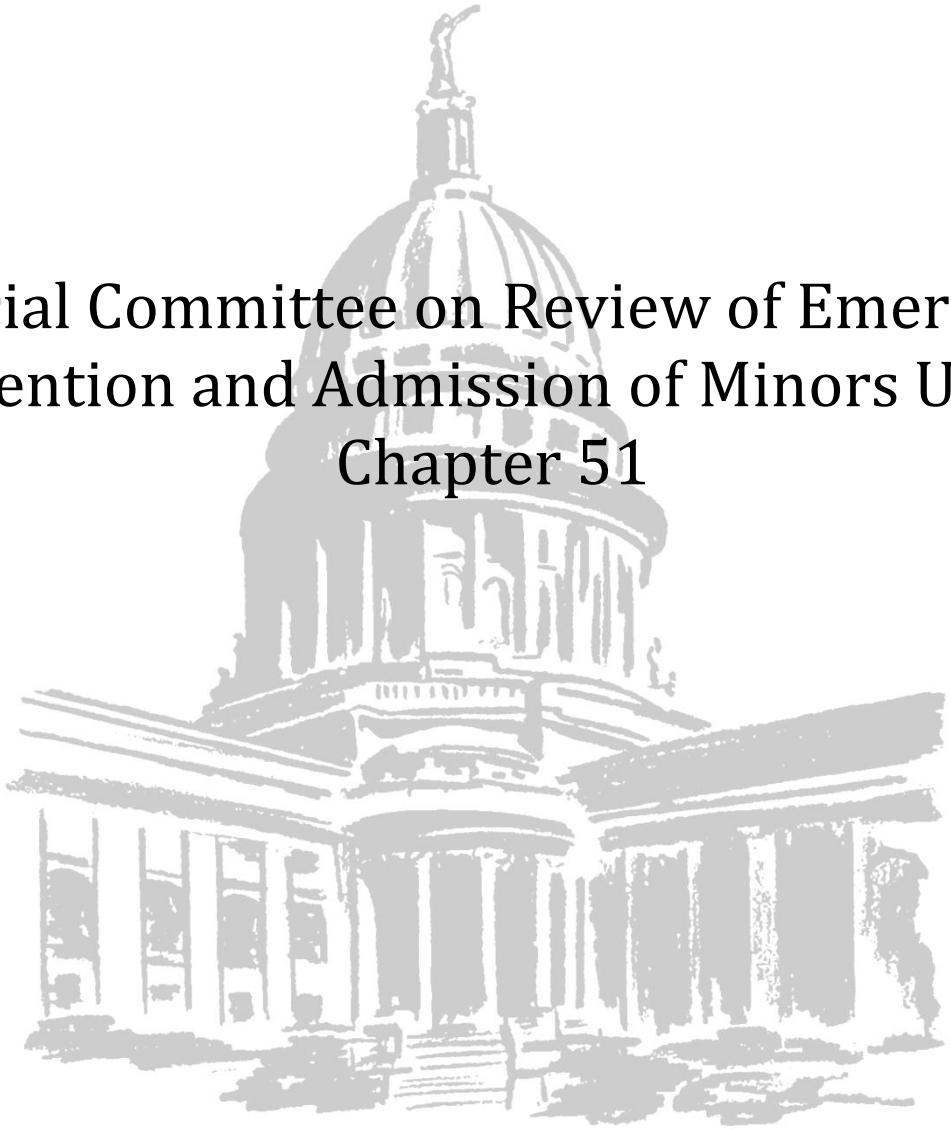
Report to the Joint Legislative Council



Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51

January 8, 2013

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SPECIAL COMMITTEE ON REVIEW OF EMERGENCY DETENTION AND ADMISSION OF MINORS UNDER CHAPTER 51

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January 8, 2013

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PART I
KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51 recommends the following bill drafts to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature.

WLC: 0024/2, RELATING TO A COUNTY CORRECTIONAL FACILITY DISABLED OFFENDER RECIDIVISM REDUCTION PILOT PROGRAM, AND MAKING AN APPROPRIATION

- Creates a pilot program to assist eligible offenders in county correctional facilities in obtaining Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), and Medical Assistance (MA) upon release, to help reduce recidivism after release.
- Directs the Office of Justice Assistance (OJA) to seek funding for the pilot program and, after at least $300,000 in funding has been obtained, to make grants to up to four counties to administer the pilot program.
- Requires a county that receives a grant for a pilot program to create an oversight committee to advise the county in administering and evaluating the pilot program.

WLC: 0073/5, RELATING TO EMERGENCY DETENTION, INVOLUNTARY COMMITMENT, AND PRIVILEGED COMMUNICATIONS AND INFORMATION

- Expands the criteria for taking an individual into emergency detention to include a determination "...that detention is the least restrictive alternative appropriate to the person's needs."
- 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.
- 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.

- Modifies the emergency detention statute applicable to Milwaukee County that requires the treatment director of the facility in which the person is detained, or his or her designee, to determine within 24 hours whether the person is to be detained. The draft provides 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.
- Eliminates that provision in the statutes that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365-day period.
- Repeals the provision 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.

WLC: 0112/3, Relating to Requiring County Community Programs Board Appointees to Include Consumers, Law Enforcement Personnel and Hospital Employees or Representatives and Increasing the Size of County Community Program Boards

- Requires the members appointed to a single- or multicounty community programs board to include each of the following:
    - A person who has received services for mental illness, developmental disability, alcoholism, or drug dependence.
    - A law enforcement officer.
    - A hospital employee or representative.
- Increases the maximum number of members for a single-county department to 17. The number of members for a multicounty department is increased to 13, with three additional members for each county in the multicounty department in excess of two.

