

SENATE HEARING SLIP

(Please Print Plainly)

DATE: MARCH 07, 2000

BILL NO. Senate 380

OR
SUBJECT _____

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/00

BILL NO. SB 380

OR
SUBJECT _____

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/2000

BILL NO. SB 380

OR
SUBJECT _____

GALEN STREBE
(NAME)

514 WATSON PLACE
(Street Address or Route Number)

MADISON WI 53704
(City and Zip Code)

SELF
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

Senator Peggy Rosenzweig
(NAME)

(Street Address or Route Number)

(City and Zip Code)
5th Senate District

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

KEVIN LEWIS, LEGISLATIVE LIAISON
(NAME)

SINICKA McCABE
(Street Address or Route Number)

DIVISION ADMINISTRATOR
DIVISION OF SUPPORTIVE LINKS
(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3-7-00
BILL NO. SB 380
OR
SUBJECT _____

Donna Mulvey-Kisseloff
(NAME)
100 River Place, Suite 109
(Street Address or Route Number)
WOMAN 53716
(City and Zip Code)
Wisconsin Center for
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3-7-00
BILL NO. SB 380
OR
SUBJECT _____

FR Jim Kinney
(NAME)
(Street Address or Route Number)
Hudson
(City and Zip Code)
Self
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
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P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: March 7, 2000
BILL NO. SB 380
OR
SUBJECT _____

Robert L. Beilman, M.D.
(NAME)
4570 Wood's End
(Street Address or Route Number)
MADISON WI
(City and Zip Code)
NAML - Wisconsin
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/00

BILL NO. SB 380

SUBJECT _____

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 7 MAR 00

BILL NO. SB 380

SUBJECT 5TH STANDARD

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3-2-00

BILL NO. SB 380

SUBJECT _____

DAROLD TREFFEET MD
(NAME)

104065 Weyburn Lane
(Street Address or Route Number)

Bad die her WI
(City and Zip Code)

State Medical Society
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

RETTA MECKE
(NAME)

8726 GLENCOE CIRCLE
(Street Address or Route Number)

WAUWATONA WI 53226
(City and Zip Code)

WAUKESHA COUNTY
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

ALAN LEE
(NAME)

(Street Address or Route Number)

(City and Zip Code)

Dep. of Justice
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O. Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3-7-2007

BILL NO. SB 380

SUBJECT _____

Senators

(NAME) Rick Goodrich

(Street Address or Route Number) _____

(City and Zip Code) _____

(Representing) 7th Senate

Speaking in Favor:

Speaking Against:

Registering in Favor: _____

but not speaking:

Registering Against: _____

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/00

BILL NO. SB 380

SUBJECT _____

(NAME) Peter Bock

Room 212 D.

(Street Address or Route Number) _____

(City and Zip Code) _____

(Representing) _____

Speaking in Favor:

Speaking Against:

Registering in Favor: _____

but not speaking:

Registering Against: _____

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3-7-08

BILL NO. SB 308

SUBJECT _____

(NAME) Rep Pleasants

(Street Address or Route Number) _____

(City and Zip Code) _____

(Representing) Assembly

Speaking in Favor:

Speaking Against:

Registering in Favor: _____

but not speaking:

Registering Against: _____

but not speaking:

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

Vote Record

Senate Committee on Judiciary and Consumer Affairs

Date: 3/7/2000
Moved by: Huelsman Seconded by: Clausing
AB: _____ Clearinghouse Rule: _____
AB: _____ **SB:** 380 Appointment: _____
AJR: _____ SJR: _____ Other: _____
A: _____ SR: _____

A/S Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member
Sen. Gary George, Chair
Sen. Fred Risser
Sen. Alice Clausing
Sen. Joanne Huelsman
Sen. Alberta Darling

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>0</u>	_____	_____

Rossmiller, Dan

From: Little, Sharon
Sent: Tuesday, March 07, 2000 2:03 PM
To: Rossmiller, Dan
Subject: RE: SB 380

Thanks.
Sharon Little
111 West Wilson Street #505
Madison, WI 53703

-----Original Message-----

From: Rossmiller, Dan
Sent: Tuesday, March 07, 2000 1:21 PM
To: Little, Sharon
Subject: RE: SB 380

I'll put you down if you send me your address info.

