

**2011 Wisconsin Code Chapter 51.
State Alcohol, Drug Abuse, Developmental Disabilities
and Mental Health Act**

51.20 Involuntary commitment for treatment.

51.20

51.20 Involuntary commitment for treatment.

51.20(1)

(1) Petition for examination.

51.20(1)(a)

(a) Except as provided in pars. (ab), (am), and (ar), every written petition for examination shall allege that all of the following apply to the subject individual to be examined:

51.20(1)(a)1.

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

51.20(1)(a)2.

2. The individual is dangerous because he or she does any of the following:

51.20(1)(a)2.a.

a. Evidences 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.

51.20(1)(a)2.b.

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, 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. In this subd. 2. b., if the petition is filed under a court order under s. 938.30 (5) (c) 1. or (d) 1., a finding by the court exercising jurisdiction under chs. 48 and 938 that the juvenile committed the act or acts alleged in the petition under s. 938.12 or 938.13 (12) may be used to prove that the juvenile exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm.

51.20(1)(a)2.c.

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. 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.

51.20(1)(a)2.d.

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, 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. No substantial probability of harm under this subd. 2. d. 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 subd. 2. d. 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 treatment or protection available in the community under this subd. 2. d.

51.20(1)(a)2.e.

e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional, or physical harm is not substantial under this subd. 2. e.

if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual may be provided protective placement or protective services under ch. 55. Food, shelter, or other care that is provided to an individual who is substantially incapable of obtaining food, shelter, or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2. e. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional, or physical harm under this subd. 2. e.

51.20(1)(ab)

(ab) If the individual is an inmate of a prison, jail or other criminal detention facility, the fact that the individual receives food, shelter and other care in that facility may not limit the applicability of par. (a) to the individual. The food, shelter and other care does not constitute reasonable provision for the individual's protection available in the community.

51.20(1)(ad)

(ad)

51.20(1)(ad)1.

1. If a petition under par. (a) is based on par. (a) 2. e., the petition shall be reviewed and approved by the attorney general or by his or her designee prior to the time that it is filed. If the attorney general or his or her designee disapproves or fails to act with respect to the petition, the petition may not be filed.

51.20(1)(ad)2.

2. Subdivision 1. does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of par. (a) 2. e. has been challenged, has upheld the constitutionality of par. (a) 2. e.

51.20(1)(am)

(am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability, or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission, a commitment or protective placement ordered by a court under this section or s. 55.06, 2003 stats., s. 971.17, or ch. 975, or a protective placement or protective services ordered under s. 55.12, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability, or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section, s. 971.17, or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., pattern of recent acts or omissions under par. (a) 2. c. or e., or recent behavior under par. (a) 2. d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for

not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act, or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act, or pattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions, or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

51.20(1)(ar)

(ar) If the individual is an inmate of a state prison, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and it shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 302.11 or 302.113, whichever is applicable. The petition shall have attached to it a signed statement by a licensed physician or a licensed psychologist of a state prison and a signed statement by a licensed physician or a licensed psychologist of a state treatment facility attesting either of the following:

51.20(1)(ar)1.

1. That the inmate needs inpatient treatment at a state treatment facility because appropriate treatment is not available in the prison.

51.20(1)(ar)2.

2. That the inmate's treatment needs can be met on an outpatient basis in the prison.

51.20(1)(b)

(b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual, except that this requirement does not apply if the petition is filed pursuant to a court order under s. 938.30 (5) (c) 1. or (d) 1.

51.20(1)(c)

(c) The petition shall contain the names and mailing addresses of the petitioners and their relation to the subject individual, and shall also contain the names and mailing addresses of the individual's spouse, adult children, parents or guardian, custodian, brothers, sisters, person in the place of a parent and person with whom the individual resides or lives. If this information is unknown to the petitioners or inapplicable, the petition shall so state. The petition may be filed

in the court assigned to exercise probate jurisdiction for the county where the subject individual is present or the county of the individual's legal residence. If the judge of the court or a circuit court commissioner who handles probate matters is not available, the petition may be filed and the hearing under sub. (7) may be held before a judge or circuit court commissioner of any circuit court for the county. For the purposes of this chapter, duties to be performed by a court shall be carried out by the judge of the court or a circuit court commissioner of the court who is designated by the chief judge to so act, in all matters prior to a final hearing under this section. The petition shall contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the petition. The petition shall be sworn to be true. If a petitioner is not a petitioner having personal knowledge as provided in par. (b), the petition shall contain a statement providing the basis for his or her belief.

51.20(1m)

(1m) Alternate grounds for commitment. For purposes of subs. (2) to (9), the requirement of finding probable cause to believe the allegations in sub. (1) (a) or (am) may be satisfied by finding probable cause to believe that the individual satisfies sub. (1) (a) 1. and evidences such impaired judgment, manifested by evidence of a recent act or omission, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury may not be deemed substantial under this subsection 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 the services or if the individual may be provided protective placement or protective services under ch. 55. The individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subsection. 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 subsection.

51.20(2)

(2) Notice of hearing and detention.

51.20(2)(a)

(a) Upon the filing of a petition for examination, the court shall review the petition to determine whether an order of detention should be issued. The subject individual shall be detained only if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and the individual is eligible for commitment under sub. (1) (a) or (am) based upon specific recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual.

51.20(2)(b)

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

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

51.20(2)(c)

(c) If the law enforcement officer has a detention order issued by a court, or if the law enforcement officer has cause to believe that the subject individual is mentally ill, drug dependent or developmentally disabled and is eligible for commitment under sub. (1) (a) or (am), based upon specific recent overt acts, attempts or threats to act or on a pattern of omissions made by the individual, the law enforcement officer shall take the subject individual into custody. If the individual is detained by a law enforcement officer, the individual shall be orally informed of his or her rights under this section on arrival at the detention facility by the facility staff, who shall also serve all documents required by this section on the individual.