WLC: 0114/1, Relating to Admission of Minors for Inpatient Treatment

- Eliminates the need to file a petition for review of an admission of a minor under age 14 for treatment of mental illness, alcoholism or drug abuse, or developmental disability. A petition would still be required if a parent refused to consent to treatment; if a parent with legal custody or guardian cannot be found; or if there is no parent or guardian.
- Eliminates the need to file a petition for a minor age 14 to 17 who is voluntarily participating in inpatient treatment for mental illness. A petition would still have to be filed if the minor refused to join in the application; if the parent with legal custody or

the guardian could not be found; or if there were no parent with legal custody or guardian. A petition would also still be required if the minor wanted treatment but the parent refused.

- Eliminates the petition requirement at the time that a short-term admission of 12 days expires, if the admission was voluntary on the part of the minor and the parent.
- Eliminates the provision that allows for no more than one short-term (up to 12 days) voluntary admission of a minor every 120 days.
- Creates subsection and paragraph titles within s. 51.13, Stats., to provide guidance to the reader regarding the subject matter of the subsections and paragraphs, and eliminates some redundant language in s. 51.13, Stats.

PART II
COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51 and appointed the chairperson by a May 7, 2010 mail ballot. The committee was directed to review the following provisions in ch. 51, Stats.: (a) the appropriateness of, and inconsistencies in, the utilization of emergency detention procedures under s. 51.15, Stats., across this state, and the availability and cost of emergency detention facilities; (b) the inconsistent statutory approaches to emergency detention between Milwaukee County and other counties in the state; and (c) the inconsistent application of procedures relating to admission of minors under s. 51.13, Stats., as modified by 2005 Wisconsin Act 444.

Membership of the Special Committee was appointed by a June 30, 2010 mail ballot. The final committee membership consisted of two Senators, two Representatives, and 11 public members. A list of committee members is included as ***Appendix 3*** to this report.

SUMMARY OF MEETINGS

The Special Committee held eight meetings on the following dates:

August 31, 2010
October 4, 2010 (Milwaukee public hearing)
November 15, 2010
December 6, 2010
December 19, 2011
May 14, 2012
July 25, 2012
October 30, 2012

In addition, the following working groups were established and met on the following dates:

Working Group on the Federal Emergency Treatment and Active Labor Act (EMTALA) and Emergency Detention: January 19, 2012

Working Group on Circumstances That Warrant Postponement of an Emergency Detention Hearing: January 19, 2012

Working Group on Probable Cause Hearing Delays: June 4, 2012

Working Group on Emergency Detention Facilities: August 9, 2012

Working Group on Medical Assistance Eligibility for Incarcerated Persons: August 28, 2012

At the August 31, 2010 meeting, the committee reviewed a Legislative Council Staff Brief 2010-01, *Emergency Detention and the Treatment of Minors Under Wisconsin's Mental Health Statutes* (August 14, 2010), and heard from a number of invited speakers on the topics of emergency detention and minors' mental health treatment. **Ms. Sarah Diedrick Kasdorf, Wisconsin Counties Association**, made several suggestions to the committee regarding improvements to mental health treatment, including suspending, rather than terminating, MA benefits to persons who are in correctional facilities, which she said would provide quicker access to medical services upon release. She also suggested that the committee consider treatment alternatives for minors in crisis situations. **Mr. Neal Blackburn, Director, Grant and Iowa County Unified Services Department**, noted a reduction in emergency detentions since statewide implementation of a process requiring county department approval of emergency detentions. **Chief Doug Pettit, Oregon, Wisconsin Chiefs of Police Association Legislative Chair**, supported additional training for law enforcement officers on emergency detention and dealing with persons with mental illness. **Chief Sue Riseling, Chief of Police, University of Wisconsin-Madison Police Department**, stated that the use of crisis intervention teams has resulted in a reduction in emergency detentions. **Dr. Kevin Kallas, Wisconsin Department of Corrections**, noted that the Department of Corrections (DOC) currently has over 7,000 inmates who are on the mental health caseload, representing about 30% of the incarcerated population. He recommended allowing a commitment order to extend beyond an inmate's date of release on parole or extended supervision. **Dr. Mike Hagen, Wisconsin Department of Corrections**, stated that instead of transferring a minor with a severe mental health crisis to a psychiatric hospital, DOC typically transfers the person to the Mendota Juvenile Treatment Center (MJTC). **Mr. John Easterday, Bureau of Substance Abuse and Mental Health Services, Department of Health Services (DHS)**, summarized for the committee the role of DHS in operating state mental health institutes and in promoting local crisis programs. **Ms. Lyn Malofsky, Warmline, Inc.**, who is a consumer of mental health services, described her work as a peer support person and stressed the need for more peer support services. **Ms. Molly Cisco, Grassroots Empowerment**, described the successes of peer support networks and stated that there are 12 such programs in Wisconsin funded by mental health block grant funds. She added the Mendota Mental Health Institute is using a sanctuary model that utilizes peer specialists, with decreasing use of restraints and increased patient satisfaction. **Mr. Hugh Davis, Director, Wisconsin Family Ties**, described the work of his organization, which is a parent-run group that supports families that have a child with mental illness. He suggested that a separate child and adolescent mental health code should be included in the statutes and noted a need for more education about the 2005 changes that were made to the minors' mental health statute.

At the October 4, 2010 meeting, the committee met at the Medical College of Wisconsin in Milwaukee, and was welcomed by **Dr. John Raymond, President of MCW**. Several invited speakers testified before the committee. **Mr. Rob Henken of the Public Policy Forum**, presented the report "Transforming the Adult Mental Health Care Delivery System in Milwaukee County." **Dr. Roderick Brodhead, Emergency Room Physician, Ministry Health**, described his work with inpatient psychiatric services at St. Mary's Hospital in Rhinelander. He said that their staff meets regularly with county and law enforcement personnel to discuss how to handle emergency detentions. **Dr. Tony Marchlewski, Psychiatrist, Bellin Health**, noted the differences between Illinois, where he worked prior to coming to Wisconsin, and Wisconsin laws relating to treatment of older minors.