-----Original Message-----

From: Little, Sharon
Sent: Tuesday, March 07, 2000 11:45 AM
To: Rossmiller, Dan
Subject: SB 380

Are you the committee clerk for the committee this bill was up before today? Is there still time for John Q. Citizen (me) to register against the bill?

Bills on Today's Hearing Agenda That Could Probably Be Voted Out of Committee**Assembly Bill 610**

Relating to: including relatives by adoption on the same basis as relatives by blood in certain definitions and references in the statutes.

By Representatives Hundertmark, Ward, Plale, Kestell, Musser, Rhoades, Ryba, Nass, Pettis, Albers, F. Lasee, Ainsworth, Owens, Ladwig, Goetsch, Olsen, Kelso, Balow, Sykora, Jeskewitz, Underheim and Waukau; cosponsored by Senators Grobschmidt, Wirch, Plache, Huelsman, Lazich, Rosenzweig and Darling.

Senate Bill 380

Relating to: eliminating emergency detention under the fifth standard of dangerousness, eliminating termination of involuntary civil commitments under the fifth standard of dangerousness, permitting only petitions approved by the attorney general to be filed for involuntary civil commitment under the fifth standard of dangerousness and providing access by the counsel for the interests of the public to court records and treatment records of persons receiving services for mental illness, developmental disabilities, alcoholism or drug dependence.

By Senators Rosenzweig, Grobschmidt, Panzer, George, Rude, Jauch, Roessler, Schultz, Darling, Huelsman and Farrow; cosponsored by Representatives Rhoades, Bock, Stone, Huber, Ladwig, Urban, Kelso, La Fave, M. Lehman, Pettis, Musser, Handrick, Berceau, Spillner, Albers, Hahn, Ainsworth and Brandemuehl.

Assembly Bill 328

Relating to: admitting certain police identification reports at preliminary examinations.

By Representatives Riley, Stone, Klusman, Grothman, Albers, Goetsch and Powers; cosponsored by Senators Burke, Roessler, Huelsman and Panzer.

Senate Bill 404

Relating to: sexually violent person commitment proceedings, escape from custody by a person who is subject to a sexually violent person commitment proceeding, sentencing of persons who have prior convictions for certain crimes, requiring persons who commit certain offenses to register as a sex offender and providing penalties.

By Senators Clausing, Burke and Roessler; cosponsored by Representatives Huber, Pohan and Seratti.

Corporation Counsel
Thomas P. Farley

Principal Assistants
Steven R. Schmitz
Danni L. Caldwell
Deborah B. Price

Waukesha C O U N T Y

OFFICE OF
CORPORATION COUNSEL

Assistants Corporation Counsel
William J. Domina
Linda J. Saafir
Fritz Mielke
Ann Marie Molitor
Robyn A. Schuchardt
Tony Jamieson

March 7, 2000

TO: Senator Gary George, Chair
Members of Senate Judiciary and Consumer Affairs Committee

FR: Fritz Mielke
Assistant Corporation Counsel

RE: SENATE BILL 380 - 5TH STANDARD

The 5th Standard reaches some of the most severely mentally ill patients for whom clear and convincing evidence under the traditional four (4) standards of dangerousness is not otherwise available. For example, dangerousness under §51.20(1)(a)2.c, Stats. requires a *pattern of recent* impaired judgment. Likewise dangerousness under §51.20(1)(a)2.d., Stats. requires *imminence*. As a result of these prerequisites, a portion of the severely mentally ill population has traditionally fallen outside the 3-party Petition process.

Before the 5th Standard, those at the Waukesha County Corporation Counsel office who would screen prospective 3-party Petitions routinely denied requests that would today qualify as 5th Standard cases. In those days, we would listen to frustrated prospective petitioners complain, "What do we have to do? Wait until s/he kills or harms himself or attacks me?" Since the percentage of individuals with schizophrenia who will attempt suicide within their lifetime is high, these concerns are entirely legitimate.

Then the 5th Standard was passed. Accompanied with the "alternate" or "substantially incapable" standard for medications incompetency within §51.61(1)(g)4.b, Stats., these new laws

gave Corporation Counsel the potential to finally reach this severely ill population.

