal custody of the minor under 12 years of age.

Older Minors (Age 14 and Older)

Inpatient: Under s. 51.13 (1) (a), Stats., an application of admission of a minor age 14 or older to an approved inpatient treatment facility for the primary purpose of treatment for AODA must be executed by a parent who has legal custody of the minor, or the minor's guardian. A statement or conduct by the minor that indicates that the minor does not agree to the admission must be noted on the application and in the review petition filed with a court.

Other treatment: Under s. 51.47 (1), Stats., any physician or health care facility licensed, approved, or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian.

Discharge From AODA Treatment

Any minor who admits himself or herself for AODA treatment may request discharge in writing.

For minors who are admitted for AODA treatment by a parent or guardian, the parent or guardian may request discharge of the minor. (s. 51.13 (7) (b) 2., Stats.)

Section 51.15, Stats. (Emergency Detention)

51.15 Emergency detention. (1) BASIS FOR DETENTION. (a) 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, 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) 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.

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.

(b) The officer's or other person's belief shall be based on any of the following:

1. A specific recent overt act or attempt or threat to act or omission by the individual which is observed by the officer or person.

2. A specific recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the officer or person by any other person, including any probation, extended supervision and parole agent authorized by the department of corrections to exercise control and supervision over a probationer, parolee or person on extended supervision.

(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 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 approved private treatment facility, if the facility agrees to detain the individual.

(3) CUSTODY. Upon arrival at the facility, the individual is deemed to be in the custody of the facility.

(4) DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 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.

(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 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. 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.

(5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, 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.

(6) RELEASE. If the individual is released, the treatment director or his or her designee, upon the individual's request, shall arrange for the individual's transportation to the locality where he or she was taken into custody.

(7) INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings conducted under this section and s. 51.20 by the county of detention concerning individuals taken into custody in the other county and shall include provisions to cover the cost of any voluntary or involuntary services provided under this chapter to the subject individual as a result of proceedings or conditional suspension of proceedings resulting from the notification of detention. Where there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention specified in subs. (4) and (5) and the notification specified in sub. (4) shall be filed with the court having probate jurisdiction in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody.

(8) EVALUATION, DIAGNOSIS AND TREATMENT. When an individual is detained under this section, the director and staff of the treatment facility may evaluate, diagnose and treat the individual during detention, if the individual consents. The individual has a right to refuse medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be advised of that right by the director of the facility or his or her designee, and a report of any evaluation and diagnosis and of all treatment provided shall be filed by that person with the court.

(9) NOTICE OF RIGHTS. At the time of detention the individual shall be informed by the director of the facility or such person'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, the right to have an attorney provided at public expense, as provided under s. 51.60, and the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual shall also be provided with a copy of the statement of emergency detention.

(10) VOLUNTARY PATIENTS. If an individual has been admitted to an approved treatment facility under s. 51.10 or 51.13, or has been otherwise admitted to such facility, the treatment director or his or her designee, if conditions exist for taking the individual into custody under sub. (1), may sign a statement of emergency detention and may detain, or detain, evaluate, diagnose and treat the individual as provided in this section. In such case, the treatment director shall undertake all responsibilities that are required of a law enforcement officer under this section. The treatment director shall promptly file the statement with the court having probate jurisdiction in the county of detention as provided in this section.

(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) (a) 1., 2., 3. or 4., 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.

(11g) OTHER LIABILITY. Subsection (11) applies to a director of a facility, as specified in sub. (2), 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.

(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.

(12) PENALTY. Whoever signs a statement under sub. (4), (5) or (10) knowing the information contained therein to be false is guilty of a Class H felony.

Sections 51.13 and 51.14, Stats. (Treatment of Minors)

51.13 Admission of minors. (1) ADMISSION. (a) Except as provided in par. (c) and ss. 51.45 (2m) and 51.47, the application for admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for alcoholism or drug abuse and the application for admission of a minor who is under 14 years of age to an approved inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse shall be executed by a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct by a minor who is the subject of an application for admission under this paragraph indicating that the minor does not agree to admission to the facility shall be noted on the face of the application and shall be noted in the petition required by sub. (4).

