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## WISCONSIN LEGISLATIVE COUNCIL

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### REVIEW OF EMERGENCY DETENTION AND ADMISSION OF MINORS UNDER CHAPTER 51

Medical College of Wisconsin, Alumni Center Room  
8701 Watertown Plank Road, Milwaukee, WI

October 4, 2010  
10:00 a.m. - 4:45 p.m.

[The following is a summary of the October 4, 2010 meeting of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

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#### **Call to Order and Roll Call; Approval of the Minutes of the August 31, 2010 Meeting**

Chair Pasch called the committee to order. The roll was called and it was determined that a quorum was present.

*Chair Pasch moved, seconded by Senator Hansen, that the minutes of the Special Committee's August 31, 2010 meeting be approved. The motion was approved by unanimous voice vote.*

COMMITTEE MEMBERS PRESENT: Rep. Sandy Pasch, Chair; Sen. Dave Hansen, Vice-Chair; Rep. Ann Hraychuck; and Public Members Michael Bachhuber, Dr. Jon Berlin, Kristin Kerschensteiner, George Kerwin, Michael Kiefer, Dr. Gina Koepl, Tally Moses, Brian Shoup, Galen Strebe, Brenda Wesley, and Carianne Yerkes.

COMMITTEE MEMBER EXCUSED: Rep. Joe Parisi.

COUNCIL STAFF PRESENT: Laura Rose, Deputy Director, and Richard Sweet, Senior Staff Attorney.

APPEARANCES: Dr. John Raymond, President, Medical College of Wisconsin; Rob Henken, President, Public Policy Forum; Dr. Roderick Brodhead, Emergency Room Physician, Ministry Health; Dr. Tony Marchlewski, Psychiatrist, Bellin Health; Denise Johnson, Project Coordinator, AODA Services for the Deaf/Hard of Hearing, Independence First; Lisa Clay

Foley, Disability Rights Wisconsin; Cathy Kunze, Mental Health Advocate; Dennis G. Purtell, Attorney Manager, Mental Health Unit, State Public Defender; Tom Hlavacek, Executive Director, Alzheimers Association of Southeastern Wisconsin; Kathleen Pritchard, Ph.D., Executive Director, Planning Council for Health and Human Services, Inc.; Jim Kubicek, Director of Crisis Services, Milwaukee County Behavioral Health Division; Lee Jones, Milwaukee Corporation Counsel; Dr. Chris Morano, Mobile Urgent Treatment Team; George Quinn, Senior Vice President, Wisconsin Hospital Association; Dr. Steve Hargarten, Medical College of Wisconsin; Dr. Thomas Zander, Clinical and Forensic Psychologist; Dan Baker, Crisis Resource Center; Paula John, Family Member; Deb DuFour, Washington County Human Services; Becca Sniderman, Warmline, Inc.; Elizabeth Heflin, Mental Health Association; and Marie Haas, Family Member.

**Opening Remarks by Representative Sandy Pasch, Committee Chair;  
and Dr. John Raymond, President, Medical College of Wisconsin;  
and Introduction of Committee Members**

Chair Pasch stated that the committee would be examining the issue of emergency detentions under ch. 51, Stats. She noted the large number of emergency detentions in Milwaukee County and she said that the hearing might result in some suggestions on how to make changes in ch. 51 to address this issue.

Dr. John Raymond, President, Medical College of Wisconsin (MCW), welcomed the committee to the Medical College. He noted the MCW's longstanding commitment to the study of mental illness and said that he appreciated the committee's work.

The committee members briefly introduced themselves and noted their interests in the topics before the Special Committee.

**Milwaukee Mental Health Redesign Project**

***Rob Henken, President, Public Policy Forum***

Mr. Henken described the process that was convened in October 2008 to redesign the mental health care delivery and financing system in Milwaukee County. He noted that the full report on the recommendations would be released on Wednesday, October 6, therefore, his presentation would focus on the background of the process that led to the recommendations. Mr. Henken's PowerPoint presentation may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

Key points made by Mr. Henken included noting the increasing levels of security at the Milwaukee Mental Health Complex and whether individuals receive appropriate care at the right time. He noted that funding sources often dictate the type of treatment that a person receives, rather than whether that treatment was most appropriate.