Nonetheless, we still had a problem. Access. All 5th Standard 3-party petitions require a psychotropic medications competency examination as part of the pleadings. Families with reclusive and paranoid thought disordered members were consistently telling us, words to the effect, "So I have to take him/her to a psychiatrist and fill out an examination form before we can do this Petition? You don't understand. S/he won't ever agree to see a mental health professional. That's why we're asking for a 3-party Petition in the first place!!" So it went. Catch-22. We continued to turn away prospective petitioners who deserved better.

In one case, shortly after the 5th Standard's passage, a badly ill patient who could not be examined for medications competency was later detained for dangerousness pursuant to §51.20(1)(a)2.d, Stats. However, I was going to have to dismiss the matter. The officer had "cause" to effect the detention, but I was lacking "clear and convincing" evidence to carry the case to Final Hearing. Instead, I called the Waukesha County Mental Health Center and had a 5th Standard examination done with a special form I created. I then sent the emergency detention papers along with this form to the Attorney General's office where they were approved. Ultimately, this "conversion" process was challenged in a later case in Waukesha county before the Honorable J. Mac Davis. At a hearing open to the public, Judge Davis ruled that the Attorney General approval form had to be done by the close of business on the same business day that the Statement of Emergency Detention was filed. At that point, the "conversion" papers would then be filed as supplemental pleadings pursuant to §802.09(4), Stats. This filing, in turn, allowed Corporation Counsel to attempt a 5th Standard probable cause finding.

Waukesha County has attempted approximately (18) 5th standard cases. Ten (10) resulted in

5th standard commitments. Three (3) resulted in the patient initially refusing but then voluntarily accepting treatment during the pendency of the proceedings. Three (3) resulted in a dangerousness finding other than the 5th standard [one (1) "a" and two (2) "c" standards]. Two (2) cases were dismissed at the Final Hearing for failure to meet the "clear and convincing" burden of proof. Of the (10) 5th standard commitments, (8) were law enforcement detentions under one of the traditional (4) standards which were converted to the 5th standard before the probable cause hearing. The other (2) were treatment director holds which employed the 5th standard from the outset.

During the three years these ten (10) 5th Standard commitments were done, Waukesha county processed over 2000 mental health emergency detentions and 3-party petitions. Thus, less than ½ of 1% of our cases have resulted in 5th Standard commitments - despite our use of the conversion process throughout this time.

Please recognize that eliminating the option of law enforcement detentions pursuant to §51.15(1)(a)5, Stats. effectively forecloses treatment directors from employing the 5th Standard for Treatment Director Holds under §51.15(10), Stats. Waukesha county's proposed language would facilitate an appropriate Treatment Director response for patients seeking discharge against medical advice. If the Treatment Director were found to have had cause to have held the patient, then use of the proposed conversion language would give Corporation Counsel the added option of the 5th Standard. Since there simply is no time to assemble a 3-party petition during the course of a Treatment Director Hold, Waukesha county's proposal is the only practical way to provide continuity of care for the 5th Standard population requesting such discharges.

Please also recognize that the 5th Standard targeted population is mobile and often lives "on

the edge.” The continuity of the conversion process in the Waukesha county proposal keeps the patient under supervision rather than being released to the community where s/he may be “lost in the cracks” while Corporation Counsel awaits three petitioners. In many cases, the wait may be forever. Families of the mentally ill can become “burned out” or may fear retaliation for stepping forward to sign a 3-party Petition. The conversion process as we propose below is one response to this problem.

Waukesha county proposes essentially codifying the same procedure that has made it Wisconsin’s leader in 5th Standard cases. The conversion process allows for access to the patient in order to conduct a professional medications competency examination, continuity of mental health care, ample safeguards for the patient’s due process concerns, continued monitoring and guidance by the attorney general’s office, and a practical opportunity to continue the use of treatment director holds with this population.

A proposal to create a new paragraph, §51.20(1)(ae), Stats.