(b) The application for admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian, except as provided in par. (c) 1., except that, if the minor refuses to execute the application, a parent who has legal custody of the minor or the minor's guardian may execute the application on the minor's behalf.

(c) 1. If a minor 14 years of age or older wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian refuses to execute the application for admission or cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last-known address. If, after a hearing, the court determines that the consent of the parent or guardian is being unreasonably withheld, that the parent or guardian cannot be found, or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's admission without the consent of the parent or guardian.

2. If a minor under 14 years of age wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last-known address. If, after a hearing, the court determines that the parent or guardian cannot be found or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's admission without the consent of the parent or guardian.

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

(d) A minor against whom a petition or statement has been filed under s. 51.15, 51.20, or 51.45 (12) or (13) may be admitted under this section. The court may permit the minor to become a patient under this section upon approval by the court of an application executed under par. (a), (b), or (c). The court shall then dismiss the proceedings under s. 51.15, 51.20, or 51.45 (12) or (13). If a hearing is held under this subsection, no hearing under sub. (4) is required.

(e) A minor may be admitted immediately upon the approval of the application executed under par. (a) or (b) by the treatment director of the facility or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee, and, if the county department is to be responsible for the cost of the minor's therapy and treatment, the director of the

appropriate county department under s. 51.42 or 51.437. Admission under par. (c) or (d) shall also be approved, within 14 days of the minor's admission, by the treatment director of the facility or his or her designee, or in the case of a center for the developmentally disabled, the director of the center or his or her designee and, if the county department is to be responsible for the cost of the minor's therapy and treatment, the director of the appropriate county department under s. 51.42 or 51.437.

(em) Approval under par. (e) shall be based upon an informed professional opinion that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse, that the treatment facility offers inpatient therapy or treatment that is appropriate for the minor's needs, and that inpatient care in the facility is the least restrictive therapy or treatment consistent with the minor's needs. In the case of a minor who is being admitted for the primary purpose of treatment for alcoholism or drug abuse, approval shall also be based on the results of an alcohol or other drug abuse assessment that conforms to the criteria specified in s. 938.547 (4).

(3) NOTICE OF RIGHTS. (am) Prior to admission if possible, or as soon thereafter as possible, the minor who is admitted under sub. (1) (a) or (b) and the minor's parent or guardian shall be informed by the director of the facility or his or her designee, both orally and in writing, in easily understandable language, of the review procedure in sub. (4), including the standards to be applied by the court and the possible dispositions; the minor's right to an independent evaluation, if ordered by the court; the minor's right to be informed about how to contact the state protection and advocacy agency designated under s. 51.62 (2) (a); the right under sub. (4) (d) to a hearing upon request under sub. (4); the minor's right to appointed counsel as provided in sub. (4) (d) if a hearing is held; for a minor other than a minor specified under par. (b), the right of the minor or parent or guardian to request the minor's discharge as provided in or limited by sub. (7) (b); and the minor's right to a hearing to determine continued appropriateness of the admission as provided in sub. (7) (c).

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

(d) A copy of the patient's rights established in s. 51.61 shall be given and explained to the minor and the minor's parent or guardian at the time of admission by the director of the facility or such person's designee.

(e) Writing materials for use in requesting a hearing or discharge under this section shall be made available to minors at all times by every inpatient treatment facility. The staff of each such facility shall assist minors in preparing and submitting requests for discharge or hearing.