51.20(2)(d)

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

51.20(3)

(3) Legal counsel. At the time of the filing of the petition the court shall assure that the subject individual is represented by adversary counsel by referring the individual to the state public defender, who shall appoint counsel for the individual without a determination of indigency, as provided in s. 51.60.

51.20(4)

(4) Public representation. Except as provided in ss. 51.42 (3) (ar) 1. and 51.437 (4m) (f), the corporation counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

51.20(5)

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

51.20(6)

(6) Juveniles. For minors, the hearings held under this section shall be before the court assigned to exercise jurisdiction under chs. 48 and 938.

51.20(7)

(7) Probable-cause hearing.

51.20(7)(a)

(a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

51.20(7)(am)

(am) A subject individual may not be examined, evaluated or treated for a nervous or mental disorder pursuant to a court order under this subsection unless the court first attempts to determine whether the person is an enrollee of a health maintenance organization, limited service health organization or preferred provider plan, as defined in s. 609.01, and, if so, notifies the organization or plan that the subject individual is in need of examination, evaluation or treatment for a nervous or mental disorder.

51.20(7)(b)

(b) If the subject individual is not detained or is an inmate of a state prison, county jail or house of correction, the court shall hold a hearing within a reasonable time of the filing of the petition, to determine whether there is probable cause to believe the allegations made under sub. (1).

51.20(7)(c)

(c) If the court determines that there is probable cause to believe the allegations made under sub. (1), it shall schedule the matter for a hearing within 14 days from the time of detention of

the subject individual, except as provided in sub. (8) (bg) or (bm) or (11) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time of detention of the subject individual. If the subject individual is not detained under s. 51.15 or this section or is an inmate of a state prison, county jail or house of correction, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment. In the event that the subject individual fails to appear for the hearing to determine probable cause for commitment, the court may issue an order for the subject individual's detention and shall hold the hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, from the time that the individual is detained.

51.20(7)(d)

(d)

51.20(7)(d)1.

1. If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order the involuntary administration of psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 55.14 (3) (e) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of serious and persistent mental illness, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

51.20(7)(d)1.a.

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

51.20(7)(d)1.b.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her serious and persistent mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

51.20(7)(d)2.

2. A finding by the court that there is probable cause to believe that the subject individual meets the commitment standard under sub. (1) (a) 2. e. constitutes a finding that the individual is not competent to refuse medication or treatment under this paragraph.

51.20(7)(dm)

(dm) The court shall proceed as if a petition were filed under s. 51.45 (13) if all of the following conditions are met:

51.20(7)(dm)1.

1. The petitioner's counsel notifies all other parties and the court, within a reasonable time prior to the hearing, of his or her intent to request that the court proceed as if a petition were filed under s. 51.45 (13).

51.20(7)(dm)2.

2. The court determines at the hearing that there is probable cause to believe that the subject individual is a fit subject for treatment under s. 51.45 (13).

51.20(7)(e)

(e) If the court determines that probable cause does not exist to believe the allegations, or to proceed under par. (d), the court shall dismiss the proceeding.

51.20(8)

(8) Disposition pending hearing.

51.20(8)(a)

(a) If it is shown that there is probable cause to believe the allegations under sub. (1), the court may release the subject individual pending the full hearing and the individual has the right to receive treatment services, on a voluntary basis, from the county department under s. 51.42 or 51.437, or from the department. The court may issue an order stating the conditions under which the subject individual may be released from detention pending the final hearing. If acceptance of treatment is made a condition of the release, the subject individual may elect to accept the conditions or choose detention pending the hearing. The court order may state the action to be taken upon information of breach of the conditions. A final hearing must be held within 30 days of the order, if the subject individual is released. Any detention under this paragraph invokes time limitations specified in sub. (7) (c), beginning with the time of the detention. The right to receive treatment voluntarily or accept treatment as a condition of release under this paragraph does not apply to an individual for whom a probable cause finding has been made, under s. 51.61 (1) (g), that he or she is not competent to refuse medication, to the extent that the treatment includes medication.

51.20(8)(b)

(b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (7) (c). Detention may be in

a hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

51.20(8)(bg)

(bg) The subject individual, or the individual's legal counsel with the individual's consent, may waive the time periods under s. 51.10 or this section for the probable cause hearing or the final hearing, or both, for a period not to exceed 90 days from the date of the waiver, if the individual and the counsel designated under sub. (4) agree at any time after the commencement of the proceedings that the individual shall obtain treatment under a settlement agreement. The settlement agreement shall be in writing, shall be approved by the court and shall include a treatment plan that provides for treatment in the least restrictive manner consistent with the needs of the subject individual. Either party may request the court to modify the treatment plan at any time during the 90-day period. The court shall designate the appropriate county department under s. 51.42 or 51.437 to monitor the individual's treatment under, and compliance with, the settlement agreement. If the individual fails to comply with the treatment according to the agreement, the designated county department shall notify the counsel designated under sub. (4) and the subject's counsel of the individual's noncompliance.

51.20(8)(bm)

(bm) If, within 90 days from the date of the waiver under par. (bg), the subject individual fails to comply with the settlement agreement approved by the court under par. (bg), the counsel designated under sub. (4) may file with the court a statement of the facts which constitute the basis for the belief that the subject individual is not in compliance. The statement shall be sworn to be true and may be based on the information and belief of the person filing the statement. Upon receipt of the statement of noncompliance, the court may issue an order to detain the subject individual pending the final disposition. If the subject individual is detained under this paragraph, the court shall hold a probable cause hearing within 72 hours from the time of detention, excluding Saturdays, Sundays and legal holidays or, if the probable cause hearing was held prior to the approval of the settlement agreement under par. (bg), the court shall hold a final hearing within 14 days from the time of detention. If a jury trial is requested later than 5 days after the time of detention under this paragraph, but not less than 48 hours before the time of the final hearing, the final hearing shall be held within 21 days from the time of detention. The facts alleged as the basis for commitment prior to the waiver of the time periods for hearings under par. (bg) may be the basis for a finding of probable cause or a final disposition at a hearing under this paragraph.