“§51.20(1)(ae). 1. If a law enforcement statement of emergency detention pursuant to §51.15(4) or (5) is based on one or more of the subpar. (a)2.a-d, the corporation counsel or his/her designee may pursue the provisions of par. (a)2.e. as an additional or alternate basis for probable cause at the probable cause hearing under subs. (7) or as an additional or alternate basis for commitment at the final hearing under subs. (10) within the provisions set forth herein. In such cases, the corporation counsel shall forward to the attorney general or his or her designee the law enforcement Statement of Emergency Detention and any supplemental materials, including a possible mental examination of the patient conducted during the course of the patient’s current

detention, for review and possible approval by the attorney general or his/her designee.

2. The provisions of par (a)2.e. shall not be available as an additional or alternate basis for a finding of probable cause at the hearing under subs. (7) unless the court finds that the law enforcement officer had cause under one or more subpar. (a)2.a-d to effect the patient's detention and the attorney general has made or makes approval of such additional or alternate grounds under par (a)2.e. prior to or at the time of the probable cause hearing. The patient shall be served with all supplemental materials, if any, used by the attorney general, when approving the request, no later than the probable cause hearing.

3. The provisions of par (a)2.e. shall not be available as an additional or alternate basis for commitment under subs. (13) unless the court again finds that the law enforcement officer had cause under one or more subpar. (a)2.a-d to effect the patient's detention and the attorney general has made or makes approval of such additional or alternate grounds under par (a)2.e. at least 48 hours in advance of the final hearing. Prior approval for such alternate or additional grounds under par. (a)2.e. rendered prior to or at the probable cause hearing shall be sufficient approval for the final hearing. The patient shall be served with all supplemental materials, if any, used by the attorney general, when approving the request, no later than 48 hours prior to the final hearing.”

Respectfully,



Fritz Mielke
Assistant Corporation Counsel

FIFTH STANDARD REQUESTS FOR ATTORNEY GENERAL (AG) APPROVAL

BY COUNTY

County	Total Requests For AG Approval	Approved Requests by AG	Not Approved Requests by AG
Bayfield County	5	5	0
Buffalo County	1	1	0
Calument County	1	1	0
Chippewa County	3	3	0
Dane County	10	10	0
Dodge County	1	1	0
Eau Claire County	1	0	1
Green Lake County	1	0	1
Jefferson County	1	1	0
La Crosse County	3	3	0
La Fayette County	4	4	0
Marinette County	1	1	0
Milwaukee County	2	2	0
Outagamie County	2	2	0
Portage County	1	1	0
Richland County	2	2	0
Shawano County	1	1	0
Sheboygan County	3	3	0
Washburn County	1	1	0
Waukesha County	31	31	0
Winnebago County	1	0	1
Wood County	2	2	0
TOTALS	78	75	3

(Revised 03/06/00)

FIFTH STANDARD REQUESTS FOR ATTORNEY GENERAL (AG) APPROVAL

BY YEAR

YEAR	Total Requests For AG Approval	Approved Requests by AG	Not Approved Requests by AG
1996	1	1	0
1997	23	20	3
1998	21	21	0
1999	28	28	0
2000	5	5	0
TOTALS	78	75	3

(Revised 03/06/00)
5thstandardstatistics2.doc

NAMI WISCONSIN
THE ALLIANCE FOR THE MENTALLY ILL OF WISCONSIN
4233 W. BELTLINE HWY. MADISON, WI 53711

Commitment Standards

My name is Dr. Robert Beilman. I am a retired internist and past president of NAMI - Wisconsin - the Alliance for the Mentally Ill of Wisconsin. I am here to testify on behalf of NAMI - Wisconsin in support of S.B. 380.

Thank you for this opportunity to testify.

S.B. 380 is sound public policy. NAMI - WI supports all aspects of this bill, but in particular we would like to address one specific provision:

The bill corrects some technical problems that have recently become evident in the current law.

S.B. 380 will allow the corporation counsel access to the same records, files and treatment records to which the attorney or guardian ad litem of an individual has access.

It simply does not make sense to tie the hands of the corporation counsel in his/her efforts to represent the interests of the public by not allowing the corporation counsel to examine the same records that are available to the public defender.

In the name of fairness, both the public defender, or the individual's attorney, or the guardian ad litem and the corporation counsel must be on **equal** ground in order to present the best case in the interest of the individual and the public. Not to allow the corporation counsel access to the same records as are available to the individual's attorney results in a lopsided presentation and is unfair to the individual. Justice cannot be done when the public defender can argue a case with information that is not available to the corporation counsel.