(4) REVIEW PROCEDURE. (a) Within 3 days after the admission of a minor under sub. (1), or within 3 days after an application is executed for admission of the minor, whichever occurs first, the treatment director of the facility to which the minor is admitted or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee, shall file a verified petition for review of the admission in the court assigned to exercise jurisdiction under chs. 48 and 938 in the county in which the facility is located. A copy of the application for admission and of any relevant professional evaluations shall be attached to the petition. The petition shall contain all of the following:

1. The name, address and date of birth of the minor.
2. The names and addresses of the minor's parents or guardian.
3. The facts substantiating the petitioner's belief in the minor's need for psychiatric services, or services for developmental disability, alcoholism or drug abuse.

4. The facts substantiating the appropriateness of inpatient treatment in the inpatient treatment facility.

5. The basis for the petitioner's opinion that inpatient care in the facility is the least restrictive treatment consistent with the needs of the minor.

6. Notation of any statement made or conduct demonstrated by the minor in the presence of the director or staff of the facility indicating that inpatient treatment is against the wishes of the minor.

(b) If hardship would otherwise occur and if the best interests of the minor would be served thereby, the court may, on its own motion or on the motion of any interested party, remove the petition to the court assigned to exercise jurisdiction under chs. 48 and 938 of the county of residence of the parent or guardian.

(c) A copy of the petition shall be provided by the petitioner to the minor and, if available, his or her parents or guardian within 5 days after admission.

(d) Within 5 days after the filing of the petition, the court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether there is a prima facie showing that the minor is in need of psychiatric services, or services for developmental disability, alcoholism, or drug abuse, whether the treatment facility offers inpatient therapy or treatment that is appropriate to the minor's needs; whether inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor; and, if the minor is 14 years of age or older and has been admitted to the treatment facility for the primary purpose of treatment for mental illness or developmental disability, whether the admission was made under an application executed by the minor and the minor's parent or guardian. If such a showing is made, the court shall permit admission. If the court is unable to make those determinations based on the petition and accompanying documents, the court may dismiss the petition as provided in par. (h); order additional information, including an independent evaluation, to be produced as necessary for the court to make those determinations within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner; or hold a hearing within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner. If a notation of the minor's unwillingness appears on the face of the petition, if the admission was made under an application executed by the minor's parent or guardian despite the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel, parent, or guardian, the court shall order an independent evaluation of the minor and hold a hearing to review the admission, within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner, and shall appoint counsel to represent the minor if the minor is unrepresented. If the court considers it necessary, the court shall also appoint a guardian ad litem to represent the minor. The minor shall be informed about how to contact the state protection and advocacy agency designated under s. 51.62 (2) (a).

(e) Notice of the hearing under this subsection shall be provided by the court by certified mail to the minor, the minor's parents or guardian, the minor's counsel and guardian ad litem if any, the petitioner and any other interested party at least 96 hours prior to the time of hearing.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. A record shall be maintained of the entire proceedings. The record shall include findings of fact and conclusions of law. Findings shall be based on a clear and convincing standard of proof.

(g) If the court finds, under a hearing under par. (d), that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse in an inpatient facility, that the inpatient facility to which the minor is admitted offers therapy or treatment that is appropriate for the minor's needs and that is the least restrictive therapy or treatment consistent with the minor's needs, the court shall permit admission. If the court finds that the therapy or treatment in the inpatient facility to which the minor is admitted is not appropriate or is not the least restrictive therapy or treatment consistent with the minor's needs, the court may order placement in or transfer to another more appropriate or less restrictive inpatient facility, if the placement or transfer is first approved by all of the

following, except that placement in or transfer to a center for the developmentally disabled shall first be approved by all of the following and the department:

1. For the primary purpose of treatment for mental illness or developmental disability, any of the following, as applicable:

a. For a minor who is under 14 years of age, a parent who has legal custody of the minor or the minor's guardian.

b. For a minor who is 14 years of age or older, the minor and a parent who has legal custody of the minor or the minor's guardian, except that, if the minor refuses approval, a parent who has legal custody of the minor or the minor's guardian may provide approval on the minor's behalf.

c. For a minor admitted under sub. (1) (c) 1. or 2., the minor.