He then discussed the planning process leading up to the Task Force recommendations and the engagement of various civic groups and public agencies in that process. The project conducted national-level research and engaged national experts to gather information and process data. 2,300 case managers returned surveys. He also noted that the focus of the Task Force study was on mental health

issues, not alcohol and other drug abuse (AODA). He also noted that the study did not focus on individuals over age 60 who are served by Family Care.

He said that the focus of the current system was on long-term maintenance of certain chronically ill individuals. He also noted that 75% of consumers said that they are currently getting the right amount of care. He also noted that the front door to the county's mental health system is often hospital emergency rooms.

In response to a question from Chair Pasch regarding the involvement of general hospitals in emergency detentions, Mr. Henken stated that there is a need for the private general hospitals to coordinate their efforts and be an engaged partner with the public system.

He noted that overall, Wisconsin is in line with the rest of the country with regard to the amount of funds expended on inpatient crisis versus outpatient services, but that Milwaukee is focused more on inpatient crisis services.

Ms. Wesley commented that quality of care and access to services go hand in hand, and that it was important to look at how private hospitals may have "dropped the ball" on providing mental health care.

In response to a question from Mr. Shoup on why the study precluded an examination of AODA issues, Mr. Henken stated that in Milwaukee County, a separate effort to examine this system is being conducted by Community Advocates.

### **Emergency Detention Procedures--Provider Perspective**

***Dr. Roderick Brodhead, Emergency Room Physician, Ministry Health; and Dr. Tony Marchlewski, Psychiatrist, Bellin Health***

Dr. Brodhead described his experiences as the Medical Director of Emergency Services at Howard Young Medical Center and in working 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. He described the federal law requiring treatment of individuals presenting themselves at emergency rooms. The law requires stabilization of the patient and transfer to an appropriate facility for treatment. He discussed liability issues if a patient is allowed to leave the emergency room and harm subsequently occurs.

Dr. Marchlewski stated he is an inpatient child psychiatrist at Bellin Hospital in Green Bay. He noted the differences between Illinois, where he worked prior to coming to Wisconsin, and Wisconsin laws relating to treatment of older minors. He also noted the involvement of law enforcement in the mental health system, which he stated is different from how this process works in Illinois.

He noted the difficulty of obtaining inpatient treatment for youth, and stated that it would be helpful to have more intermediate level diversion options instead of inpatient hospital treatment.

In response to a question from Senator Hansen, Dr. Marchlewski said that the Wisconsin Hospital Association (WHA) would be presenting some suggestions on how to obtain consistency among counties regarding mental health treatment.

In response to a question from Chair Pasch regarding how a patient is transferred from an emergency room for appropriate treatment, Dr. Brodhead stated that if the patient is experiencing a

medical crisis, they are transferred by ambulance. If they are suicidal or homicidal, they are generally transferred by law enforcement. He noted that in some cases it might be more appropriate to transfer these individuals by ambulance.

Dr. Marchlewski commented that his facility rarely uses the provisions regarding treatment of minors that were adopted in 2005 Wisconsin Act 444. He said that if a minor is detained in a facility for a period of time, they will usually voluntarily consent to treatment.

Ms. Kerschensteiner asked whether reliance on law enforcement with mentally ill patients resulted in difficulty in working with the patient. Dr. Brodhead commented that involvement of law enforcement can escalate the issue.

Representative Hraychuck then asked whether law enforcement should even be involved in the original decision for emergency detention or should they be taken out of the process. Dr. Brodhead said that the relationship between law enforcement and treatment personnel should be a partnership.

In response to Dr. Berlin's questions regarding the impact of Act 444 on a minor's treatment, Dr. Marchlewski said that it is a useful tool that provides parents with more authority. Dr. Marchlewski also said that even though the provisions have not been frequently used, once a minor understands that their inpatient stay tends to be short-term, they become more amenable to treatment.

In response to a question from Mr. Kerwin, Dr. Brodhead stated that law enforcement resources are not well utilized if they are being used to transport a person for mental health treatment. He said in his county, there is a focus on building collegial relationships with law enforcement, which can be easier to do in a rural area than in an urban area.

Mr. Bachhuber asked if they utilized a formal assessment of risk tool in the emergency room. Dr. Brodhead said that a formal assessment tool is not utilized.