Ms. Denise Johnson, Project Coordinator, Alcohol and Other Drug Abuse Services for the Deaf/Hard of Hearing, Independence First, discussed an incident regarding a hearing impaired couple with a son who encountered a mental health crisis and the difficulty obtaining an appropriate interpreter when their son was taken to an emergency room for mental health treatment. **Ms. Lisa Clay Foley, Disability Rights Wisconsin**, commented on the need to reduce the number of emergency detentions in Milwaukee County, and to create more crisis diversion processes. She also discussed the treatment director statement (TDS) requirement and said it provides protections to Milwaukee County consumers. **Ms. Kathy Kunze, Mental Health Advocate**, provided examples of individuals who had mental illness who had become involved in the law enforcement system. **Mr. Tom Hlavacek , Alzheimer's Association, and Dr. Kathleen Pritchard, Planning Council for Health and Human Services**, presented the findings of the Challenging Behaviors task force. **Mr. Dennis Purtell, State Public Defender's Office**, discussed the TDS requirement in Milwaukee County, and stated it resulted in very few dismissals of cases. **Mr. Jim Kubicek, Director of Crisis Services, Milwaukee County Behavioral Health Division, and Mr. Lee Jones, Milwaukee Corporation Counsel**, also discussed the TDS requirement and the impact of the *Delores M.* case [*Matter of Delores M.*, 217 Wis. 2d 69, 77 N.W.2d 371 (Wis. App. 1998)], and the burdens this requirement places on the Milwaukee County System.

The committee then took testimony from additional individuals, including the Wisconsin Hospital Association; mental health services providers; peer counselors; and county representatives.

At the November 15, 2010 meeting, the committee reviewed Memo No. 1, *Potential Recommendations for the Committee's Consideration in the Areas of Emergency Detention, Treatment of Minors, Involuntary Commitment, and Other Mental Health Issues* (November 8, 2010). The committee discussed the options presented in the Memo, including changes to the emergency detention laws; changes to s. 51.13, relating to treatment of minors; continuing MA eligibility for incarcerated persons; and requiring consumer representation on county human services boards. The committee came to consensus on several changes to the emergency detention statutes.

At the December 6, 2010 meeting, staff recapped the decisions of the committee at its November meeting. These included:

- Modifying the 3rd standard of dangerousness to include harm to others.
- Adding a requirement that emergency detention be the "least restrictive" option when considering whether to place an individual under emergency detention under ch. 51.
- Clarifying s. 51.15 (2), Stats., regarding which facilities are permissible for use in emergency detentions.

The committee continued its discussion of the *Delores M.* case and the TDS requirement. The *Delores M.* case held that the time of emergency detention begins when the individual arrives at a designated ch. 51 facility, defined as any medical hospital. The committee then discussed the interplay between the federal EMTALA and emergency detention requirements. Staff was directed to prepare bill drafts on the following items: tolling the 72-hour time period for

emergency detention when a person is medically unstable; limiting the applicability of the 24-hour TDS requirement in Milwaukee if an individual is taken to a facility other than the county's Psychiatric Crisis Services; increasing awareness of the changes that were made in 2005 to s. 51.13, Stats., relating to treatment of minors, and making several changes in that statute; and making several technical changes to the involuntary commitment statutes. The committee also directed staff to gather additional information on a number of other topics, including power of attorney for mental health care; laws relating to seclusion and restraint; and provision of mental health services at federally qualified health centers.

At its December 19, 2011 meeting, the new chairperson of the committee, Senator Mary Lazich, introduced herself to committee members. The committee discussed WLC: 0112/1, relating to requiring county community programs board appointees to include law enforcement personnel and hospital employees and increasing the size of county community programs boards, and recommended several changes to that draft. The committee began its discussion of WLC: 0073/1, relating to various emergency detention issues. The committee discussed how some of the draft's provisions created potential issues with the federal EMTALA. Chair Lazich convened a working group to resolve this issue prior to the committee's next meeting. The committee directed staff to draft several additional changes to WLC: 0073/1 for the next meeting.

At the May 14, 2012 meeting, the committee reviewed the changes to WLC: 0112/2 and voted to approve the draft, as amended. The committee reviewed WLC: 0073/2 and approved several of the changes that had been made, as well as suggesting other amendments to the draft. The committee held a lengthy discussion of constitutional due process issues arising when a probable cause hearing is postponed by someone other than the detained individual, balanced against an apparent need for postponement in some cases, particularly in Milwaukee County. Chair Lazich announced the establishment of a working group to consider the proposed changes to these provisions of the draft. The working group was directed to meet prior to the next full committee meeting and develop a resolution to this issue to recommend to the committee.

At the July 25, 2012 meeting, committee staff reviewed items in WLC: 0073/3 and outlined the changes that had been recommended by the working group. Concerns were raised about the due process implications of postponing a probable cause hearing. Also, it was pointed out these sections of the draft were probably unnecessary, because other workarounds existed to postpone a hearing. It was indicated that the ultimate recommendation of the working group was to remove the provisions from the draft that permitted postponement of the probable cause hearing. The committee resolved this issue by recommending alternative language. Staff explained other changes that had been requested by committee members and incorporated into the draft. The committee reviewed Memo No. 2, *Medical Assistance Eligibility for Incarcerated Persons* (July 18, 2012), and formed a working group to develop a proposal for committee consideration to address the issue of MA eligibility for released offenders. Finally, the committee discussed and approved WLC: 0114/1, relating to admission of minors for inpatient treatment.

At the October 30, 2012 meeting, staff described the changes to WLC: 0073/4 that were approved at the July 25, 2012 meeting and incorporated into the draft. After reviewing the draft, the committee recommended a few additional changes to clarify when custody of an individual begins for the purpose of an emergency detention. The committee approved the draft, as

amended. Staff then described WLC: 0024/1, which was the result of a working group on MA eligibility for incarcerated persons that met on August 28, 2012. Suggestions were made to clarify the draft so that individuals with mental illness would be eligible for the pilot program; that the county human services, social services, or community services departments, rather than the county health departments, would be on the advisory committee that would oversee the program; and that the program would be characterized as a "recidivism reduction" program. The draft was also clarified to provide that eligibility for the program would be based on the individual's eligibility (either prior to incarceration or currently) for SSDI, SSI, or MA, rather than on an individual's type of disability. The committee approved the draft, as amended.