2. The treatment director of the facility or his or her designee.

3. The director of the appropriate county department under s. 51.42 or 51.437 if the county department is to be responsible for the cost of the minor's therapy or treatment.

(h) If the court does not permit admission under par. (g), it shall do one of the following:

1. Dismiss the petition and order the application for admission denied and the minor released.

2. Order the petition to be treated as a petition for involuntary commitment and refer it to the court where the review under this section was held, or if it was not held in the county of legal residence of the subject individual's parent or guardian and hardship would otherwise occur and if the best interests of the subject individual would be served thereby, to the court assigned to exercise jurisdiction under chs. 48 and 938 in such county for a hearing under s. 51.20 or 51.45 (13).

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.

4. If there is a reason to believe the minor is in need of protection or services under s. 48.13 or 938.13 or the minor is an expectant mother of an unborn child in need of protection or services under s. 48.133, dismiss the petition and authorize the filing of a petition under s. 48.25 (3) or 938.25 (3). The court may release the minor or may order that the minor be taken and held in custody under s. 48.19 (1) (c) or (cm) or 938.19 (1) (c).

(i) Approval of an admission under this subsection does not constitute a finding of mental illness, developmental disability, alcoholism or drug dependency.

(5) APPEAL. Any person who is aggrieved by a determination or order under this section and who is directly affected thereby may appeal to the court of appeals under s. 809.30.

(6) SHORT-TERM ADMISSIONS. (a) 1. Subject to subd. 2. or 3., as applicable, a minor may be admitted to an inpatient treatment facility without review under sub. (4) of the application, for diagnosis and evaluation or for dental, medical, or psychiatric services, for a period not to exceed 12 days. The application for short-term admission of a minor shall be executed by the minor's parent with legal custody of the minor or the minor's guardian, unless sub. (1) (c) applies.

2. If the minor is 14 years of age or older and is being admitted for the primary purpose of diagnosis, evaluation, or services for mental illness or developmental disability, the application shall be executed by the minor's parent or guardian and the minor, except that, if the minor refuses to execute the application, the parent or the guardian may execute the application. Admission under this subdivision of a minor who refuses to execute the application is reviewable under sub. (4) (d). If a review is requested or required, the treatment director of the facility to which the minor is admitted or

his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee shall file a verified petition for review of the admission on behalf of the minor.

3. A minor may not be readmitted to an inpatient treatment facility for psychiatric services under this paragraph within 120 days of a previous admission under this paragraph.

(b) The application shall be reviewed by the treatment director of the facility or, in the case of a center for the developmentally disabled, by the director, and shall be accepted only if the director determines that the admission constitutes the least restrictive means of obtaining adequate diagnosis and evaluation of the minor or adequate provision of medical, dental or psychiatric services.

(c) At the end of the 12-day period, the minor shall be released unless an application has been filed for admission under sub. (1); a statement has been filed for emergency detention; or a petition has been filed for emergency commitment, involuntary commitment, or protective placement.

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

(b) 1. Any minor who is voluntarily admitted under sub. (1) (c) 1. or 2., may request discharge in writing.

2. For a minor 14 years of age or older who is admitted under sub. (1) (a) or (b) for the primary purpose of treatment for alcoholism or drug abuse or a minor under 14 years of age who is admitted under sub. (1) (a) or (b) for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse, the parent or guardian of the minor may request discharge in writing.

3. For a minor 14 years of age or older who is admitted under sub. (1) (a) or (b) for the primary purpose of treatment for mental illness or developmental disability, the minor and the minor's parent or guardian may request discharge in writing. If the parent or guardian of the minor refuses to request discharge and if the director of the facility to which the minor is admitted or his or her designee avers, in writing, that the minor is in need of psychiatric services or services for developmental disability, that the facility's therapy or treatment is appropriate to the minor's needs, and that inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor, the minor may not be discharged under this paragraph.

