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Testimony to Wisconsin Legislative Council Special Committee
Review of Emergency Detention and Admission of Minors under Chapter 51
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Thank you for the opportunity to testify today. My name is Lisa Foley, and I am a supervising attorney at Disability Rights Wisconsin in the Milwaukee office. Disability Rights Wisconsin is the protection and advocacy agency for people with disabilities in our state. Our Milwaukee office primarily serves people in Southeastern Wisconsin including many people in Milwaukee County in the mental health system, and works on the frontline with these issues every day. I'd like to thank Rep. Pasch and Sen. Hansen for their passionate work on behalf of mental health consumers in Wisconsin, including their strong commitment to the passage of the Wisconsin Mental Health Parity Act.

I am here today as an advocate for people with mental illness to address the emergency detention process under Chapter 51 in Milwaukee County, highlight problems and make recommendations. There are several key messages that I want to share with you:

1. As advocates for people with mental illness, we are committed to protecting the rights of people with mental illnesses to live with dignity in the community and to ensuring that our mental health system respects the right of people with mental illness to choose their own treatment. I'll talk with you today about the unique way that Chapter 51 is implemented in Milwaukee County, including the Treatment Director's Supplement, which we believe protects individual rights by ensuring that unnecessary emergency detentions end quickly.

2. In Milwaukee County, our mental health system relies too heavily on emergency room and crisis services provided at great fiscal and human cost. We also have far too many emergency detentions-emergency detentions in our County continue to increase, unlike other counties where the number of ED's are declining. Forced mental health care is never appropriate, except when there are immediate and serious safety risks. We ask for your support for the development of alternatives to emergency detention including recovery oriented models such as peer run respite homes and the Crisis Resource Center, as well as improving access to outpatient services and case management.

3. As you consider changes to the current Chapter 51 process in Milwaukee County, we ask that you proceed with great caution. These are complex issues and any changes should be made carefully, in a collaborative manner, by those in our community on the frontlines with this issue. At this time there is not consensus about possible changes to Chapter 51 in Milwaukee County. For this reason, we recommend formation of a work group including representatives from Milwaukee County BHD, the public defenders office, representatives from private hospitals, Disability Rights Wisconsin, Mental Health America, NAMI, and consumers to work on these complex issues.

Milwaukee County

Milwaukee County operates the Milwaukee County Mental Health complex, an inpatient hospital for individuals experiencing mental illness with 96 acute care beds for adults and 24 for children. It serves as Milwaukee County's detention facility. The emergency room for the complex is PCS

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(Psychiatric Crisis Services). All emergency detentions are brought to PCS except for those in which the person being detained first requires medical stabilization. Those cases are taken to private hospitals.

In Milwaukee County, our mental health system relies too heavily on emergency room and crisis services provided at great fiscal and human cost. Our county's psychiatric emergency room, PCS, had over 12,000 visits last year and is on track for 14,000 visits this year – it is the 2nd busiest psychiatric emergency room in the country. Clearly the heavy volume at our emergency room indicates that our system is in crisis. Milwaukee County is also, unfortunately, a leader in emergency detentions. Throughout the state, the number of ED's are declining – in Milwaukee County the number has more than doubled since 2000, according to data obtained from the Milwaukee County Corporation Counsel's office. Of the 12,000 PCS visits last year, approximately 8,000 were emergency detentions, and approximately 6,000 of these had Ch. 51 court cases filed. (5300 adults and 700 juveniles according to data from Milwaukee County Public Defender office.) As the committee has heard, ED's are a costly and traumatic way for mental health consumers to enter the system.

Treating Director Supplement (TDS)

The Ch. 51 detention procedure in Milwaukee County is different from any other county in Wisconsin, because Ch. 51 has a different procedure for counties with populations greater than 500,000. (Sec. 51.15(4)) Milwaukee County is the only Wisconsin county with a population larger than 500,000. This different procedure was put in Ch. 51 in the late 1970's, because, according to the *Milwaukee Journal*, the Milwaukee Police Department (MPD) advocated for it. Prior to the change, Milwaukee police tried hard to avoid handling commitments, and instead booked many potential patients into jail on minor charges. As a result of the change, the provision for counties with populations greater than 500,000 put less emphasis on the role of police by requiring a doctor's opinion before the emergency detention statement was filed with the court. The doctor's opinion, or Treating Director Supplement (TDS), must be done in the first 24 hours that the person has been detained.