PART III
RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This Part of the report provides background information on, and a description of, the drafts as recommended by the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51.

WLC: 0024/2, RELATING TO A COUNTY CORRECTIONAL FACILITY DISABLED OFFENDER RECIDIVISM REDUCTION PILOT PROGRAM, AND MAKING AN APPROPRIATION

Background

Among the population of incarcerated individuals in Wisconsin, one group that is particularly at risk of recidivism is offenders who, upon release from incarceration, are eligible for but who fail to obtain certain benefits such as SSDI, SSI, or MA. This is because there is often a gap between an offender's date of release and the date that he or she begins to receive benefits for which he or she is eligible. During the period after release but prior to the receipt of benefits, an offender may be at higher risk of recidivism.

DOC has taken significant steps to address this issue among Wisconsin's prison population. In the last several years, DOC has secured funding for a program to provide individualized assistance to prisoners in 14 Wisconsin prisons in obtaining benefits for which they are eligible as of release. The program is known as the Disabled Offender Economic Security (DOES) project. It is administered through DOC, via a contract with Legal Action of Wisconsin, in collaboration with DHS. DOC considers the program a success and has expressed an interest in continuing the program and eventually expanding it to prisoners across the state.

Thus far, efforts to address this issue in Wisconsin have been limited to offenders housed in Wisconsin prisons. No similar form of individualized assistance is currently available to offenders housed in county correctional facilities (i.e., county jails, houses of correction, and rehabilitation facilities). The committee concluded that replicating DOES at a county level would help reduce recidivism and potentially save county funding.

Description

WLC: 0024/2 creates a pilot program at a small number of county correctional facilities to provide individualized assistance to eligible offenders in obtaining SSDI, SSI, or MA, including any applicable MA-related program, upon release. The draft directs the OJA to seek funding for the pilot program and, after at least $300,000 in funding has been obtained, to make grants to up to four counties to administer the pilot program. Participating counties must operate the pilot

program for at least two years and include performance outcome measurements and data collection to allow for program evaluation. The counties must create an oversight committee to advise the county in administering and evaluating the pilot program. The draft provides that DOC and DHS may participate in the activities of the oversight committee and must provide consultation services to the oversight committee.

In addition to the basic program requirements set forth in the statutes, the draft allows OJA to establish additional eligibility requirements, criteria, and procedures that a county must meet in order to be eligible for the program. The draft expressly provides that OJA is not required to promulgate administrative rules in establishing criteria for the grant program.

WLC: 0073/5, RELATING TO EMERGENCY DETENTION, INVOLUNTARY COMMITMENT, AND PRIVILEGED COMMUNICATIONS AND INFORMATION

Emergency Detention Standards

Background

Current law allows a law enforcement officer, or other specified persons when a juvenile is involved, to take an individual into custody on an emergency detention basis if certain criteria are met. The individual must be mentally ill, developmentally disabled, or drug dependent and evidence behavior that falls under one of the four statutory standards of dangerousness for emergency detention. The individual must exhibit behavior that is evidenced by specific recent overt acts, or attempts or threats to act. The individual's behavior must be either witnessed directly by a law enforcement officer or reported to the law enforcement officer. In addition, the county department of human services must approve the need for an emergency detention before the detention is permitted.

Information was presented to the committee that indicated that emergency detention is used too frequently in Wisconsin, and that efforts should be made to increase the use of voluntary treatment options and options that do not involve a law enforcement officer's intervention.

In addition, the committee offered technical changes to the emergency detention statutes.

Description

The draft modifies the emergency detention statute to require that when an emergency detention is being contemplated, a determination must be made "...that taking the person into custody is the least restrictive alternative appropriate to the person's needs." The draft also 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. Finally, the draft provides that the county department may approve an emergency detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and

treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others.

Currently, the 3rd standard of dangerousness allows for an emergency detention if there is a substantial probability of physical impairment or injury to an individual due to impaired judgment. The amendment to this standard allows for an emergency detention if there is a substantial probability of harm **to others,** which makes this standard consistent with the 3rd standard of dangerousness for involuntary commitment.

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

Taking an Individual into Custody

Background

Under current law, emergency detention may occur in a hospital approved by DHS 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. Current law provides that upon arrival at an emergency detention facility, the custody of the individual who is the subject of an emergency detention is transferred to the facility. However, current law does not specify when custody begins prior to the individual's arrival at a facility.

The committee determined that the statutes relating to where an individual may be taken into custody, and when custody begins, are confusing and inconsistent and need clarification. Also, because an individual may be held in custody under an emergency detention for only 72 hours prior to a probable cause hearing, the committee felt it was important to clarify when "custody" begins, to avoid detaining a person for too long.

Description

The draft consolidates the references to facilities that may be used for emergency detention to provide that detention may occur in a treatment facility approved by DHS or the county department, if the facility agrees to detain the individual, or in a state treatment facility. The draft provides that an individual is deemed to be in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child or juvenile into custody, for the purposes of emergency detention.

Milwaukee County-Specific Provisions

Background

Current law provides different procedures for emergency detention in counties with a population of 500,000 or more (currently, only Milwaukee County) and those with a population of

less than 500,000. 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 committee discussed several issues in relation to the 24-hour requirement and the difficulty in complying with this requirement when an individual is unable to be evaluated within that time period due to physical incapacities.

Description

The draft modifies the statute creating the 24-hour requirement to provide that when calculating the 24 hours, any period delaying that determination about the individual's detention that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual shall be excluded from the calculation.

Further, because Dane County's population is expected to approach 500,000 in the near future, the draft increases the population threshold to 750,000, to ensure that those procedures will continue to apply only to Milwaukee County.