51.20(8)(br)

(br) Upon the motion of the subject individual, the court shall hold a hearing on the issue of noncompliance with the settlement agreement within 72 hours from the time the motion for a hearing under this paragraph is filed with the court, excluding Saturdays, Sundays and legal

holidays. The hearing under this paragraph may be held as part of the probable cause or final hearing if the probable cause or final hearing is held within 72 hours from the time the motion is filed with the court, excluding Saturdays, Sundays and legal holidays. At a hearing on the issue of noncompliance with the agreement, the written statement of noncompliance submitted under par. (bm) shall be prima facie evidence that a violation of the conditions of the agreement has occurred. If the subject individual denies any of the facts as stated in the statement, he or she has the burden of proving that the facts are false by a preponderance of the evidence.

51.20(8)(c)

(c) During detention a physician may order the administration of such medication or treatment as is permitted under s. 51.61 (1) (g) and (h). The subject individual may consent to treatment but only after he or she has been informed of his or her right to refuse treatment and has signed a written consent to such treatment, except that an individual for whom, under s. 51.61 (1) (g), a probable cause finding has been made that he or she is not competent to refuse medication may not consent to medication under this paragraph. A report of all treatment which is provided, along with any written consent, shall be filed with the court by the director of the treatment facility in which the subject individual is detained, or his or her designee.

51.20(9)

(9) Examination.

51.20(9)(a)

(a)

51.20(9)(a)1.

1. If the court finds after the hearing that there is probable cause to believe the allegations under sub. (1), it shall appoint 2 licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, or 2 physicians, to personally examine the subject individual. The examiners shall have the specialized knowledge determined by the court to be appropriate to the needs of the subject individual. The examiners may not be related to the subject individual by blood, marriage, or adoption and may not have any interest in his or her property.

51.20(9)(a)2.

2. One of the examiners appointed under subd. 1. may be selected by the subject individual if the subject individual makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment. The court may deny the subject individual's selection if the examiner does not meet the requirements of subd. 1. or the subject individual's selection is not available.

51.20(9)(a)3.

3. If requested by the subject individual, the individual's attorney, or any other interested party with court permission, the individual has a right at his or her own expense or, if indigent and with approval of the court hearing the petition, at the reasonable expense of the individual's county of legal residence, to secure an additional medical or psychological examination and to offer the evaluator's personal testimony as evidence at the hearing.

51.20(9)(a)4.

4. Prior to the examination, the subject individual shall be informed that his or her statements can be used as a basis for commitment, that he or she has the right to remain silent and that the examiner is required to make a report to the court even if the subject individual remains silent. The issuance of such a warning to the subject individual prior to each examination establishes a presumption that the individual understands that he or she need not speak to the examiner.

51.20(9)(a)5.

5. The examiners shall personally observe and examine the subject individual at any suitable place and satisfy themselves, if reasonably possible, as to the individual's mental condition, and shall make independent reports to the court. The subject individual's treatment records shall be available to the examiners. If the subject individual is not detained pending the hearing, the court shall designate the time and place where the examination is to be held and shall require the individual's appearance. A written report shall be made of all such examinations and filed with the court. The report and testimony, if any, by the examiners shall be based on beliefs to a reasonable degree of medical certainty, or professional certainty if an examiner is a psychologist, in regard to the existence of the conditions described in sub. (1), and the appropriateness of various treatment modalities or facilities. If the examiners are unable to make conclusions to a reasonable degree of medical or professional certainty, the examiners shall so state in their report and testimony, if any.

51.20(9)(b)

(b) If the examiner determines that the subject individual is a proper subject for treatment, the examiner shall make a recommendation concerning the appropriate level of treatment. Such recommendation shall include the level of inpatient facility which provides the least restrictive environment consistent with the needs of the individual, if any, and the name of the facility where the subject individual should be received into the mental health system. The court may, prior to disposition, order additional information concerning such recommended level of treatment to be provided by the staff of the appropriate county department under s. 51.42 or 51.437, or by the staff of a public treatment facility if the subject individual is detained there pending the final hearing.

51.20(9)(c)

(c) On motion of either party, all parties shall produce at a reasonable time and place designated by the court all physical evidence which each party intends to introduce in evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical evidence in the presence of a person designated by the court. The order shall specify the time, place and

manner of making the inspection, copies, photographs, or transcriptions, and may prescribe such terms and conditions as are just. The court may, if the motion is made by the subject individual, delay the hearing for such period as may be necessary for completion of discovery.
51.20(10)

(10) Hearing.
51.20(10)(a)

(a) Within a reasonable time prior to the final hearing, the petitioner's counsel shall notify the subject individual and his or her counsel of the time and place of final hearing. The court may designate additional persons to receive notice of the time and place of the final hearing. Within a reasonable time prior to the final hearing, each party shall notify all other parties of all witnesses he or she intends to call at the hearing and of the substance of their proposed testimony. The provision of notice of potential witnesses shall not bar either party from presenting a witness at the final hearing whose name was not in the notice unless the presentation of the witness without notice is prejudicial to the opposing party.

51.20(10)(b)

(b) Counsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing.

51.20(10)(c)

(c) The court shall hold a final hearing to determine if the allegations specified in sub. (1) are true. Except as otherwise provided in this chapter, the rules of evidence in civil actions and s. 801.01 (2) apply to any judicial proceeding or hearing under this chapter. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.