It is critical to recognize that the value of the TDS is that it serves to identify as soon as possible those individuals who do NOT fit the emergency detention criteria. It gets people out of the acute care inpatient mental health system who do NOT need to be there as soon as possible. Therefore, it minimizes the disruption and trauma to the person's life, family and work. Without TDS a person, who doesn't need to be there, can be held for up to 72 hours or longer if a weekend and/or holiday is involved waiting for their probable cause hearing. That's three to five or six days (if holiday and/or weekend involved), when they don't need to be there. Those extra days are a huge burden and highly disruptive for people who have jobs and families. It is also traumatic to be in a facility with acutely ill patients, when one doesn't need to be there, and is just waiting to be seen to be released. The TDS also saves money. The average cost of a day of inpatient service is over $1,000. In a facility as busy as PCS this is crucial, and as seen by the numbers I mentioned earlier, TDS serves a vital function by significantly contributing to eliminating many of the emergency detentions brought to PCS, as seen by the approximately 2000 detentions that did not go to hearing in 2009.

Its DRW's understanding that the doctors at PCS have no problem doing the TDS in the 24 hour time limit. The concern raised about TDS is for the detained person, who is taken to a private hospital by the police for medical stabilization. Only a treatment director can do the supplement, and we have heard that the private hospitals have, to date, not allowed their psychiatrists to take on this responsibility, even when their psychiatrists are treating the person. Therefore, PCS has a mobile team that goes out to the private hospitals to do the TDS. For persons who are unconscious or uncooperative, it is DRW's understanding that the doctor can do the TDS, by taking a couple of minutes to assess the serious medical condition, such as a suicide attempt, and that the individual is in bad shape because of it, thereby supplementing the statement to detain them.

However, due to limited availability of the mobile team, the 24-hour time limit has been missed for some detained persons at the private hospitals. It is DRW's understanding that out of the 5300 adult emergency detentions that make it to court, only 20-25 cases are dismissed for these 24-hour violations (according to figures supplied by public defenders' office.) It is important to note that people whose 24-hour TDS is missed are not released at the end of the 24 hours. They are still held on police hold at the private hospital or the Mental Health Complex until their hearing. They can only be released after the court rules there is a 24-hour violation.

Eliminating the TDS requirement that allows for the soonest possible release of people who don't need to be detained, up to 2,000 last year, because a very few miss the deadline does not make sense. It makes more sense to fix the logistics that prevent the 20-25 from getting timely TDS's done. TDS protects the liberty interests of the people who don't need to be detained any longer, while minimizing the disruption and trauma on their lives that an emergency detention causes. TDS protects those who don't need to be detained. TDS saves money. It makes much more sense to invest in fixing the TDS logistics problem with private hospitals and the mobile team for the very few, who are missed.

TDS and Sec. 51.15(2) County Approval for Need for Detention

Regarding TDS, there is a second critical way the emergency detention law is applied differently in Milwaukee County than other counties. The biennial budget included a provision whereby all emergency detentions must be approved by the local mental health authority before law enforcement has someone admitted to a designated treatment facility (Sec. 51.15(2)). This provision ensures that a person is screened at the earliest possible time for the appropriate level of care. Milwaukee County uses TDS to meet this requirement. Therefore, in Milwaukee County, when the police respond, no call is required to be made to a county agency for approval of detention or possible diversion to other more appropriate services. As a result, the police go ahead and do the emergency detentions first, and the county "approval" comes later, via the TDS, which is done by the doctor at the detention facility. Therefore, the person in crisis, whose care needs may be more appropriately met in the community without detention, is detained, handcuffed and taken to PCS. Last year 2,000 detained people at the Mental Health Complex were released prior to the probable cause hearing. But they weren't released until they had to go through the trauma of the emergency detention, and the expense to the system of law enforcement time and emergency hospital services.