Rights of Individuals Subject to Emergency Detention

Background

Current law provides that an individual must be informed of his or her rights, by the director of the emergency detention facility, at the time of detention. Under current law, a hearing to determine probable cause to believe the allegations in an emergency detention petition must be held within 72 hours after the individual arrives at the emergency detention facility. Also under current law, an individual who is the subject of a petition for commitment may waive the required time periods for probable cause and final hearings and may be ordered to obtain treatment under a settlement agreement. If the individual fails to comply with the settlement agreement, the individual may be detained for a period not to exceed 72 hours.

Description

The draft amends the provision about informing an individual of his or her rights, to state that the individual must be informed of his or her rights at the time of the individual's arrival at the emergency detention facility. The draft also provides that the probable cause hearing must be held within 72 hours from the time that the person is taken into custody for violation of a settlement agreement.

Miscellaneous Changes to Involuntary Commitment Laws

Background

Generally, current law provides that the first order of involuntary commitment is for up to six months, and all subsequent consecutive orders of commitment are for up to one year. One exception is that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365-day period.

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 to parole or extended supervision.

Finally, 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 treatment or various other types of proceedings.

Description

The draft eliminates the provision that a person committed under the 4th standard of dangerousness may be committed no longer than 45 days in any 365-day period. The draft also eliminates the provision 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 to parole or extended supervision.

The draft amends the exception to the privilege statute to substitute "commitment" for "hospitalization" and to replace "proceedings to hospitalize" with "probable cause or final proceedings to commit" the patient for mental illness under s. 51.20.

WLC: 0112/3, Relating to Requiring County Community Programs Board Appointees to Include Consumers, Law Enforcement Personnel and Hospital Employees or Representatives and Increasing the Size of County Community Program Boards

Background

Under current law, county departments of community programs are governed by boards comprised of members of the county board of supervisors and citizen members. The county community programs board is a governing and policy-making board. In a single-county department, the board must be composed of 9 to 15 members. Members must have a recognized ability and demonstrated interest in the problems of mentally ill, developmentally disabled, alcoholic, or drug dependent persons and shall have representation from the interest group of the mentally ill, the interest group of the developmentally disabled, the interest group of the alcoholic, and the interest group of the drug dependent. At least one member must be either a consumer of services or family member of the consumer. No more than five members may be county board of supervisors members.

In a multicounty department, the board is composed of 11 members, with three additional members for each county in a multicounty department of community programs in excess of two. As with the single-county department board, a multicounty department board shall have representation from the interest group of the mentally ill, the interest group of the

developmentally disabled, the interest group of the alcoholic, and the interest group of the drug dependent. At least one member must be a consumer of services or a family member of the consumer. Each of the counties in the multicounty department of community programs may appoint to the county community programs board not more than three members from its county board of supervisors.

In order to foster intra-county collaboration between county agencies, law enforcement, and hospitals and to ensure the best outcomes for mental health consumers, the committee discussed requiring hospital and law enforcement personnel to serve on community programs boards. The committee also felt that it was important to require a consumer of services to be on the board. Finally, the committee noted that the language used in this statute to refer to persons on the boards who are representative of certain interest groups is antiquated and should be updated.

Description

This draft requires at least one of the members appointed to a single- or multicounty community programs board to be each of the following:

- A person who has received services for mental illness, developmental disability, alcoholism, or drug dependence.
- A law enforcement officer.
- A hospital employee or representative.

The maximum number of members for a single-county department is accordingly increased to 17. The number of members for a multicounty department is increased to 13, with three additional members for each county in the multicounty department in excess of two.

The draft also revises the references to interest group representatives who must serve on the boards.

WLC: 0114/1, Relating to Admission of Minors for Inpatient Treatment

Background

Under current law, s. 51.13, Stats., governs inpatient mental health treatment of minors. Section 51.13 (4), Stats., requires a petition to be filed for the review of an admission of a minor of any age for treatment of mental illness, alcoholism or drug abuse, or developmental disability.

Included in the petition must be a notation of any statement made or conduct demonstrated by the minor in the presence of the director or staff of the facility indicating that inpatient treatment is against the minor's wishes.

Under current law, the application for admission of a minor who is age 14 or older for treatment for mental illness or developmental disability must be executed by both the minor and a parent who has legal custody of the minor or the minor's guardian, unless the parent refuses to execute the application or cannot be found, or there is no parent with legal custody. In that case,

the minor, or someone acting on the minor's behalf, may petition the court for approval of the admission. If after a hearing, the court determines that the parent's consent is being unreasonably withheld, or there is no parent with legal custody or the parent cannot be found, the court may approve the minor's admission without parent or guardian consent, provided the appropriate statutory standards for treatment are met. If the minor refuses to execute the application, a parent who has legal custody of the minor or the minor's guardian may execute the application on the minor's behalf.

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

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

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

The facility treatment director must file a petition for review of a minor's admission. The petition must be filed within three days of the admission or the execution of the application for admission, whichever occurs first.

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

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

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

If the application for admission notes a minor's unwillingness to be admitted, despite the minor's age, or if the application for admission of a minor age 14 or older was made by the parent or guardian despite the minor's refusal, or there has been a request for a hearing, the court must order an independent evaluation of the minor and hold a hearing to review the admission. The hearing must be held within seven days of the admission or application, whichever is earlier

(exclusive of weekends and holidays). The court must appoint counsel for the minor and, if it considers it necessary, a guardian ad litem. The minor must also be informed about how to contact the state protection and advocacy agency.

The court must permit admission if the court finds that:

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

Also, under current law, a minor may be admitted to an inpatient treatment facility on a short-term basis (for no longer than 12 days) without following the review procedures for diagnosis and evaluation or for dental, medical, or psychiatric services. A minor's parent or guardian must execute the application for short-term admission. However, if the minor is age 14 or older, the minor must join in the application if it is for mental health or developmental disability services or treatment. If the minor refuses to join the application, then the parent or guardian may execute the application without the minor. In that case, the review procedures outlined above apply, and the facility's treatment director must file a petition for review of the short-term admission.