NAMI - Wisconsin strongly supports S.B. 380.

March 7, 2000

State Medical Society of Wisconsin
testimony in support of Senate Bill 380

I am Darold Treffert, M.D. of Fond du Lac and appear on behalf of the Wisconsin State Medical Society in support of Senate Bill 380 which modifies in part the provisions of the so-called "Fifth Standard" pertaining to civil commitment laws, and also eliminates the sunset date for the Fifth Standard which would otherwise expire on 12/1/2002. SMS supports both changes.

For many years The State Medical Society of Wisconsin and the Alliance for the Mentally worked together to modify Wisconsin's The Mental Health Act and incorporate the Fifth Standard provisions into criteria for involuntary civil commitment to reach a more reasonable balance in the delicate equation between the right to be sick and the right to be rescued. When it enacted the Fifth Standard in 1995 Wisconsin then joined 8 other states which at that time had passed similar legislation. Once again Wisconsin was on the cutting edge and leading the way with progressive legislation in difficult areas. A number of other states have done so since that time and a number of others, including California, are considering such legislation presently.

Briefly stated, the Fifth Standard provides that persons with a documented history of mental illness who demonstrate a substantial probability, by recent acts and omissions, of a need for care and treatment to prevent further disability or deterioration, and who left untreated lack services for safety and will suffer severe emotional or physical harm, can be detained and hospitalized for 30 days if there is no reasonable provision for care and treatment available in the community and if there is no reasonable probability the person will avail themselves of such community treatment. In order to use this standard, the Attorney General's office must approve the petition. This new standard is a useful, but very narrowly defined, addition to the three other standards which are based solely on *imminent physical* dangerousness--danger to self, danger to others and gravely disabled.

Let me make several points about the Fifth Standard and the changes SB380 proposes:

1. The present Fifth Standard is more stringent than that proposed by SMS and AMI originally. The requirement of involvement of the Attorney General's office is singular among all the states who have enacted such legislation. That was inserted to deal effectively and proactively with any constitutional challenge that might occur. While SMS was concerned that such an added requirement might, just through logistical concerns, interfere with the use of this new standard, that requirement has been a workable one and we have no objection to that sustained requirement.
2. This bill eliminates emergency detention under the Fifth Standard. We have no objection to that. The Fifth Standard is aimed toward that chronic mentally ill patient with a documented history of severe mental disability when not treatment compliant, who has probably gone off his or her medications and is deteriorating toward imminent dangerousness narrowly defined. If such a person is in an emergency circumstance and already dangerous, the other three standards can apply. The fifth standard is most useful in circumstances where treatment intervention can *prevent* such deterioration before catastrophes occur. In such circumstances there is time to seek approval of the Attorney General's office in a prompt manner before the petition is filed.

3. This bill eliminates the sunset provision and in so doing allows the Fifth Standard to remain available in effect beyond 12/1/2002. SMS wholeheartedly supports the Fifth Standard remaining intact and available. While there are some modifications we might suggest to make the Fifth Standard even more available and useful to its purpose, its present form is certainly preferable to no such provision at all and is a reasonable compromise between all the considerations at issue.

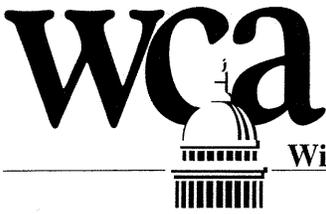
4. So far this provision has been used about 60 times. While that may seem a small number, it is crucial in each circumstance where it has been applicable and used. SMS and AMI had said all along this was a vital provision in limited but important circumstances to prevent deterioration and perhaps catastrophe. The prediction that the Fifth Standard would not 'open the flood gates', has been borne out. Over time perhaps more counties will use this provision but with the circumstances to which it applies being limited, it will continue to be appropriately, but sparingly.

5. The constitutional challenge has been raised on two occasions, according to the Attorney General's office, but in both instances after the challenge had reached the appellate level, the individuals voluntarily withdrew their appeals because they had recovered. And such recovery because of reasonable, timely, due-process-protected intervention is precisely what the Fifth Standard was intended to cover.