### **Consumers/Advocates**

***Denise Johnson, Project Coordinator, AODA services for the deaf/hard of hearing, Independence First; Lisa Clay Foley, Disability Rights Wisconsin; and Cathy Kunze, Mental Health Advocate***

Ms. Johnson related 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. He was subsequently transferred to the Milwaukee County Mental Health Complex where similar issues were encountered. Ms. Johnson's complete testimony may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

Ms. Foley discussed the treatment director statement (TDS) in Milwaukee County which she stated protects individual rights by ensuring that unnecessary emergency detentions end quickly. She commented on the need to reduce the amount of emergency detentions in Milwaukee County but that any changes should be pursued cautiously. Ms. Foley's complete testimony may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

She commented on the need for Milwaukee County to implement a crisis diversion process and to develop more community-based alternatives to emergency detention, such as what is being done with the Crisis Resource Center. She also requested that the state provide the Medicaid match for certain

mental health services, and said Medicaid reimbursement rates should be examined. She also commented on the need to build on the success of Milwaukee's Crisis Intervention Team (CIT).

Ms. Kunze reiterated some of the points made by Ms. Foley. She stated support for the TDS in Milwaukee County. She also provided examples of individuals who had mental illness who had become involved in the law enforcement system. She said that many people have medical conditions that can be mistaken for a mental health issue.

In response to a question from Ms. Wesley about how emergency detentions could be improved, Ms. Kunze said that utilizing safe vehicles with trained and nonjudgmental individuals would make a big difference. She said that in some cases, police might be needed to address cases where physical violence is occurring.

Ms. Yerkes stated that the emergency detention process placed a huge burden on law enforcement officers, especially those who are young and inexperienced. She said that doctors need to spend more time with the assessment process.

### **Chapter 51 Issues in Milwaukee County and Findings of the Alzheimers Association's Challenging Behaviors Task Force**

***Dennis G. Purtell, Attorney Manager, Mental Health Unit, State Public Defender; Tom Hlavacek, Executive Director, Alzheimers Association of Southeastern Wisconsin; and Kathleen Pritchard, Ph.D., Executive Director, Planning Council for Health and Human Services, Inc.***

Mr. Hlavacek and Dr. Pritchard presented the findings of the Alzheimers Association's Challenging Behaviors Task Force, convening April 2010, to study incidents involving older adults with dementia who are caught up in the legal and involuntary commitment systems. Their testimony may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

They summarized the findings of the Task Force, which focused on emergency detentions, initiatives for individuals in long-term care facilities, and the use of psychotropic medications with "black box" warnings for individuals with dementia, which can be dangerous. They commented that because Alzheimers is not a mental illness, the use of ch. 51 may not be appropriate for use with persons with age-related dementias.

In response to a question from Mr. Shoup, Mr. Hlavacek said that Wisconsin should regulate dementia care facilities separately from general nursing homes and establish special standards for those facilities.

Mr. Purtell noted that the public defender never sees the paperwork for cases that do not meet the TDS 24-hour deadline. He noted that there are six different facilities used for emergency detentions in Milwaukee County, and presented data on the increase in ch. 51 cases in Milwaukee County from 1994-1995 to the present. He said that the elimination of the indigency requirement as of July 1, 2008 had a substantial impact on these figures.

In response to a question from Senator Hansen regarding how many ch. 51 cases do not meet indigency requirements, Mr. Purtell said that he is not sure, but that he routinely represents people that have salaries, homes, and other resources.

In response to a question from Mr. Strebe about what happens to the cases that do not meet the 24-hour requirement, he said that some patients agree to voluntary treatment, or they may be discharged to detoxification facilities. In some cases, witnesses do not show up for the probable cause hearings, which results in dismissal. Ms. Yerkes commented that with the 24-hour rule, a small number of cases will fall through the cracks, especially on weekends if a person is not taken to the Milwaukee Mental Health Complex on a timely basis. This can result in dismissal if the case does not meet the 24-hour TDS deadline.

Mr. Purtell commented that he sees about one case dismissed every three weeks for failure to meet the 24-hour deadline.