An application for short-term admission must be reviewed by the facility's treatment director, who may approve it only if the treatment director determines that the admission provides the least restrictive means of providing the diagnosis or evaluation, or provision of dental, medical, or psychiatric services. The minor must be released at the end of the 12-day period unless a regular application for admission has been filed. Only one short-term admission under this procedure may be made every 120 days.

Testimony provided to the Special Committee indicated that, in some areas of the state, there is little awareness of the ability of a parent of a minor age 14 or older to obtain treatment for the minor if the minor does not want treatment. In some cases, this lack of awareness has resulted in necessary treatment not being provided that could have prevented harm to a minor.

Description

This draft:

- Eliminates the need to file a petition for review of an admission of a minor under age 14 for treatment of mental illness, alcoholism or drug abuse, or developmental disability. Because under current law, parents have the authority to consent to inpatient admission for minors under age 14 without the minor joining in the petition, the committee determined that the petition and hearing requirements in current law for minors under age 14 are unnecessary and should be eliminated. A petition would still be required if the minor wanted treatment but the parent refused; if a parent with legal custody or guardian cannot be found; or if there is no parent or guardian.
- Eliminates the need to file a petition for a minor age 14 or older who voluntarily participates in inpatient treatment for mental illness. A petition would still have to be filed if the minor age 14 to 17 refused to join in the application, or if the parent with legal custody or guardian cannot be found, or there is no parent with legal custody or guardian. A petition would also still be required if the minor wanted treatment but the parent refused. It should be noted that a minor age 14 or older may request discharge from the inpatient facility at any time. If the request is denied, current law sets forth a procedure for determining the continued appropriateness of the admission. This procedure is retained, and provides protection of the minor's rights if the minor withdraws his or her consent to the treatment.
- Eliminates the petition requirement at the expiration of the 12-day time period if the admission was voluntary on the part of the minor and the parent.
- Eliminates the provision that allows for no more than one short-term (up to 12 days) voluntary admission of a minor every 120 days.
- Creates subsection and paragraph titles within s. 51.13, Stats., to provide guidance to the reader regarding the subject matter of the subsections and paragraphs and eliminates some redundant language in s. 51.13, Stats.

APPENDIX 1

COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following drafts were recommended by the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51 to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature.

SPECIAL COMMITTEE VOTE

The Special Committee voted to recommend the following four drafts to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature. The votes on the drafts are as follows:

- WLC: 0024/2, relating to a county correctional facility disabled offender recidivism reduction pilot program, and making an appropriation, passed on a vote of Ayes, 12 (Sens. Lazich and Hansen; Reps. Pasch and Ballweg; and Public Members Bachhuber, Berlin, Kerschensteiner, Kerwin, Koeppl, Shoup, Strebe, and Yerkes); Noes, 0; and Absent, 3 (Public Members Kiefer, Moses, and Wesley).

- WLC: 0073/5, relating to emergency detention, involuntary commitment, and privileged communications and information, passed on a vote of Ayes, 11 (Sens. Lazich and Hansen; Reps. Pasch and Ballweg; and Public Members Berlin, Kerschensteiner, Kerwin, Koeppl, Shoup, Strebe, and Yerkes); Noes, 0; Absent, 3 (Public Members Kiefer, Moses, and Wesley); and Not Voting, 1 (Public Member Bachhuber).

- WLC: 0112/3, relating to requiring county community programs board appointees to include consumers, law enforcement personnel and hospital employees or representatives and increasing the size of county community program boards, passed on a vote of Ayes, 8 (Sens. Lazich and Hansen; Reps. Pasch and Ballweg; and Public Members Berlin, Kerschensteiner, Kerwin, and Strebe); Noes, 1 (Public Member Shoup); and Absent, 7 (Public Members Bachhuber, Hraychuck, Kiefer, Koeppl, Moses, Wesley, and Yerkes).

- WLC: 0114/1, relating to admission of minors for inpatient treatment, passed on a vote of Ayes, 8 (Sens. Lazich and Hansen; and Public Members Berlin, Kerwin, Koeppl, Moses, Strebe, and Yerkes); Noes, 0; Absent, 6 (Reps. Pasch and Ballweg; and Public Members Kerschensteiner, Kiefer, Shoup, and Wesley); and Not Voting, 1 (Public Member Bachhuber).

JOINT LEGISLATIVE COUNCIL

[s. 13.81, Stats.]

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Terry C. Anderson, Director, Legislative Council Staff
1 East Main Street, Suite 401, P.O. Box 2536, Madison, Wisconsin 53701-2536

APPENDIX 3

COMMITTEE LIST

Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51	
Chair Mary Lazich, Senator (Chair 1/11 to completion) 4405 South 129th Street New Berlin, WI 53151	**Vice-Chair Sandy Pasch**, Representative (Chair 5/10 to 1/11) 6301 North Berkeley Blvd. Whitefish Bay, WI 53217
Michael J. Bachhuber Executive Director Independent Living Council of Wisconsin, Inc. 201 West Washington Avenue, Suite 110 Madison, WI 53703	**Michael Kiefer** 710 East Briarwood Place Whitefish Bay, WI 53217
Joan Ballweg, Representative 170 West Summit Street Markesan, WI 53946	**Dr. Gina Koeppl,** Regional Director Ministry Behavioral Health 1020 Kabel Avenue Rhinelander, WI 54501
Dr. Jon S. Berlin, Medical Director – Crisis Service Milwaukee County Behavioral Health Division 9455 Watertown Plank Road Milwaukee, WI 53226-3559	**Tally Moses**, Assistant Professor of Social Work University of Wisconsin-Madison 308 School of Social Work Building 1350 University Avenue Madison, WI 53706
David Hansen, Senator 3489 Blackwolf Run Green Bay, WI 54311	**Brian A. Shoup**, Executive Director Brown County Human Services 111 North Jefferson Street Green Bay, WI 54305
Ann Hraychuck (resigned, effective 6/4/12) P.O. Box 334 Balsam Lake, WI 54810	**Galen Strebe**, Dane County Corporation Counsel City County Building, Room 419 210 Martin Luther King Jr. Blvd. Madison, WI 53703-3345
Kristin M. Kerschensteiner, Managing Attorney Disability Rights Wisconsin 131 West Wilson Street, #700 Madison, WI 53703	**Brenda E. Wesley**, Education and Outreach Coordinator NAMI Greater Milwaukee 3732 West Wisconsin Avenue Milwaukee, WI 53208
George Kerwin, President/CEO Bellin Health 744 South Webster Avenue, P.O. Box 23400 Green Bay, WI 54305-3400	**Carianne Yerkes**, Crisis Intervention Team Coordinator Milwaukee Police Department 749 West State Street Milwaukee, WI 53233