6. The Fifth Standard is no cure-all for all the mental illness crises and catastrophes that continue to occur in Wisconsin and throughout the nation. But it has been of help with some such circumstances and should be retained. It has not, as some opponents predicted, been used as a first rather than last resort; state hospitals have not been overrun with new admissions; and county programs have not been bankrupted. It has been a modest, but worthwhile, improvement.

7. Yet still far too many seriously mentally ill persons are inappropriately put into prisons or jails, because that is all the law will allow, to where approximately 16% of inmates in jails and prisons are severely mentally ill. The L.A. county jail is now the nation's largest treatment facility for the severely mentally ill according to a California newspaper. One in three homeless individuals is severely mentally ill. Tragedies, such as that leading to the implementation of Kendra's law in New York for assisted treatment, continue to occur. As a result, many other states, including California with its long-standing, landmark LPS act, are moving in the direction of 'assisted treatment' addressing some of the concerns, and remedies, that the Fifth Standard already incorporates. So there will need to be continued dialogue between patients, advocates, families, the public, professionals and legislators about, and there will need to be continual fine tuning of, this delicate equation. The Fifth Standard was a part of that fine tuning, as is this revision of the Fifth Standard itself. While not the final product, the Fifth Standard is an important step along the way. It should remain available but only as one part of the total mosaic that must include adequate services & resources with the same due diligence as it includes enlightened & balanced legislation.

Darold A. Treffert, M.D.
March 7, 2000



MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary

FROM: Sarah Diedrick-Kasdorf, Legislative Associate 

DATE: March 7, 2000

SUBJECT: Support for Senate Bill 380

The Wisconsin Counties Association (WCA) supports Senate Bill 380 which eliminates the fifth standard for emergency detention; eliminates the December 1, 2002 sunset date for the use of the fifth standard; requires attorney general review prior to the filing of a petition for involuntary commitment under the fifth standard; and provides access by the counsel for the interests of the public to an individual's files and records of court proceedings and to the individual's treatment records, to the same extent that the individual's attorney or guardian ad litem have access.

County governments across the state utilized the fifth standard over 60 times since its enactment in 1996. Counties have found that the fifth standard played an integral role in providing individuals suffering from mental illness with the appropriate placement and treatment. Absent the fifth standard, it is likely that a majority of these individuals would have been inappropriately placed in the criminal justice system. Additionally, counties across the state have not reported increased costs associated with the use of the fifth standard.

WCA also supports the provision included in Senate Bill 380 that requires attorney general review prior to the filing of a petition for involuntary commitment under the fifth standard. Of the 65 requests made by counties to the attorney general's office since 1996, 62 have been approved. This statistic clearly shows that counties are properly utilizing the fifth standard for involuntary commitments.

Senate Bill 380 also provides greater access to county corporation counsel to an individual's files and records of court proceedings and to an individual's treatment records. Providing county corporation counsel access to these records will ensure that counties are making proper recommendations to the courts regarding treatment options for an individual.

WCA respectfully requests your support for Senate Bill 380.

Thank you for considering our comments.

PEGGY ROSENZWEIG



State Senator, 5th Senate District

TO: Members of the Senate Committee on Judiciary and Consumer Affairs

FROM: Senator Peggy Rosenzweig

DATE: March 7, 2000

RE: Senate Bill 380

I would like to first thank Senator George for scheduling the hearing today on Senate Bill 380, which makes some changes to the fifth standard for civil commitments. I appreciate the fact that Senator George gave this important legislation such a timely hearing.

As you all remember, the Wisconsin Legislature passed a law that created the fifth standard of dangerousness for civil commitments in May of 1996. The fifth standard allows for the brief commitment of individuals with a documented history of mental health problems before they cause harm to themselves or others. Too often under the old law, individuals who needed help were not able to receive it, which frustrated many people in the mental health field, not to mention the families of the individuals. The legislation passed in 1996 would allow those individuals to receive help while meeting constitutional concerns that were raised.

