



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF EMERGENCY DETENTION AND ADMISSION OF MINORS UNDER CHAPTER 51

Legislative Council Conference Room
Madison, Wisconsin

October 30, 2012
9:30 a.m. – 12:30 p.m.

[The following is a summary of the October 30, 2012, 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>.]

Call to Order and Roll Call; Approval of the Minutes of the July 25, 2012 Meeting

Chair Lazich called the meeting to order. The roll call was taken and a quorum was present. The Special Committee reviewed the minutes of the previous meeting held on July 25, 2012.

Senator Hansen moved, seconded by Mr. Strebe, to approve the minutes of the July 5, 2012 meeting. The motion carried on a voice vote.

COMMITTEE MEMBERS PRESENT: Sen. Mary Lazich, Chair; Rep. Sandy Pasch, Vice-Chair; Sen. Dave Hansen; Rep. Joan Ballweg; and Public Members Dr. Jon Berlin, Michael Bachhuber, Kristin Kerschensteiner, George Kerwin, Dr. Gina Koepl, Brian Shoup, Galen Strebe, and Carianne Yerkes.

COMMITTEE MEMBERS EXCUSED: Public Members Michael Kiefer, Tally Moses, and Brenda Wesley.

COUNCIL STAFF PRESENT: Laura Rose, Deputy Director, and Brian Larson, Staff Attorney.

<p>*ATTENTION: This was the final meeting of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>

Review of Bill Drafts

WLC: 0073/4, relating to emergency detention, involuntary commitment, and privileged communications and information

Ms. Rose described the changes to WLC: 0073/4 that were approved at the July 25, 2012 meeting and incorporated into the draft.

Dr. Berlin moved, seconded by Mr. Kerwin, to approve WLC: 0073/4. The motion carried on a vote of Ayes, 11 (Sens. Lazich and Hansen; Reps. Pasch and Ballweg; and Public Members Berlin, Kerschensteiner, Kerwin, Koepl, Shoup, Strebe, and Yerkes); Noes, 0; Absent, 3 (Public Members Kiefer, Moses, and Wesley); and Not Voting, 1 (Public Member Bachhuber).

WLC: 0016/1, relating to specifying that the 72-hour time period for emergency detention begins when an individual is taken into custody

Ms. Rose described WLC: 0016/1, and explained that the draft is the outcome of the working group on emergency detention facilities which met on August 9, 2012. At that meeting, the working group discussed the need to clarify, in ch. 51, that the 72-hour time period for detaining an individual prior to a probable cause hearing starts running at the time that the person is “in custody.”

She added that if the committee approves WLC: 0016/1, that it would be incorporated into WLC: 0073/4.

Ms. Yerkes stated that, as a law enforcement officer, she interprets “custody” for the purposes of the 72-hour time period for emergency detention to begin when an individual is no longer free to leave the presence of the officer. Ms. Kerschensteiner agreed, saying that this interpretation comports with constitutional principles regarding how long an individual has been deprived of their liberty.

A committee discussion ensued regarding whether to clarify that the draft’s reference to “in custody” is for the purpose of an emergency detention. The committee agreed that the draft should be amended to include this clarification.

Dr. Koepl said that the draft is unclear regarding when custody is transferred to the facility. For example, if a law enforcement officer transports an individual to an emergency room within a hospital that contains a psychiatric unit, does the transfer take place when the individual is brought to the emergency room, or when the individual is admitted to the psychiatric unit? Dr. Koepl stated that the interpretation has ramifications for when the law enforcement officer is permitted to leave the individual in the hospital’s care.

After further discussion, the committee agreed to two additional amendments to the draft. First, a cross-reference will be added to clarify that emergency detentions are made to emergency detention facilities described under s. 51.15 (2), Stats., as amended in WLC: 0073/4. Second, page 3, line 15 will be amended to provide that the individual will be provided the notice of rights at the time the individual arrives at the emergency detention facility.

Mr. Shoup moved, seconded by Mr. Bachhuber, to approve WLC: 0016/1, as amended. The motion carried on a vote of Ayes, 12 (Sens. Lazich and Hansen; Reps. Pasch and Ballweg; and Public Members Bachhuber, Berlin, Kerschensteiner, Kerwin, Koepl, Shoup, Strebe, and Yerkes); Noes, 0; and Absent, 3 (Public Members Kiefer, Moses, and Wesley).

WLC: 0024/1, relating to a county correctional facility disabled offender economic security pilot program, and making an appropriation

Mr. Larson described WLC: 0024/1, which was the result of a working group on medical assistance eligibility for incarcerated persons that met on August 28, 2012. Mr. Bachhuber suggested that the draft clarify that individuals with mental illness would be eligible for the pilot program. The committee agreed to this amendment. He also suggested that instead of authorizing the county health department to operate the program, it may be more appropriate to authorize the county human services, social services, or community services departments to operate the program. The committee agreed to this amendment.

Dr. Berlin stated that the term “economic security” be deleted and instead, that program be characterized as a recidivism reduction program. The committee agreed to this amendment.

Committee discussion ensued regarding whether individuals with substance abuse should also be eligible for the program. At the conclusion of the discussion, the committee agreed to amend the draft to provide that eligibility for the program would be based on the individual’s eligibility (either prior to incarceration or currently) for Social Security Disability Insurance, Supplemental Security Income, or Medical Assistance (MA), rather than on an individual’s type of disability.

Dr. Koepl suggested that, in addition to the listed entities that would constitute the advisory committee, private social services agencies should be added. The committee agreed to amend the draft to add private service organizations to the advisory committee membership.

Chairperson Lazich recognized Kenya Bright, Department of Health Services, who was in the audience. Ms. Bright asked whether consumers should be added to the advisory committee. After discussion, the committee agreed to amend the draft to include, on the advisory committee, an ex-offender who would satisfy the eligibility criteria for the pilot program, or a family member of such an individual. After further discussion, it was agreed by the committee that ex-offender status would be optional for the consumer member.

Review of Letter to Dennis Smith, Secretary of Health Services

Mr. Larson described the draft letter that the working group on MA eligibility for incarcerated persons recommended to the committee. The working group asked the committee to recommend to Secretary Dennis Smith that the Department of Health Services pursue an expansion of the state’s Medicaid program as permitted under the federal Affordable Care Act. The purpose of recommending this expansion would be to simplify MA eligibility determination for released offenders, by basing eligibility on income rather than on disability. This is because disability determination is a lengthy process which can result in delaying the provision of necessary care and would help the released offenders adjust to community life.

After discussion, Representative Pasch moved, seconded by Senator Hansen, to send the letter to Secretary Smith. Chairperson Lazich stated that the letter's recommendation was outside of the scope of the committee's work, and that it would be preferable to pursue a strategy that would ensure that released offenders who suffer from mental illness have continued access to necessary psychotropic medications and psychiatric care upon release from a correctional facility.

Other Business

Chairperson Lazich thanked the committee members for serving on the committee and dedicating their time over the past two years to developing the bill drafts. She stated that the Legislative Council staff would be revising the drafts as recommended by the committee, and preparing the drafts and report to present to the Joint Legislative Council for introduction into the 2013 Legislature.

Adjournment

The meeting was adjourned at 12:30 p.m.

LR:jal