51.20(10)(cm)

(cm) Prior to or at the final hearing, for individuals for whom a petition is filed under sub. (1) (a) 2. e., the county department under s. 51.42 or 51.437 shall furnish to the court and the subject individual an initial recommended written treatment plan that contains the goals of treatment, the type of treatment to be provided, and the expected providers. If the person has served in the U.S. armed forces or forces incorporated as part of the U.S. armed forces, the county department shall contact the U.S. department of veterans affairs to determine if the person is eligible for treatment at a U.S. department of veterans affairs facility. If the person is eligible for that treatment, the county department shall include that information in the treatment plan. The treatment plan shall address the individual's needs for inpatient care, residential services, community support services, medication and its monitoring, case management, and other services to enable the person to live in the community upon release from an inpatient facility. The treatment plan shall contain information concerning the availability of the needed services and community treatment providers' acceptance of the individual into their programs. The treatment plan is only a recommendation and is not subject to approval or disapproval by the

court. Failure to furnish a treatment plan under this paragraph does not constitute grounds for dismissal of the petition unless the failure is made in bad faith.

51.20(10)(d)

(d) In the event that the subject individual is not detained and fails to appear for the final hearing the court may issue an order for the subject individual's detention and shall hold the final commitment hearing within 7 days from the time of detention.

51.20(10)(e)

(e) At the request of the subject individual or his or her counsel the final hearing under par. (c) may be postponed, but in no case may the postponement exceed 7 calendar days from the date established by the court under this subsection for the final hearing.

51.20(11)

(11) Jury trial.

51.20(11)(a)

(a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel if the individual does not object, the court shall direct that a jury of 6 people be selected to determine if the allegations specified in sub. (1) (a) or (ar) are true. A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual or his or her counsel. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand. If an inmate of a state prison, county jail or house of correction demands a jury trial within 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the probable cause hearing. If an inmate of a state prison, county jail or house of correction demands a jury trial later than 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the date of demand.

51.20(11)(b)

(b) No verdict shall be valid or received unless agreed to by at least 5 of the jurors.

51.20(11)(c)

(c) Motions after verdict may be made without further notice upon receipt of the verdict.

51.20(12)

(12) Open hearings; exception. Every hearing which is held under this section shall be open, unless the subject individual or the individual's attorney, acting with the individual's consent, moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses may be present. If the subject individual is a minor, every hearing shall be closed unless an open hearing is demanded by the minor through his or her counsel.

51.20(13)

(13) Disposition.

51.20(13)(a)

(a) At the conclusion of the proceedings the court shall:

51.20(13)(a)1.

1. Dismiss the petition; or

51.20(13)(a)2.

2. If the subject individual is an adult, or is a minor aged 14 years or more who is developmentally disabled, proceed under s. 51.67 to determine whether the subject individual should receive protective placement or protective services; or

51.20(13)(a)3.

3. If the individual is not an inmate of a state prison, county jail or house of correction and the allegations specified in sub. (1) (a) are proven, order commitment to the care and custody of the appropriate county department under s. 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient treatment under care of such county department; or

51.20(13)(a)4.

4. If the individual is an inmate of a state prison and the allegations under sub. (1) (a) or (ar) are proven, order commitment to the department and either authorize the transfer of the inmate to a state treatment facility or if inpatient care is not needed authorize treatment on an outpatient basis in the prison; or

51.20(13)(a)4m.

4m. If the individual is an inmate of a county jail or house of correction and the allegations under sub. (1) (a) are proven, order commitment to the county department under s. 51.42 or 51.437 serving the inmate's county of residence or, if the inmate is a nonresident, order commitment to the department. The order shall either authorize the transfer of the inmate to a state or county treatment facility or, if inpatient care is not needed, authorize treatment on an outpatient basis in the jail or house of correction; or

51.20(13)(a)5.

5. If the allegations specified in sub. (1) (a) are proven and the subject individual is a nonresident, order commitment to the department.

51.20(13)(b)

(b) If the petition has been dismissed under par. (a), the subject individual may agree to remain in any facility in which he or she was detained pending the hearing for the period of time necessary for alternative plans to be made for his or her care.

51.20(13)(c)

(c) If disposition is made under par. (a) 3., all of the following apply:

51.20(13)(c)1.

1. The court shall designate the facility or service that is to receive the subject individual into the mental health system, subject to s. 51.06 (3).

51.20(13)(c)2.

2. The county department under s. 51.42 or 51.437 shall arrange for treatment in the least restrictive manner consistent with the requirements of the subject individual in accordance with a court order designating the maximum level of inpatient facility, if any, that may be used for treatment, subject to s. 51.06 (3).

51.20(13)(c)3.

3. The county department under s. 51.42 or 51.437 shall report to the court as to the initial plan of treatment for the subject individual.

51.20(13)(cm)

(cm) If disposition is made under par. (a) 4. or 4m. and the inmate is transferred to a state or county treatment facility, the department or, in the case of a disposition under par. (a) 4m., the county department under s. 51.42 or 51.437 may, after evaluating the inmate and developing an appropriate treatment plan, transfer the inmate back to the prison, county jail or house of correction on a conditional basis. The inmate shall be informed of the terms and conditions of the transfer as provided in s. 51.35 (1) (a). If the inmate does not cooperate with the treatment or if the inmate is in need of additional inpatient treatment, the department or the county department under s. 51.42 or 51.437 may return the inmate to a state or county treatment facility.

51.20(13)(cr)

(cr) If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall require the individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

51.20(13)(ct)

(ct)

51.20(13)(ct)1m.

1m.

51.20(13)(ct)1m.a.

a. Except as provided in subd. 2m., if the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed any violation, or to have solicited, conspired, or attempted to commit any violation, of ch. 940, 944, or 948 or s.

942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the subject individual to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the subject individual report under s. 301.45.
51.20(13)(ct)1m.b.

b. If a court under subd. 1m. a. orders a person to comply with the reporting requirements under s. 301.45 in connection with the commission of a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the person be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying conditions specified by the court. If the person satisfies the conditions, the court shall notify the department of corrections that the person has satisfied the conditions.
51.20(13)(ct)2m.