### **Impact of *Delores M.* Decision/Treatment Director Statements**

***Jim Kubicek, Director of Crisis Services, Milwaukee County Behavioral Health Division; and Lee Jones, Milwaukee Corporation Counsel***

Mr. Kubicek's written testimony may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>. He pointed out two major problems with ch. 51 in Milwaukee County: the interpretation of the *Delores M.* court case [*Matter of Delores M.*, 217 Wis. 2d 69, 77 N.W.2d 371 (Wis. App. 1998)] and the TDS requirement. He said that 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 TDS requirement may lead to dismissals of cases when a person has a medical condition and is unable to be evaluated within the 24-hour time period due to medical treatment.

He described the main components of Milwaukee County crisis services, including the psychiatric crisis services (PCS) unit; mobile crisis teams; a 24-hour a day, seven-day a week crisis line; a geriatric crisis nurse; a seven-bed respite center; a walk-in clinic; and a close relationship with Warmline, a peer advocate telephone line.

Mr. Jones also described burdens placed on Milwaukee County by the TDS requirement. He said that the county experiences 15 to 65 cases per day, and meeting the 24-hour requirement for all of them is challenging. He also noted problems with the interpretation of the *Delores M.* case to the commencement of the 24-hour TDS time period in Milwaukee County.

Mr. Kubicek commented that the TDS 24-hour requirement is able to be met if patients are taken to PCS, but if there is a delay in transferring someone to PCS for evaluation, the deadline can be missed.

Mr. Strebe commented that a county could pursue the three-party ch. 51 petition for persons who have not been medically released for evaluation. Mr. Jones commented that the three-party petition is a time-consuming process, and that the person might leave the medical facility in the time that it takes to prepare the three-party petition.

### **Public Testimony**

***Dr. Chris Morano, Mobile Urgent Treatment Team***

Dr. Morano said that in Milwaukee, it is possible to get inpatient psychiatric treatment for youth. However, there is an improper application of ch. 51 in these situations and inpatient care is not always the best treatment. He said that most youth can remain safely in the community. He recommended that the TDS requirement in ch. 51 should be removed. In the first 24 hours of detention, youth are



incapacitated. He said that Act 444 should have eliminated the need to use emergency detentions for minors, because parents can now get their children into inpatient care. However, the changes have not been implemented.

***George Quinn, Senior Vice President, Wisconsin Hospital Association***

Mr. Quinn presented the conclusions of the WHA Behavioral Health Task Force chaired by George Kerwin. Mr. Quinn's remarks may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

Mr. Quinn stated that the Task Force's recommendations focused on health care provider shortages; amending ch. 51 to make it more understandable and workable for hospitals; encouraging collaboration between hospitals and counties, and informing hospitals of examples of successful collaboration; allocating state funding to counties on a regional basis; supporting alternatives to hospital emergency detentions; and encouraging accountability and system improvements.

***Dr. Steve Hargarten, Medical College of Wisconsin***

Dr. Hargarten commented that special psychiatric training for emergency room doctors would be helpful. He commented that the TDS 24-hour rule should start once an individual is medically cleared for evaluation. He commented that the role of law enforcement officers in the mental health system is perplexing.

***Dr. Thomas Zander, Clinical and Forensic Psychologist***

Dr. Zander commented that the TDS requirement serves an important function and should apply statewide. He recounted the history of the TDS requirement. He said that it was shocking that 8,000 people are brought in by law enforcement into the Milwaukee County mental health system and that it should not be the portal of all public health services. He commented that the *Delores M.* case only affected a small number of cases and that the clock should not start ticking until a person is medically stabilized. He said that most people in a mental health crisis, if approached with compassion, will voluntarily seek admission. He said that all emergency detentions should be screened before an emergency detention is filed. He said that of all the cases going into the system, only 5% to 10% of them end up being committed long term.

In response to a question from Mr. Strebe regarding the number of people in Milwaukee County under settlement agreements rather than commitments, Dr. Zander estimated that 75% of persons receiving treatment are voluntary treatments, stipulated agreements, or outpatient treatments.

Representative Hraychuck asked how law enforcement could be taken out of the emergency detention process. Dr. Zander responded that a team needs to screen each case before a person is taken away by law enforcement. Further, with regard to transporting an individual to an emergency detention hearing, it might be possible to use private security firms or other options instead of transportation by the sheriff.

