Wisconsin Legislative Council
STAFF BRIEF

STUDY COMMITTEE ON EMERGENCY DETENTION AND CIVIL COMMITMENT OF MINORS

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The Wisconsin Legislative Council is a nonpartisan legislative service agency. Among other services provided to the Wisconsin Legislature, staff of the Wisconsin Legislative Council conduct study committees under the direction of the Joint Legislative Council.

Established in 1947, the Joint Legislative Council directs study committees to study and recommend legislation regarding major policy questions facing the state. Study committee members are selected by the Joint Legislative Council and include both legislators and citizen members who are knowledgeable about a study committee's topic.

This staff brief was prepared by the Wisconsin Legislative Council staff as an introduction for study committee members to the study committee's topic.

INTRODUCTION

Under Wisconsin law, "emergency detention" refers to a process that allows a law enforcement officer to initiate an emergency "hold" for up to 72 hours if a law enforcement officer reasonably believes a person is unable or unwilling to cooperate with voluntary treatment. A civil commitment is the involuntary restriction of an individual's liberty by a civil proceeding on the basis that the individual is in need of treatment or care for certain mental health, developmental disability, or substance dependency issues in order to protect the individual or others from harm. Very generally, under ch. 51, Stats., a civil commitment may be initiated either by an emergency detention or through the separate filing of a petition for involuntary commitment. A court may then determine whether the individual meets the criteria for continued civil commitment. Throughout the proceedings, the individual must be afforded the least restrictive treatment appropriate to the individual's situation.

The same process generally applies for minors, with some differences. In particular, the Children's Code and Juvenile Justice Code permit certain additional county personnel, other than a law enforcement officer, to initiate an emergency detention of a minor. And, if it is alleged that a minor satisfies the criteria for involuntary commitment, the children's court or juvenile court under ch. 48 or 938, Stats., has jurisdiction over the minor. The children's court or juvenile court also has jurisdiction if there is probable cause to believe that a minor is a child or juvenile in need of protection or services. It is common for a minor to be subject to jurisdiction under either or both involuntary commitment and child or juvenile in need of protection or services proceedings.

In relation to these processes, the Joint Legislative Council has directed the study committee to study the appropriateness of current emergency detention and civil commitment laws as applied to minors. The committee shall review whether special emergency detention procedures should be established for minors, including whether persons other than law enforcement either be permitted or required to take a minor into custody for the purpose of emergency detention. The committee shall also review current civil commitment placement options for minors, with an emphasis on examining the appropriateness of placements outside Wisconsin and feasibility of creating psychiatric residential treatment facilities for minors in Wisconsin. After these reviews, the committee shall recommend legislation that creates child-appropriate emergency detention and civil commitment procedures and maximizes civil commitment care and custody options for minors in Wisconsin.

To support committee members in accomplishing this charge, this staff brief provides information on the following topics:

- **Part I** provides an overview of the statutory emergency detention and continuing care or custody procedures for minors.
- **Part II** summarizes due process principles relating to emergency detention and involuntary commitment standards.
- **Part III** summarizes recent legislative enactments revising emergency detention and care or custody options for minors.
- **Part IV** provides background data on emergency detention and placement for minors.

PART I | OVERVIEW OF EMERGENCY DETENTION AND CONTINUING CARE OR CUSTODY PROCEDURES

State law provides certain procedures that allow an individual's liberty to be restricted, involuntarily, on the basis that the individual is in need of treatment or care for certain mental health, developmental disability, or substance dependency issues, in order to protect the individual or others from harm. As relevant to minors, these procedures include emergency detention and continuing care and custody procedures under the involuntary commitment and child or juvenile in need of protection or services statutes.

EMERGENCY DETENTION

Wisconsin law allows certain individuals to initiate a temporary 72-hour "hold" for a person who is mentally ill, developmentally disabled, or drug dependent, based on observable behavior that the person is "dangerous" to themselves or others.

Grounds for Emergency Detention

An individual (adult or minor) may be subject to emergency detention if the person is reasonably believed to be unable or unwilling to cooperate with voluntary treatment. [s. 51.15 (1) (ag) 3., Stats.]