2m. If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation, or to have solicited, conspired, or attempted to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the subject individual was not the victim's parent, the court shall require the individual to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the individual, that the individual is not required to comply under s. 301.45 (1m).
51.20(13)(ct)3.

3. In determining under subd. 1m. a. whether it would be in the interest of public protection to have the subject individual report under s. 301.45, the court may consider any of the following:
51.20(13)(ct)3.a.

a. The ages, at the time of the violation, of the subject individual and the victim of the violation.
51.20(13)(ct)3.b.

b. The relationship between the subject individual and the victim of the violation.
51.20(13)(ct)3.c.

c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.
51.20(13)(ct)3.d.

d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
51.20(13)(ct)3.e.

e. The probability that the subject individual will commit other violations in the future.

51.20(13)(ct)3.g.

g. Any other factor that the court determines may be relevant to the particular case.

51.20(13)(ct)4.

4. If the court orders a subject individual to comply with the reporting requirements under s. 301.45, the court may order the subject individual to continue to comply with the reporting requirements until his or her death.

51.20(13)(ct)5.

5. If the court orders a subject individual to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding under s. 938.30 (5) (c) (intro.) on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding has been reversed, set aside or vacated.

51.20(13)(cv)

(cv)

51.20(13)(cv)1.

1. If the court makes the disposition under par. (a) 3., 4., 4m., or 5., the court shall order the individual not to possess a firearm, order the seizure of any firearm owned by the individual, and inform the individual of the requirements and penalties under s. 941.29 if the court determines that the individual is prohibited, under 18 USC 922 (g) (4), from possessing a firearm.

51.20(13)(cv)1m.

1m.

51.20(13)(cv)1m.a.

a. If a court orders an individual under subd. 1., or ordered an individual under s. 51.20 (13) (cv) 1., 2007 stats., not to possess a firearm, the individual may petition that court or the court in the county where the individual resides to cancel the order.

51.20(13)(cv)1m.b.

b. The court considering the petition under subd. 1m. a. shall grant the petition if the court determines that the circumstances regarding the disposition under par. (a) 3., 4., 4m., or 5. and the individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.

51.20(13)(cv)1m.c.

c. If the court grants the petition under subd. 1m. b., the court shall cancel the order under subd. 1., or the order under s. 51.20 (13) (cv) 1., 2007 stats., whichever is appropriate, and order the return of any firearm ordered seized under subd. 1. or s. 51.20 (13) (cv) 1., 2007 stats. 51.20(13)(cv)3.

3. In lieu of ordering the seizure under subd. 1., the court may designate a person to store the firearm until the order has been canceled under subd. 1m. c. 51.20(13)(cv)4.

4. If the court orders a subject individual not to possess a firearm under subd. 1. or cancels under subd. 1m. c. an order issued under subd. 1. or under s. 51.20 (13) (cv) 1., 2007 stats., the court clerk shall notify the department of justice of that fact and provide any information identifying the subject individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c). No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or under rules the department of justice promulgates under s. 175.35 (2g) (d). 51.20(13)(d)

(d) A disposition under par. (a) 3., 4., 4m. or 5. may be modified as provided in s. 51.35. 51.20(13)(dm)

(dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the county department under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician, subject to the individual's right to refuse medication under s. 51.61 (1) (g) and (h), and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. A finding by the court that the allegations under sub. (1) (a) 2. e. are proven constitutes a finding that the individual is not competent to refuse medication or treatment. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4). 51.20(13)(e)

(e) The petitioner has the burden of proving all required facts by clear and convincing evidence.

51.20(13)(f)

(f) The county department under s. 51.42 or 51.437 that receives an individual who is committed by a court under par. (a) 3. is authorized to place the individual in an approved treatment facility, subject to any limitations which are specified by the court under par. (c) 2. The county department shall place the subject individual in the treatment program and treatment facility that is least restrictive of the individual's personal liberty, consistent with the treatment requirements of the individual. The county department has ongoing responsibility to review the individual's needs, in accordance with sub. (17), and to transfer the person to the least restrictive program consistent with the individual's needs. Placement or transfer under this paragraph is subject to s. 51.06 (3).

51.20(13)(g)

(g)

51.20(13)(g)1.

1. Except as provided in subd. 2., the first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of the individual may be for a period not to exceed one year.

51.20(13)(g)2.

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.

51.20(13)(g)2d.

2d.

51.20(13)(g)2d.a.

a. Except as provided in subd. 2d. b., after the 30th day after an order of commitment under par. (a) 3. to 5. following proof of the allegations under sub. (1) (a) 2. e., the subject individual may, under the order, be treated only on an outpatient basis.

51.20(13)(g)2d.b.

b. If a subject individual who is committed under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. e., and who is being treated on an outpatient basis violates a condition of treatment that is established by the court or a county department under s. 51.42, the county department or the department may transfer the subject individual under s. 51.35 (1) (e) to an inpatient facility or to an inpatient treatment program of a treatment facility for a period not to exceed 30 days.

51.20(13)(g)2m.

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.

51.20(13)(g)2r.

2r. Twenty-one days prior to expiration of the period of commitment under subd. 1., 2., or 2m., the department, if the individual is committed to the department, or the county department to which an individual is committed shall file an evaluation of the individual and the recommendation of the department or county department regarding the individual's recommitment with the committing court and provide a copy of the evaluation and recommendation to the individual's counsel and the counsel designated under sub. (4). If the date for filing an evaluation and recommendation under this subdivision falls on a Saturday, Sunday or legal holiday, the date which is not a Saturday, Sunday or legal holiday and which most closely precedes the evaluation and recommendation filing date shall be the filing date. A failure of the department or the county department to which an individual is committed to file an evaluation and recommendation under this subdivision does not affect the jurisdiction of the court over a petition for recommitment.

51.20(13)(g)3.