4. Upon receipt of any form of written request for discharge from a minor specified under subd. 1. or 3., the director of the facility in which the minor is admitted shall immediately notify the minor's parent or guardian, if available.

5. A minor specified in subd. 1., a minor specified in subd. 2. whose parent or guardian requests discharge in writing, and a minor specified in subd. 3. who requests and whose parent or guardian requests discharge in writing shall be discharged within 48 hours after submission of the request, exclusive of Saturdays, Sundays, and legal holidays, unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement.

(c) Any minor who is admitted under this section, other than a minor to which par. (b) 1. applies, who is not discharged under par. (b) may submit a written request to the court for a hearing to determine the continued appropriateness of the admission. If the director or staff of the inpatient

treatment facility to which a minor described in this paragraph is admitted observes conduct by the minor that demonstrates an unwillingness to remain at the facility, including a written expression of opinion or unauthorized absence, the director shall file a written request with the court to determine the continued appropriateness of the admission. A request that is made personally by a minor under this paragraph shall be signed by the minor but need not be written or composed by the minor. A request for a hearing under this paragraph that is received by staff or the director of the facility in which the minor is admitted shall be filed with the court by the director. The court shall order a hearing as provided in sub. (4) (d) upon request if no hearing concerning the minor's admission has been held within 120 days before court receipt of the request. If a hearing is held, the court shall hold the hearing within 14 days after receipt of the request, unless the parties agree to a longer period. After the hearing, the court shall dispose of the matter in the manner provided in sub. (4) (h).

51.14 Review of outpatient mental health treatment of minors aged 14 or older. (1)
DEFINITIONS. In this section, "outpatient mental health treatment" means treatment and social services for mental illness, except 24-hour care, treatment, and custody that is provided by a treatment facility.

(2) MENTAL HEALTH REVIEW OFFICER. Each court assigned to exercise jurisdiction under chs. 48 and 938 shall designate a mental health review officer to review petitions filed under sub. (3).

(3) REVIEW BY MENTAL HEALTH REVIEW OFFICER. (a) A minor 14 years of age or older or a person acting on behalf of the minor may petition the mental health review officer in the county in which the minor's parent or guardian has residence for a review of a refusal or inability of the minor's parent or guardian to provide the informed consent for outpatient mental health treatment required under s. 51.61 (6). For a minor on whose behalf consent for outpatient treatment was provided by the minor's parent or guardian despite the minor's refusal, the treatment director of the outpatient facility shall file a petition for review of the informed consent on behalf of the minor.

(b) A petition filed under this subsection shall contain all of the following:

1. The name, address and birth date of the minor.
2. The name and address of the parent or guardian of the minor.
3. The facts substantiating the petitioner's belief that the minor needs, or does not need, outpatient mental health treatment.
4. Any available information which substantiates the appropriateness of the particular treatment sought for the minor and that the particular treatment sought is the least restrictive treatment consistent with the needs of the minor.

(c) Any professional evaluations relevant under par. (b) 3. or 4. shall be attached to the petition filed under this subsection.

(d) The court which appointed the mental health review officer shall ensure that necessary assistance is provided to the petitioner in the preparation of the petition under this subsection.

(e) The mental health review officer shall notify the county department under s. 51.42 or 51.437 of the contents of any petition received by the mental health review officer under this subsection. The county department under s. 51.42 or 51.437 may, following review of the petition contents, make recommendations to the mental health review officer as to the need for and appropriateness and availability of treatment.

(f) If prior to a hearing under par. (g) the minor requests and the mental health review officer determines that the best interests of the minor would be served, a petition may be filed for court review under sub. (4) without further review under this subsection.

(g) Within 21 days after the filing of a petition under this subsection, the mental health review officer shall hold a hearing on the refusal or inability of the minor's parent or guardian to provide informed consent for outpatient treatment or on the provision of informed consent by the parent or guardian despite the minor's refusal. The mental health review officer shall provide notice of the date, time and place of the hearing to the minor and, if available, the minor's parent or guardian at least 96 hours prior to the hearing.