Mr. Strebe asked Dr. Zander's opinion regarding the change made as of July 1, 2009 to require county approval of emergency detentions. Dr. Zander said this was a good change that resulted in a large drop in detentions in other counties. Dr. Koeppl commented that there are very few places where individuals can be referred, and that this law change may serve as an "empty" gate-keeping process in rural areas. She said it is also very true in rural communities that a hospital emergency room is often the portal to the public mental health system.

***Dan Baker, Crisis Resource Center***

Mr. Baker described the Crisis Resource Center's efforts to provide support to persons in a mental health crisis without involving the criminal justice system and is one way to prevent emergency detentions. Mr. Baker's complete testimony may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

He noted that the seven-bed facility provides voluntary treatment to individuals who are in a severe mental health crisis. He noted the Crisis Resource Center's work with the Milwaukee County Behavioral Health Division, police departments, and local emergency departments in attempting to prevent emergency detentions and reduce law enforcement involvement.

Dr. Berlin said that he would like to spell out in ch. 51 that it should only be used when a person is high risk and uncooperative. He says that he sees emergency detentions when a person has been voluntarily seeking help and that it is important to return a person to voluntary treatment at the earliest possible stage.

Ms. Kerschensteiner said that there is tension between obtaining informed consent and evaluating a person's capacity to consent to treatment. In response to a question from Ms. Kerschensteiner regarding how people get to the Crisis Resource Center, Mr. Baker said that there are diverse avenues for admission, including the police department, PCS, self referrals, family referrals, and provider referrals.

***Paula John, Family Member***

Ms. John stated that she has several family members with mental illness. She said it is important to recognize mental illness as a medical illness. She said she has been her brother's guardian for over 20 years, and he did well until he started developing resistance to his medications. She described her sister's death by suicide and said it is important to get help for a person before they decompensate. She said it is important not to criminalize mental illness.

***Deb DuFour, Washington County Human Services***

Ms. DuFour stated that Washington County contracts with several hospitals for inpatient care. Ms. DuFour's complete statement may be found at the following link: <http://www.legis.state.wi.us/lc/committees/study/2010/CH51/index.html>.

She stated some concern with the WHA report referenced by Mr. Quinn earlier in the meeting. She said that counties were not invited to participate in the process, and that there was concern with allowing emergency room doctors to make emergency detention decisions. She said that doctors' concerns with liability sometimes lead to inappropriate decisions, and an increase in emergency detentions can result. She says that making emergency detention decisions should be a collaborative process and that sufficient training and education is necessary.

***Becca Sniderman, Warmline, Inc.***

Ms. Sniderman said that the model of Warmline is "Call us, we've been there." She described her experiences with the emergency detention process and the feeling of losing control over one's life. She said that peer-operated services are very effective in helping people with mental illness.



***Elizabeth Heflin, Mental Health Association***

Ms. Heflin commented on her work in the West Allis school district and stated that law enforcement involvement with youth should be removed from the equation. She said that there are approximately 15 emergency detentions of children per year in West Allis, and that 95% of the calls are with regard to children receiving special education services. She said that the availability of police liaison officers in schools makes them the “go to” person for children experiencing mental health episodes.

She described the mental health protocol that she developed for the schools and the need to involve more than one person in dealing with crises. She said that the Positive Behavioral Intervention and Supports model is starting to be used in the West Allis schools. She said that when children feel safe and engaged and the school climate is positive, there is less of an opportunity for problems to develop.

***Marie Haas, Family Member***

Ms. Haas said that she has been an intensive care nurse for 10 years. She said that her mother, sister, niece, and nephew suffer from mental illness. She described her nephew’s problems with law enforcement authorities. She stated that his mother called the police for help, but that they waited weeks for her nephew to be picked up. She said that her nephew stayed in the Racine County jail for six weeks and when he was finally admitted to the psychiatric unit in the hospital, he got well within a week.

Mr. Strebe commented on the existence of the fifth standard for commitment and asked whether the use of this standard was considered in this case. He commented that while the fifth standard was created in the involuntary commitment statute, it was ultimately removed from use for the emergency detention statute. He said that the committee might consider reinserting this back into the emergency detention statute.

**Plans for Future Meetings**

Chair Pasch said that the next meeting of the committee would be held on either November 15 or November 19, 2010, and that members would be polled regarding their availability.

**Adjournment**

The meeting was adjourned at 4:45 p.m.

LR:wu