3. The county department under s. 51.42 or 51.437 to whom the individual is committed under par. (a) 3. may discharge the individual at any time, and shall place a committed individual in accordance with par. (f). Upon application for extension of a commitment by the department or the county department having custody of the subject, the court shall proceed under subs. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a) 1. and evidences the conditions under sub. (1) (a) 2. or (am) or is a proper subject for commitment as prescribed in sub. (1) (ar), it shall order judgment to that effect and continue the commitment. The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

51.20(13)(h)

(h) Any disposition of a minor under this subsection may extend beyond the age of majority of the individual, if the disposition is otherwise made in accordance with this section.

51.20(14)

(14) Transportation; expenses. The sheriff or any law enforcement officer shall transport an individual who is the subject of a petition and execute the commitment, or any competent relative, friend or member of the staff of a treatment facility may assume responsibility for the individual and transport him or her to the inpatient facility. The director of the county department under s. 51.42 or 51.437 may request the sheriff to provide transportation for a subject individual or may arrange any other method of transportation which is feasible. The county department may provide reimbursement for the transportation costs from its budgeted operating funds.

51.20(15)

(15) Appeal. An appeal may be taken to the court of appeals within the time period specified in s. 808.04 (3) in accordance with s. 809.30 by the subject of the petition or the individual's guardian, by any petitioner, or by the representative of the public.

51.20(16)

(16) Reexamination of patients.

51.20(16)(a)

(a) Except in the case of alcoholic commitments under s. 51.45 (13), any patient who is involuntarily committed for treatment under this chapter, may on the patient's own verified petition, except in the case of a minor who is under 14 years of age, or on the verified petition of the patient's guardian, relative, friend, or any person providing treatment under the order of commitment, request a reexamination or request the court to modify or cancel an order of commitment.

51.20(16)(b)

(b) A petition under this subsection may be filed with the court assigned to exercise jurisdiction over probate matters, either for the county from which the patient is committed or for the county in which the patient is detained.

51.20(16)(c)

(c) If a hearing has been held with respect to the subject individual's commitment within 30 days of the filing of a petition under this subsection, no hearing shall be held. If such a hearing has not been held within 30 days of the filing of a petition, but has been held within 120 days of the filing, the court shall within 24 hours of the filing order an examination to be completed within 7 days by the appropriate county department under s. 51.42 or 51.437. A hearing may then be held in the court's discretion. If such a hearing has not been held within 120 days of the filing, a hearing shall be held on the petition within 30 days of receipt.

51.20(16)(d)

(d) Reexaminations under this subsection are subject to the standards prescribed in sub. (13) (g).

51.20(16)(e)

(e) If the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (9) (a). For the purposes of the examination and observation, the court may order the patient confined in any place designated in s. 51.15 (2).

51.20(16)(f)

(f) If a patient is involuntarily committed and placed in a hospital, a notice of the appointment of the examining physicians and copies of their reports shall be furnished to such hospital by the court.

51.20(16)(g)

(g) Upon the filing of the examiners' reports the court shall fix a time and place of hearing and cause reasonable notice to be given to the petitioner, the treatment facility, the patient's legal counsel and the guardian of the patient, if any, and may notify any known relative of the patient. Subsections (10) to (13) shall govern the procedure to be used in the conduct of the hearing, insofar as applicable. The privileges provided in ss. 905.03 and 905.04 shall apply to reexamination hearings.

51.20(16)(h)

(h) All persons who render services in such proceedings shall receive compensation as provided in sub. (18) and all expenses of such proceedings shall be paid and adjusted as provided in sub. (18).

51.20(16)(i)

(i) Subsequent reexaminations may be had at any time in the discretion of the court but may be compelled after 120 days of the preceding examination in accordance with this subsection. All petitions for reexamination must be heard within 30 days of their receipt by the court.

51.20(16)(j)

(j) This subsection applies to petitions for reexamination that are filed under ch. 971, but not s. 971.17, and ch. 975, except that the petitions shall be filed with the committing court.

51.20(16)(k)

(k) Any order of a county department under s. 51.42 or 51.437 is subject to review by the court assigned to exercise probate jurisdiction upon petition under this subsection.

51.20(16)(L)

(L) The pendency of an appeal in either the court of appeals or the supreme court does not deprive the circuit court of jurisdiction to conduct reexamination proceedings under this section with respect to the individual who is the subject of the appeal.

51.20(17)

(17) Right to reevaluation. With the exception of alcoholic commitments under s. 51.45 (13), every patient committed involuntarily to a board under this chapter shall be reevaluated by the treatment staff or visiting physician within 30 days after the commitment, and within 3 months after the initial reevaluation, and again thereafter at least once each 6 months for the purpose of determining whether such patient has made sufficient progress to be entitled to transfer to a less restrictive facility or discharge. The findings of such reevaluation shall be written and placed with the patient's treatment record, and a copy shall be sent to the board which has responsibility for the patient and to the committing court.

51.20(18)

(18) Fees of examiners, witnesses; expenses of proceedings.

51.20(18)(a)

(a) Unless previously fixed by the county board of supervisors in the county in which the examination is held, the examiners shall receive a fee as fixed by the court for participation in commitment proceedings, and reasonable reimbursement for travel expenses.

51.20(18)(b)

(b) Witnesses subpoenaed before the court shall be entitled to the same fees as witnesses subpoenaed before the court in other cases.

51.20(18)(c)

(c) Expenses of the proceedings from the presentation of the statement of emergency detention or petition for commitment to the conclusion of the proceeding shall be allowed by the court and paid by the county from which the subject individual is detained, committed, or released, in the manner that the expenses of a criminal prosecution are paid, as provided in s. 59.64 (1).