(h) If following the hearing under par. (g) and after taking into consideration the recommendations, if any, of the county department under s. 51.42 or 51.437 made under par. (e), the mental health review officer finds all of the following, he or she shall issue a written order that, notwithstanding the written, informed consent requirement of s. 51.61 (6), the written, informed consent of the minor's parent or guardian, if the parent or guardian is refusing or unable to provide consent, is not required for outpatient mental health treatment for the minor or, if the parent or guardian provided informed consent despite the minor's refusal, the outpatient mental health treatment for the minor is appropriate:

1. The informed consent of the parent or guardian is unreasonably withheld or the refusal of the minor to provide informed consent is unreasonable.

2. The minor is in need of treatment.

3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.

4. The proposed treatment is in the best interests of the minor.

- (i) The findings under par. (h) and the reasons supporting each finding shall be in writing.

- (j) The mental health review officer shall notify the minor and the minor's parent or guardian, if available, of the right to judicial review under sub. (4).

(k) No person may be a mental health review officer in a proceeding under this section if he or she has provided treatment or services to the minor who is the subject of the proceeding.

(4) JUDICIAL REVIEW. (a) Within 21 days after the issuance of the order by the mental health review officer under sub. (3) or if sub. (3) (f) applies, the minor or a person acting on behalf of the minor may petition a court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the minor's parent or guardian for a review of the refusal or inability of the minor's parent or guardian to provide the informed consent for outpatient mental health treatment required under s. 51.61 (6) or for a review of the provision of informed consent by the parent or guardian despite the minor's refusal.

- (b) The petition in par. (a) shall conform to the requirements set forth in sub. (3) (b). If the minor has refused to provide informed consent, a notation of this fact shall be made on the face of the petition.

- (c) If a notation of a minor's refusal to provide informed consent to outpatient mental health treatment appears on the petition, the court shall, at least 7 days prior to the time scheduled for the hearing, appoint counsel to represent the minor if the minor is unrepresented. If the minor's parent or guardian has refused to provide informed consent and the minor is unrepresented, the court shall appoint counsel to represent the minor, if requested by the minor or determined by the court to be in the best interests of the minor.

- (d) The court shall hold a hearing on the petition within 21 days after filing of the petition.

- (e) Notice of the hearing under this subsection shall be provided by the court by certified mail, at least 96 hours prior to the hearing, to the minor, the minor's parent or guardian, the minor's counsel and guardian ad litem, if any, and any other interested party known to the court.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. A record, including written findings of fact and conclusions of law, shall be maintained of the entire proceedings. Findings shall be based on evidence that is clear, satisfactory and convincing.

(g) After the hearing under this subsection, the court shall issue a written order stating that, notwithstanding the written, informed consent requirement of s. 51.61 (6), the written, informed consent of the parent or guardian, if the parent or guardian refuses or is unable to provide consent, is not required for outpatient mental health treatment for the minor or that, if the parent or guardian provided informed consent despite the minor's refusal, the outpatient mental health treatment for the minor is appropriate, if the court finds all of the following:

1. The informed consent is unreasonably withheld.
2. The minor is in need of treatment.
3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.
4. The treatment is in the best interests of the minor.

(5) APPEAL. Any person who is aggrieved by a determination or order under sub. (4) and who is directly affected by the determination or order may appeal to the court of appeals under s. 809.30.

(6) FINDING OR ORDER NOT A FINDING OF MENTAL ILLNESS. A finding or order under this section does not constitute a finding of mental illness.

(7) LISTING OF MENTAL HEALTH REVIEW OFFICERS. The department shall compile a list that specifies the mental health review officers in each county, post the list on the department's Web site, and update the list as necessary.

Model Contract Addendum for Interstate Purchase of Services

Source: