

# **EMERGENCY DETENTION OF RESERVATION RESIDENTS**

## **WHITE PAPER**

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### **Overview:**

Currently, most of the Indian Tribes in Wisconsin lack procedures for the emergency detention of reservation residents. There are few emergency detention procedures in tribal codes or in federal statutes, which are the primary written laws applicable on reservations within the State. To exacerbate the problem is that, it is unsettled whether pursuant to Public Law 80-280 the State has the obligation to act over emergency detentions on reservations within the State.

The difficult issues presented in this situation are highlighted by a recent scenario in which a tribal child was transported to a tribal treatment facility based upon a substantial probability of physical harm to herself, as manifested by threats of suicide and serious bodily harm. The tribal treatment facility contacted the County to initiate an emergency detention process. The County failed to act on the referral and as a result the tribal child was released from custody. Within the hour the tribal child was returned to the tribal treatment facility by tribal law enforcement following an actual suicide attempt and the commitment of serious bodily harm to herself. The tribal child was then airlifted to a regional medical facility in nearby urban area.

### **Issue:**

There are a number of factors that have contributed to the circumstances detailed in this White Paper. First, most reservations lack appropriate facilities for emergency detentions. There are virtual no secure beds available in either the tribal or regional IHS system. Second, direct care and contract health monies are scarce, which leads to drastic underfunding of mental health services. The lack of money is compounded by the existence of three separate jurisdictions (federal, state, and tribal), each of which has its own funding priorities. Finally, few tribes have enacted specific tribal mental health codes with developed emergency detention provisions.

### **Need:**

Added to the complexity surrounding emergency detentions are the existences of multiple legal frameworks that are often poorly coordinated. For instance, on many reservations, tribal, state, and federal authorities have certain responsibilities and jurisdiction which may overlap, or conversely, may totally disregard important needs. Thus, a major problem in developing emergency detention procedures for reservation residents is to decide which portions of the process should be handled by tribal, state, or federal mechanisms. Finally, once these decisions are made, implementing them presents yet another set of difficulties. How do the various actors in the various jurisdictions work cooperatively while respecting tribal customs and traditions? Who will pay for the various components of the process such as courts, attorneys, transportation, and detention?

**Recommendations:**

1. The Tribes and the State need to establish a forum to review and discuss the difficulties of administering emergency detention procedures for reservation residents within the State and cooperatively establish an appropriate process for addressing the issue.
2. The Tribes and the State need to review and discuss the emergency detention procedures for reservation residents in other States as examples of appropriate processes which may be utilized in the development of a cooperative process in Wisconsin.
3. The Tribes and the State need to examine the issues related to the emergency detention process for individuals committed through tribal courts and comity of tribal court orders by state courts.
4. The Tribes and the State need to develop regular meetings between the Tribes, the State, and behavioral health service providers on available services and other issues.
5. The Tribes and the State need to develop cooperative agreements among the major parties in developing emergency detention procedures for reservation residents between the Tribes, Counties, and the State government.
6. The Tribes and the State need to establish training on the tribal court emergency detention process focusing on particular issues unique to tribal populations including Indian law, tribal jurisdiction, the court process, and the process for the payment for services.