51.20(18)(d)

(d) If the subject individual has a legal residence in a county other than the county from which he or she is detained, committed or discharged, that county shall reimburse the county from which the individual was detained, committed or discharged for all expenses under pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments of all such proceedings on nonresident payments to the department, which shall certify such expenses for reimbursement in the form of giving credits to the detaining, committing or discharging county and assessing such costs against the county of legal residence or against the state at the time of the next apportionment of charges and credits under s. 70.60.

51.20(19)

(19) Departmental duties.

51.20(19)(a)

(a) Prior to filing a petition for commitment of an inmate under sub. (1) (ar) the department shall:

51.20(19)(a)1.

1. Attempt to use less restrictive forms of treatment with the individual. Less restrictive forms of treatment shall include, but are not limited to, voluntary treatment within the prison or voluntary transfer to a state treatment facility, including an admission which meets the requirements of s. 51.10 (4m).

51.20(19)(a)2.

2. Ensure that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist.

51.20(19)(b)

(b) The department shall promulgate rules:

51.20(19)(b)1.

1. Establishing standards for the use of psychotropic drugs on prisoners in a state prison and inmates committed under sub. (1) (ar).

51.20(19)(b)1m.

1m. Establishing standards and procedures for use of and periodic review of the use of psychotropic drugs on inmates in a county jail or house of correction who are being treated in the jail or house of correction under a commitment based on a petition under sub. (1) (a).

51.20(19)(b)2.

2. Providing for the periodic review and evaluation of the appropriateness of and the need for the use of psychotropic drugs on, and the need for the continuation of treatment for, each inmate committed under sub. (1) (ar).

51.20(19)(b)3.

3. Needed to carry out its duties under par. (a).

51.20 - ANNOT.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; 2007 a. 20, 45, 116; 2009 a. 137, 258, 260.

51.20 - ANNOT.

Cross-reference: See also s. DOC 314.01, Wis. adm. code.

51.20 - ANNOT.

NOTE: 1987 Wis. Act 366, which amended this section, contains notes by the Legislative Council following many of the statutes affected.

51.20 - ANNOT.

NOTE: 1987 Wis. Act 394, which affected this section, contains a prefatory note and notes following the sections.

51.20 - ANNOT.

Judicial Council Committee's Note, 1981: The final sentence of sub. (1) (am) allows the court to consider the subject individual's conduct during or subsequent to the crime as "recent" for purposes of involuntary civil commitment under this section, if the individual is proceeded against during, or immediately upon discharge from, a commitment for examination or treatment for incompetency to proceed as a criminal defendant. The relevancy of evidence of the individual's conduct prior to the crime is to be determined by the court. The revised statute requires the subject individual's dangerousness to be evidenced by acts, attempts, threats, omissions or behavior referred to in sub. (1) (a) 2. Prior law allowed commitment of such an individual upon a showing that there was a substantial likelihood, based on the treatment record, that he or she would be a proper subject for commitment if treatment were withdrawn. [Bill 765-A]

51.20 - ANNOT.

Judicial Council Note, 1988: The amendment to sub. (2) allows notice of hearings to be given by telephone. The time at which such notice is given and the person to whom it is given must be noted in the case file. [Re Order effective Jan. 1, 1988]

51.20 - ANNOT.

The role of an attorney appointed under sub. (4), 1975 stats., [now (3)] is discussed. State ex rel. Memmel v. Mundy, 75 Wis. 2d 276, 249 N.W.2d 573 (1977).

51.20 - ANNOT.

The due process standard for hearings under this section is more flexible than the standard for criminal proceedings. In Matter of Parham, 95 Wis. 2d 21, 289 N.W.2d 326 (Ct. App. 1979).

51.20 - ANNOT.

The 14-day time limit in sub. (7) (c) is mandatory and refers to calendar days, not business days. State ex rel. Lockman v. Gerhardstein, 107 Wis. 2d 325, 320 N.W.2d 27 (Ct. App. 1982).

51.20 - ANNOT.

Criminal and civil commitments are not substantially the same. State v. Smith, 113 Wis. 2d 497, 335 N.W.2d 376 (1983).

51.20 - ANNOT.

A person may be a proper subject for treatment even though a cure is unlikely. In Matter of Mental Condition of C.J. 120 Wis. 2d 355, 354 N.W.2d 219 (Ct. App. 1984).

51.20 - ANNOT.

The 45-day limit in sub. (13) (g) 2. applies only to an original commitment order and does not bar subsequent extensions of the order. In Matter of M.J. 122 Wis. 2d 525, 362 N.W.2d 190 (Ct. App. 1984).

51.20 - ANNOT.

The use of telephone testimony by physicians did not violate the petitioner's due process rights. In *Matter of W.J.C.* 124 Wis. 2d 238, 369 N.W.2d 162 (Ct. App. 1985).
51.20 - ANNOT.

Hearings under sub. (12) are open unless the court grants the subject individual's motion for closure. *Wisconsin State Journal v. Circuit Court for Dane County*, 131 Wis. 2d 515, 389 N.W.2d 73 (Ct. App. 1986).
51.20 - ANNOT.

An individual's counsel may not withdraw a jury demand without the individual's consent. In *Matter of S.B.*, 138 Wis. 2d 409, 406 N.W.2d 408 (1987).
51.20 - ANNOT.

Sub. (13) (c) 2. does not permit the committing court to specify a treatment method in addition to the facility. In *Matter of J.R.R.* 145 Wis. 2d 431, 427 N.W.2d 137 (Ct. App. 1988).
51.20 - ANNOT.

Under sub. (13) (g) 3. an individual has a right to a jury trial in proceedings to extend a commitment. In *Matter of Mental Condition of G.O.T.* 151 Wis. 2d 629, 445 N.W.2d 697 (Ct. App. 1989).
51.20 - ANNOT.

There is a bright-line rule prohibiting a circuit court from accepting petitions drafted by persons not authorized to do so under sub. (4). In *Matter of S.P.B.* 159 Wis. 2d 393, 464 N.W.2d 102 (Ct. App. 1990).
51.20 - ANNOT.