STUDY ASSIGNMENT: The Special Committee is directed to review the following provisions in ch. 51, Stats.: (a) the appropriateness of, and inconsistencies in, the utilization of emergency detention procedures under s. 51.15, Stats., across this state, and the availability and cost of emergency detention facilities; (b) the inconsistent statutory approaches to emergency detention between Milwaukee County and other counties in the state; and (c) the inconsistent application of procedures relating to admission of minors under s. 51.13, Stats., as modified by 2005 Wisconsin Act 444.

15 MEMBERS: 2 Senators; 2 Representatives; and 11 Public Members.

LEGISLATIVE COUNCIL STAFF: Laura Rose, Deputy Director, Brian T. Larson, Staff Attorney, and Julie Learned, Support Staff.

APPENDIX 4

COMMITTEE MATERIALS LIST

[Copies of documents are available at www.legis.wisconsin.gov/lc

October 30, 2012 Meeting	**Notice**	**Agenda**	**Audio**	**Minutes**
• WLC: 0016/1, relating to specifying that the 72-hour time period for emergency detention begins when an individual is taken into custody. • WLC: 0024/1, relating to a county correctional facility disabled offender economic security pilot program, and making an appropriation. • WLC: 0073/4, relating to emergency detention, involuntary commitment, and privileged communications and information. • Draft letter to Dennis Smith, Secretary of Health Services. • *Constitutional Issues - Probable Cause Hearings Under Chapter 51, Prepared by Dennis Purtell, SPD Attorney Manager.*				
August 28, 2012 (Working Group on Medical Assistance Eligibility for Incarcerated Persons of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51)				**Notice**
August 9, 2012 (Working Group on Emergency Detention Facilities of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51)				**Notice**
July 25, 2012 Meeting	**Notice**	**Agenda**	**Audio a.m. Audio p.m.**	**Minutes**

• Memo No. 2, *Medical Assistance Eligibility for Incarcerated Persons* (July 18, 2012).
  ○ Publication *Returning Home: Access to Health Care After Prison*, by the National Conference of State Legislatures (NCSL).
  ○ Department of Corrections (DOC) document, revised May 6, 2003 – *Draft* Process/Timeline: Processing SSI/MA Benefit Applications for Prison Inmates.
  ○ DOC document, dated July 1, 2004 – Executive Directive #30 (entitlement programs for eligible offenders).
  ○ DHS document, dated July 1, 2004 – Operations Memo 04-30 (applications for Medicaid benefits for DOC offenders released into the community).
• WLC: 0073/3, relating to emergency detention, involuntary commitments, and privileged communications and information.				

June 21, 2012 (CANCELED)	**Notice**	**Agenda**		
• WLC: 0073/3, relating to emergency detention, involuntary commitments, and privileged communications and information.				

May 14, 2012 (Legislative Council's Large Conference Room, 1 East Main St., Ste. 401)	Notice	Agenda	Audio	Minutes

- WLC: 0073/2, relating to emergency detention, involuntary commitments, and privileged communications and information.
- WLC: 0112/2, relating to requiring county community programs board appointees to include consumers, law enforcement personnel and hospital employees or representatives and increasing the size of county community program boards.
- Letter to Senator Mary Lazich and Representative Sandy Pasch, from Shel Gross, Chair, Wisconsin Council on Mental Health (March 21, 2012).
- Article, submitted by Public Member Mike Bachhuber, "'Living Room' offers ER alternative for mental illnesses", by John Keilman, Chicago Tribune reporter (December 21, 2011).
- Memo with table to members of the Special Committee, "Suggested Language Regarding "Least Restrictiveness", submitted by Public Member Dr. Jon Berlin, MD (May 14, 2012).
- Memo to members of the Special Committee, "WHA Comments on WLC: 0073/2, WLC: 0112/2, and WLC: 0114/1", from Matthew Stanford, WHA VP Policy & Regulatory Affairs, Associate General Counsel (May 11, 2012).
- Memo to members of the Special Committee, "Comments on WLC: 0112/2 and WLC: 0073/2", from Vicki Tylka, President, Wisconsin County Human Services Association, Sarah Diedrick-Kasdorf, Senior Legislative Associate, Wisconsin Counties Association, submitted at the request of Public Member Brian Shoup (May 14, 2012).

January 19, 2012 (Working Group on the Federal Emergency Treatment and Active Labor Act (EMTALA) and Emergency Detention of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51)	Notice
January 19, 2012 (Working Group on Circumstances That Warrant Postponement of an Emergency Detention Hearing of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51)	Notice

December 19, 2011 (Legislative Council's Large Conference Room, 1 East Main St., Ste. 401)	Notice	Agenda	Audio	Minutes

- WLC: 0073/1, relating to emergency detention, involuntary commitment, and privileged communications and information (March 21, 2011).
- WLC: 0094/1, relating to allowing an individual to execute a power of attorney for mental health care, granting rule-making authority, and providing a penalty (February 4, 2011).
- WLC: 0112/1, relating to requiring county community programs board appointees to include law enforcement personnel and hospital employees and increasing the size of county community programs boards (December 7, 2011).
- WLC: 0114/1, relating to admission of minors for inpatient treatment (December 12, 2011).
- WLC: 0115/1, an amendment to WLC: 0073/1. (December 16, 2011).
- Flow chart submitted by Committee Member George Kerwin (December 19, 2011).
- Memo submitted by Committee Member Jon Berlin, *Recommendations of the Milwaukee Contingent of the Chapter 51 Study Committee* (December 12, 2011).