A sunset provision that was added to the bill has provided us with the opportunity to examine the impact of the bill since it took effect in December of 1996. Since that date, the fifth standard law has been used successfully over 70 times statewide. The law has been used responsibly and judiciously by the counties and has not led to a glut of commitments under this law. Only two cases were appealed to the Court of Appeals, and both of those cases were dismissed at the request of the petitioner soon after filing. The Attorney General's office has considered the law a success and has been very pleased with its use to date.

The legislation before you today would make changes to the fifth standard law that will allow it to continue to be an effective part of our mental health statutes:

- The bill would eliminate the December 1, 2002 sunset that was added to the bill originally to placate fears that the statute would be used incorrectly. As we have seen, the bill has been used as intended and has been considered successful by all that have used the law.
- The bill requires that the Attorney General or his designee review and approve all petitions for involuntary commitment before they can be filed. This change would

make sure that there is no question of Attorney General approval before the case begins.

- The bill would eliminate the use of the fifth standard for emergency detentions. This change was made at the request of practitioners who believed that it was superfluous. This change should also help allay concerns raised initially about police being able to effectively determine whether a case met fifth standard grounds.
- Finally, the bill provides the corporation counsel with the same level of access to an individual's court and treatment records as that individual's attorney or guardian ad litem has while preparing for mental health proceedings, including fifth standard proceedings. This item was brought to our attention by various corporation counsels who said that they wanted to codify what has been accepted practice for years.

I am hopeful that you will all be supportive of this legislation, which has the support of advocates, professionals in the field, and the Attorney General. I believe the changes are necessary to allow us to continue to use and strengthen a law that has proven to be extremely successful throughout the state. I would be happy to answer any questions that people may have on the bill.

DHFS TESTIMONY IN SUPPORT OF SB 380
WITH A SIMPLE AMENDMENT

BEFORE THE SENATE JUDICIARY COMMITTEE
MARCH 7, 2000

DHFS supports SB 380. Through the Governor's budget submission, DHFS had proposed the repeal of the sunset language originally contained in 1995 WI Act 292. And we continue to support this repeal of the sunset of the fifth standard. In an effort to keep our remarks brief, we would just echo the comments made by representatives from the Department of Justice and the State Medical Society that the Fifth Standard is not an appropriate tool for emergency detentions but it is a necessary instrument for three party petitions.

In addition to supporting the bill, DHFS strongly urges Senate adoption and passage of an amendment that would very simply repeal the data collection requirement found under s. 51.03(3). When 1995 SB 270 was being considered, DHFS and the counties had concerns about the costs to MA and community aids that would result from this added fifth standard of emergency detention, and commitment. Accordingly, a data collection provision was added to the bill, which is now found at sub. 51.03(3). As the Wisconsin Counties Association also testified today, these concerns have not been realized either at the county or at the state level. The Department of Justice aptly put it: "the law is not being abused, it is not being overused."

Since the reason for this data collection was an effort to track the costs related to the implementation of 1995 Act 292 given the fears of an astronomical fiscal impact, it is appropriate to eliminate this data requirement in light of no such fiscal impact having been created. This would be the case even if the data that is required to be collected under s. 51.03(3) actually did tell the observer anything about the fifth standard. In fact, this data collection tells the observer nothing about the fifth standard which makes it all the more prudent to eliminate it.

The data collected under the statutory direction found in 51.03(3) does not yield the information that would be necessary to identify any increase in costs related to the fifth standard even if this was still a concern in Wisconsin. Here are some reasons why 51.03(3) simply does not work:

DHFS is required to collect the numbers of and total cost of ALL emergency detentions and commitments initiated, without any distinction of those detentions or commitments made by virtue of the fifth standard. In any event, SB 380 repeals fifth-standard emergency detentions entirely, making this wholly irrelevant.

The data collection also requires the collection of total cost information from all payment sources. Counties do not have the ability to track commitment costs paid by Medicare, HMOs or private insurance. Moreover, the state cannot force private third-party payers to submit commitment costs data. The result is an impasse with regard to any meaningful information.

In sum, there is broad understanding that the fifth standard has been used judiciously in Wisconsin and is an important part of our mental health system. There is no longer the concern about the costs this commitment standard will impose on either the counties or medical assistance. It is time to repeal an ineffective data collection effort that is simply deadwood in our Mental Health Code. Please support this amendment to repeal s. 51.03(3). Thank you.