Crisis diversion at first contact with the police, as contemplated by Sec. 51.15(2), assures that people in crisis receive the appropriate level of care to meet their needs, saves law enforcement time and

money, and saves money by decreasing expensive emergency detentions. It is successful in decreasing emergency detentions. Dr. Neil Blackburn testified about the crisis diversion in Crawford and Iowa counties, and that it has led to a 66% decrease in detentions. Also, John Easterday testified that emergency detentions are decreasing around the state as a result of this requirement and as the result of the expansion of community resources. However, in Milwaukee County, which doesn't have the initial crisis diversion, emergency detentions have doubled since 2000 and continue to increase. Therefore, crisis diversion must be implemented in Milwaukee County before detention, when possible, as it is successfully done in other counties. This provision doesn't just apply to people with mental illness, people with developmental disabilities and with dementia are being ED'd in Milwaukee County. There may be better treatment options than mental health hospitals to meet their needs.

Even with the successful crisis diversion, TDS still serves a valuable purpose in getting detained people seen within 24 hours to release any individuals who a doctor determines need not be detained. There will still be some individuals who are not diverted up front, but upon seeing a doctor, will be found not to meet the emergency detention criteria. Some of the money saved by decreasing the numbers of emergency detentions can be used to fix the logistics problems in getting TDS done in 24 hours for individuals at private hospitals. Therefore, as mentioned earlier, we support formation of a Milwaukee County work group to look at both the role of TDS, the benefits of requiring a call to the county community programs department for crisis diversion as contemplated by Sec. 51.15(2), and addressing the development and expansion of community based services programs. Also, this week we will hearing the recommendations from a national group, which as analyzed adult mental health services in Milwaukee County.

Recommendations

Therefore, DRW urges that you support Milwaukee County in implementing a successful crisis diversion process as contemplated by 51.15(2). In order to make crisis diversion successful, we ask you to support the development of community-based alternatives to emergency detention including recovery oriented models such as peer run respite homes and the Crisis Resource Center (CRC). The CRC provides a safe, recovery oriented environment, short term intervention, peer support, and helps link consumers to ongoing services and supports. The CRC was established to provide diversion and an alternative to costly inpatient and crisis services and to the corrections system, and as an alternative to emergency detentions as consumers voluntarily access services. We urge you to support the needed policy changes to enable HMO reimbursement for the CRC and to support development of additional programs like this. It is important to note that in addition to being more recovery oriented, it is more cost effective to serve people at the CRC – approximately $400 a day vs. over $1000 a day for inpatient.

In addition, we can reduce the need for ED's and crisis services by increasing access to community services and supports including improving access to outpatient services such as therapy and medication management, Peer Specialists throughout the continuum of care, and supportive housing. We recommend including outpatient services in the service array for the 1915i initiative, with the state covering the Medicaid match.

Low Medicaid reimbursement rates for psychiatrists have led to a huge gap in psychiatric services in Milwaukee County. We urge you to support increasing this rate, so that individuals will be able to get community-based psychiatric services including prescriptions for medications. Many individuals suffer an exacerbation their symptoms, when they are unable to get prescriptions. Milwaukee County does have does have crisis walk-in services, but that program only serves four people a day.

We urge you to support incentives to expand partnerships with federally qualified health centers, which get higher Medicaid reimbursement rates, so that more behavioral health services are available to the low income community.

Finally, we need to build on the success of CIT and offer expanded training for law enforcement to enable them to better respond to mental health concerns and support the choice for voluntary treatment. Emergency room personnel also need training. Many CIT officers have expressed frustration with private hospitals refusing to treat voluntary patients. On many occasions emergency room staff tells officers that the patient needs to be placed on an emergency detention. When the officers have related that the patient does not fit the criteria for an emergency detention and that they were voluntary, emergency room personnel continue to push for an emergency detention and refuse to accept the patient. This indicates the urgent need for training and for oversight to hold staff accountable to respect the right to access treatment on a voluntary basis

By supporting these changes, you will promote recovery, reduce the number of inpatient, emergency and crisis admissions currently occurring in Milwaukee County and elsewhere, and enable people to remain independent in the community, ensuring compliance with the law which requires that people are served in the least restrictive environment.

- Support better outcomes for the system and the people it serves.
- Shift the balance of spending from costly and sometime traumatizing inpatient to more recovery oriented support services.
- Maximize the number of people able to receive services from a system that has limited resources.

We look forward to a continued partnership with elected officials and policy makers to work for positive change and better choices for people with mental illness.