December 6, 2010 (Legislative Council's Large Conference Room, 1 East Main St., Ste. 401)	Notice	Agenda	Audio	Minutes

- Memo No. 1, *Potential Recommendations for the Committee's Consideration in the Areas of Emergency Detention, Treatment of Minors, Involuntary Commitment, and Other Mental Health Issues* (November 8, 2010).
- Memo, *Joint Wisconsin Hospital Association and Wisconsin Counties Association proposal to create a*

Wisconsin Emergency Detention Collaboration Council and develop emergency detention process and outcome measures, from George Quinn and Matthew Stanford, Wisconsin Hospital Association, and Sarah Diedrick-Kasdorf, Wisconsin Counties Association (December 6, 2010).

- Handout, submitted by Committee Member Michael Bachhuber (December 3, 2010).
- Memo, *Making Parity Real: Current legal barriers to accessing psychiatric care for older adults deemed incapacitated or incompetent*, submitted by Colleen Erb, Amery Regional Behavioral Health Center (October 14, 2010).

November 15, 2010 (Legislative Council's Large Conference Room, 1 East Main St., Ste. 401)	**Notice**	**Agenda**	**Audio a.m./p.m.**	**Minutes**

- Memo No. 1, *Potential Recommendations for the Committee's Consideration in the Areas of Emergency Detention, Treatment of Minors, Involuntary Commitment, and Other Mental Health Issues* (November 8, 2010).
- Handout, "Issues that need to be addressed," submitted by Committee Member Jon Berlin, MD (November 10, 2010).
- Handout, *Comments on Potential Recommendations for the Committee's Consideration*, submitted by Sarah Diedrick-Kasdorf, Senior Legislative Associate, Wisconsin Counties Association, and Bill Orth, President, Wisconsin County Human Services Association (November 15, 2010).
- Handout, *Milwaukee County Response on Proposed Chapter 51 Statutory Change*, submitted by Geri Lyday, Interim-Director, Department of Health & Human Services, Milwaukee County (November 15, 2010).

October 4, 2010 Public Hearing (Invited Speakers @ 10 a.m.; public testimony @ 1:30 p.m.) Medical College of Wisconsin, Milwaukee	**Notice**	**Agenda**	**Audio a.m./p.m.**	**Minutes**

- Directions to the Medical College of Wisconsin.
- Presentation, *Transforming the Adult Mental Health Care Delivery System in Milwaukee County*, by Rob Henken, Public Policy Forum (October 4, 2010).
- Document, *Wisconsin Hospital Association Behavioral Health Task Force White Paper* (October 4, 2010).
- Testimony, Dr. Bill Topel, Director, Winnebago County Human Services Department (October 4, 2010).
- Testimony, Denise Johnson, Project Coordinator, AODA Services for the Deaf/Hard of Hearing, Independence First (October 4, 2010).
- Testimony, Tom Hlavacek, Executive Director, Alzheimer's Association - Southeastern Wisconsin Chapter, and Kathleen Pritchard, President and CEO, Planning Council for Health and Human Services, Inc. (October 4, 2010).
- Testimony, Lisa Clay Foley, Supervising Attorney, Disability Rights Wisconsin (October 4, 2010).
- Testimony, Deb DuFour, Representative, Washington County Human Services Department (October 4, 2010).
- Testimony, Jim Kubicek, Director of Crisis Services, Milwaukee County Behavioral Health Division (October 4, 2010).
- Testimony, Lee R. Jones, Principal Assistant Corporation Counsel, Milwaukee County Office of Corporation Counsel (October 4, 2010).
- Testimony, Dan Baker, Director, TLS - Crisis Resource Center (October 4, 2010).
- Testimony, George Quinn, Senior Vice President, and Matthew Stanford, Associate Counsel, Wisconsin Hospital Association, Inc. (October 4, 2010).

August 31, 2010 (412 East, State Capitol)	Notice	Agenda	Audio	Minutes
• Ch. 51, *State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act.* • Ch. DHS 34, *Emergency Mental Health Service Programs*. • Staff Brief 10-01, *Emergency Detention and the Treatment of Minors Under Wisconsin's Mental Health Statutes* (August 24, 2010). • Study by the International Association of Chiefs of Police, "Building Safer Communities: Improving Police Response to Persons with Mental Illness" (June 2010). • Testimony, John Easterday, Administrator, Division of Mental Health and Substance Abuse, Department of Health Services (August 31, 2010). • Testimony, Dr. Kevin Kallas and Dr. Michael Hagan, Department of Corrections (August 31, 2010). • Testimony, Susan Riseling, Associate Vice Chancellor and Chief of Police, University of Wisconsin-Madison (August 31, 2010). • Testimony, Sarah Diedrick-Kasdorf, Senior Legislative Associate, Wisconsin Counties Association (August 31, 2010). • Testimony, Dr. Neal Blackburn, Director, Unified Services, Grant and Iowa Counties; past President, Wisconsin County Human Service Association (August 31, 2010). • Handout, *Emergency Detention Medical Clearance Alternative Protocol (MCAP)*, submitted by Doug Pettit, Oregon Police Chief (August 31, 2010). • Testimony, Lyn Malofsky, Director, Warmline, Inc. (August 31, 2010). • Testimony, Hugh J. Davis, Parent & Executive Director, Wisconsin Family Ties.				