AN ACT ***to repeal*** 51.20 (13) (g) 2. and 51.20 (13) (g) 2m.; ***to renumber and amend*** 51.15 (1) (a) and (b); ***to amend*** 51.15 (2), 51.15 (4) (a), 51.15 (4) (b), 51.15 (5), 51.20 (1) (a) 2. c., 51.20 (2) (d), 51.20 (8) (b) and 905.04 (4) (a); and ***to create*** 51.15 (1) (a) and 51.15 (4) (c) 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 privileged communications and information:

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

2. The bill creates a "purpose" statement for the emergency detention statute. The statement says that the purpose of emergency detention is to provide, on an emergency basis, treatment by the least restrictive means possible, to individuals who meet all of the following criteria: (a) are mentally ill, drug dependent, or developmentally disabled; (b) evidence one of the statutory standards of dangerousness; and (c) are unable or unwilling due to mental illness, drug dependency, or developmental disability, to cooperate with voluntary treatment. [SECTION 2.]

3. Current law provides standards for emergency detention and involuntary commitment. The 3rd standard of dangerousness allows for commitment if there is a substantial probability of physical impairment or injury to himself or herself due to impaired judgment. The bill modifies this language to also include a substantial probability of physical impairment or injury **to others**. [SECTIONS 1 and 8.]

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 provides that the county department may approve the detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others. The bill also consolidates the references to these facilities to provide that detention may occur in a treatment facility approved by the department or county department, if the facility agrees to detain the individual, or a state treatment facility. [SECTIONS 3, 9, and 10.]

5. Current law provides different procedures for emergency detention in counties with a population of 500,000 or more and those with a population of less than 500,000. The bill increases the population threshold to 750,000, so that those procedures will continue to apply only to Milwaukee County. [SECTIONS 4 and 7.]

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 that when calculating the 24 hours, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non−psychiatric medical conditions of the individual shall be excluded from the calculation. [SECTIONS 5 and 6.]

7. Generally, current law provides that the first order of involuntary commitment is for up to 6 months, and all subsequent consecutive orders of commitment are for up to one year. However, current law provides that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365−day period. The bill eliminates that provision with respect to persons committed under the 4th standard of dangerousness. [SECTION 11.]

8. Current law provides that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision. The bill repeals this provision. [SECTION 12.]

9. 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 13.]

SECTION 1. 51.15 (1) (a) and (b) of the statutes are renumbered 51.15 (1) (b) and (c), and 51.15 (1) (b) (intro.) 3. and 4., as renumbered, are amended to read:

51.15 **(1)** (b) (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, that taking the person into custody is the least restrictive alternative appropriate to the person's needs, and that the individual evidences any of the following:

NOTE: The amendment adds a criterion that must be considered when determining whether to take a person into custody for an emergency detention: that taking the person into custody is the least restrictive alternative appropriate to the person's needs.

COMMENT: It was unclear from my notes whether the committee wanted to include this reference to the "least restrictive alternative" in this introductory paragraph. This should be clarified by the committee.

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.

NOTE: This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial probability of an injury or impairment **to others** due to an individual's impaired judgment.

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.

NOTE: This amendment deletes references to drug dependency from the 4th standard of dangerousness for emergency detentions which makes

this 4th standard consistent with the 4th standard of dangerousness for commitment under s. 51.20 (1) (a) 2. d.

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

51.15 **(1)** (a) *Purpose.* The purpose of this section is to provide, on an emergency basis, treatment by the least restrictive means appropriate to the individual's needs, to individuals who meet all of the following criteria:

1. Are mentally ill, drug dependent, or developmentally disabled.

2. Evidence one of the standards set forth in par. (b) 1. to 4.

3. Are unable or unwilling to cooperate with voluntary treatment, due to mental illness, drug dependency, or developmental disability.

NOTE: This SECTION adds a purpose statement to the beginning of s. 51.15, the emergency detention statute.

SECTION 3. 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 for evaluation, diagnosis, and treatment if permitted under sub. (8) ~~to any of the following facilities:~~. The county department may approve the detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove the substantial probability of physical harm, impairment, or injury to himself, herself, or others.

~~(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~~ Detention may only be in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or a state treatment facility.

NOTE: The amendment consolidates references to the types of facilities that may be used for emergency detention. Under the amendment, a person may be detained in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or in a state treatment facility. Section 51.01 (19), stats., defines a "treatment facility" as "a publicly or privately operated treatment facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs".

Section 51.01 (15), stats., defines "state treatment facility" as "any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes".

SECTION 4. 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.

> **NOTE:** Emergency detention procedures for Milwaukee County differ from the procedures in the rest of the state. This amendment raises the Milwaukee County population threshold from 500,000 to 750,000, to ensure that Dane County, the only other Wisconsin county whose population is approaching 500,000, is not made subject to these special procedures.

SECTION 5. 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, except as provided in par. (c), 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.

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

51.15 **(4)** (c) When calculating the 24 hours under par. (b) in which a treatment director determines whether an individual should be detained, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non−psychiatric medical conditions of the individual shall be excluded from the calculation.

> **NOTE:** The amendment to s. 51.15 (4) (b) and creation of s. 51.15 (4) (c) tolls the 24−hour time period for the treatment director's determination as to whether the individual should be detained, if the subject individual must be evaluated and treated for non−psychiatric medical conditions.

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.

NOTE: This amendment provides that this emergency detention procedure applies in counties with a population less than 750,000.

SECTION 8. 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.

NOTE: This amendment modifies the 3rd standard of dangerousness for emergency detention to allow for detention if there is a substantial

probability of injury or impairment to others due to an individual's impaired judgment.

SECTION 9. 51.20 (2) (d) of the statutes is amended to read:

51.20 **(2)** (d) Placement shall only 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 approved by the department or the county department, 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.

NOTE: The amendments to this statute reflect the changes in SECTION 3 of the draft.

SECTION 10. 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 only 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 approved by the department or the county department if the facility agrees to detain the subject individual, or in a state treatment facility.

NOTE: See the NOTE to SECTION 3.

SECTION 11. 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 12. 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 13. 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~~ commitment, guardianship, protective services, or protective placement or control, care, and treatment as a sexually violent person.

NOTE: This amendment changes a reference from "hospitalization" to "commitment", in the statute that provides that there is no evidentiary privilege as to communications and information relevant to an issue in probable cause or final proceedings in a commitment proceeding under s. 51.20, stats.

(END)