The services of appointed counsel for non-indigent individuals in civil commitment hearing should be paid for by the county. *State ex. rel. Chiarkas v. Skow*, 160 Wis. 2d 123, 465 N.W.2d 625 (1991).
51.20 - ANNOT.

The assurance of representation by adversary counsel under sub. (3) does not preclude self-representation when a waiver of counsel is knowingly and competently made. In *Matter of Condition of S.Y.* 162 Wis. 2d 320, 469 N.W.2d 836 (1991).
51.20 - ANNOT.

The sub. (16) (c) provision for a hearing on a petition within 30 days of filing is directory and violation is not grounds for release. *State v. R.R.E.* 162 Wis. 2d 698, 470 N.W.2d 283 (1991).
51.20 - ANNOT.

When a recommitment hearing under sub. (13) (g) 3. is before the same judge who conducted the original commitment proceeding, a request for substitution under s. 801.58 is not allowed. *Serocki v. Circuit Court for Clark County*, 163 Wis. 2d 152, 471 N.W.2d 49 (1991).

51.20 - ANNOT.

Sub. (15) does not authorize the appeal of a court commissioner's order to the court of appeals; proper review is a new hearing by the circuit court. In *Matter of Mental Condition of C.M.B.* 165 Wis. 2d 703, 478 N.W.2d 385 (1992).

51.20 - ANNOT.

An involuntary commitment may not be ordered on summary judgment. *Matter of Mental Condition of Shirley J.C.* 172 Wis. 2d 371, 493 N.W.2d 382 (Ct. App. 1992).

51.20 - ANNOT.

A probable cause determination made by a court commissioner under sub. (7) may be reviewed by the circuit court, but nothing gives the subject a right to review. Factors to consider in deciding whether to grant review are discussed. *Milwaukee County v. Louise M.* 205 Wis. 2d 162, 555 N.W.2d 807 (1996), 95-0291.

51.20 - ANNOT.

The 14-day deadline under sub. (7) (c) is subject to reasonable extension when the need for the extension is caused solely by the conduct and manipulation of the detained subject. *County of Milwaukee v. Edward S.* 2001 WI App 169, 247 Wis. 2d 87, 633 N.W.2d 241, 00-1003.

51.20 - ANNOT.

By expressing the time requirement in sub. (7) (a) in terms of hours rather than days, the legislature manifested its intent that the clock start running immediately "after the individual arrives at the facility," rather than the next day. The "exclude-the-first-day" rule of s. 990.001 (4) (a) and (d) does not apply in the context of this section under which 72 hours means 72 hours. *Matter of the Mental Commitment of Ryan E. M.* 2002 WI App 71, 252 Wis. 2d 490, 642 N.W.2d 592, 01-1175.

51.20 - ANNOT.

Sub. (1) (a) 2. e. is constitutional. It does not: 1) allow involuntary commitment upon a finding of mental illness alone and contains an ascertainable standard of commitment, and thus is not vague or overbroad; 2) create a class of persons who can be involuntarily committed upon a finding of mere mental or emotional harm, and thus does not violate equal protection; and 3) violate substantive due process because the constitution does not require proof of imminent physical harm prior to commitment for treatment. *State v. Dennis H.* 2002 WI 104, 255 Wis. 2d 359, 647 N.W.2d 851, 01-0374.

51.20 - ANNOT.

A corporation counsel has discretion to refuse to file a petition for examination after receiving signed statements under oath that meet the requirements contained in sub. (1) if the corporation counsel determines that it is not in the interests of the public to file the petition. A good faith discretionary determination on the part of the corporation counsel that the filing of

a petition for examination would not be in the interests of the public is not susceptible to challenge in a mandamus action. OAG 4-10.

51.20 - ANNOT.

Under sub. (2), a court can entertain proceedings for involuntary commitment of a person admitted as a voluntary inpatient. 68 Atty. Gen. 97.

51.20 - ANNOT.

Sub. (14) requires a sheriff to transport the subject of a petition under s. 51.20 at all stages of the proceedings, regardless of reimbursement. 68 Atty. Gen. 225.

51.20 - ANNOT.

An individual in the custody of a sheriff for transport to, from, and during an involuntary commitment hearing has rights to the least restrictive restraint appropriate. 71 Atty. Gen. 183.

51.20 - ANNOT.

The duties and obligations of a corporation counsel in involuntary civil commitment proceedings under this chapter are discussed. 79 Atty. Gen. 129.

51.20 - ANNOT.

Under sub. (14), the director of the county department under s. 51.42 or 51.437 may request the sheriff of the county in which an individual was placed under emergency detention to transport that individual to another designated inpatient facility prior to the initial court hearing under ch. 51, and the sheriff must do so within a reasonable time. 80 Atty. Gen. 299.

51.20 - ANNOT.

The state cannot confine, without more, nondangerous persons capable of surviving safely in freedom alone or with help from family or friends. *O'Connor v. Donaldson*, 422 U.S. 563.

51.20 - ANNOT.

Due process does not require states to use the "beyond a reasonable doubt" standard in civil commitment proceedings. *Addington v. Texas*, 441 U.S. 418 (1979).

51.20 - ANNOT.

In signing a commitment application, a county employee was in essence acting as a witness in a judicial proceeding and as such was entitled to immunity. *Martens v. Tremble*, 481 F. Supp. 831 (1979).

51.20 - ANNOT.

Persons confined in a state hospital under ss. 51.20, 51.37, 971.14, 971.17 and 975.06 are being subjected to punishment within the meaning of the cruel and unusual punishment clause.

Flakes v. Percy, 511 F. Supp. 1325 (1981).

51.20 - ANNOT.

Beyond Overt Violence: Wisconsin's Progressive Civil Commitment Statute as a Marker of a New Era in Mental Health Law. Erickson, Vitacco, and Van Rybroek, 89 MLR 359 (2005).
51.20 - ANNOT.