The individual must be **mentally ill, developmentally disabled, or drug dependent**, and there must be cause to believe the person is "**dangerous**," as articulated in the statutes. The statutes include detailed descriptions of various circumstances that qualify. Evidence of dangerousness essentially requires a substantial probability of physical harm, impairment, or injury to the individual or others. [s. 51.15 (1) (ag) 1. and 2. and (ar), Stats.]

The person initiating the emergency detention must have a belief in the need for the detention that is based on a specific recent overt act by the individual, or attempt or threat to act, or omission. The act must have been observed by the person initiating the emergency detention, or have been reliably reported to the person initiating the emergency detention, by any other person. [s. 51.15 (1) (b) 1. and 2., Stats.]

Initiation of Emergency Detention

A law enforcement officer, or other person authorized to take a child or juvenile into custody under the state's child welfare laws or Juvenile Justice Code, may take a minor into custody under the grounds described above.[1] In all cases, the officer or other authorized person must have cause to believe that taking the individual into custody is the least restrictive alternative appropriate to the individual's needs. [s. 51.15 (1) (ar) (intro.), Stats.]

A county department of community programs must approve the need for detention, and the need for evaluation, diagnosis, and treatment.[2] To approve the detention, a psychiatrist, psychologist, or mental health professional must first perform a crisis assessment and agree

[1] If a county department of community programs offers an in-service training program on emergency detention and emergency protective placement procedures, law enforcement agencies serving the county must designate at least one officer who is authorized to take an individual into custody to attend the in-service training. [s. 51.15 (11m), Stats.]

[2] A county department of community programs provides services and facilities for the prevention or amelioration of mental illness, developmental disabilities, and alcoholism and drug abuse. [s. 51.42, Stats.] This is commonly incorporated within a county department of human or social services.

with the need for detention.[3] Further, the county department must reasonably believe that the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and to remove the substantial probability of physical harm, impairment, or injury to the individual or others. [s. 51.15 (2) (a) and (c), Stats.]

A county's crisis assessment may be conducted in person, by telephone, or by telemedicine or video conferencing technology. [s. 51.15 (2) (c), Stats.]

Additionally, the law enforcement officer or other authorized person must file a statement of emergency detention with the detention facility at the time of admission, and with the court immediately thereafter. The statement must provide detailed, specific information concerning the recent overt act, name the persons observing or reporting the act, and allege that the officer or other authorized person has reason to believe that the person is mentally ill, developmentally disabled, or drug dependent. [s. 51.15 (5), Stats.]

Custody and Medical Clearance

The law enforcement officer or other authorized person must transport the individual to a facility for the detention. Another officer or person, another law enforcement agency, an ambulance service provider, or a third-party vendor may also provide the transportation. [s. 51.15 (2) (a), Stats.]

If emergency medical care is necessary for the individual or the individual is in a hospital's emergency department, the individual may not be transported to a facility for the detention until treating staff determine that the transfer is medically appropriate. This is commonly referred to as a medical clearance, and refers to the individual's physical status, rather than mental status. [s. 51.15 (2) (b), Stats.]

If an individual is under the physical control of a law enforcement officer or other authorized person, the individual is "in custody." The individual remains in the custody of the officer or other authorized person until the individual arrives at the facility for the detention (or is transferred to a different law enforcement agency for transport). Upon arrival at a facility, custody of the individual is transferred to the facility for the detention. This means that during a medical clearance evaluation, the law enforcement officer or other authorized person retains custody of the individual. [s. 51.15 (3), Stats.]

The amount of time an individual may be detained before further proceedings begin may total no more than 72 hours (excluding Saturdays, Sundays, and legal holidays), including the detention by a law enforcement officer or other authorized person and the time at a treatment facility. [s. 51.15 (5), Stats.]

Treatment Facility for Emergency Detention

Emergency detention may occur in a treatment facility approved by DHS or the county department. Other than the state treatment facility at Winnebago Mental Health Institute ("Winnebago" or "WMHI"), which must accept a patient for emergency detention, a treatment facility may determine whether it will agree to accept an individual for emergency detention.

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[3] A "mental health professional" determined by the Department of Health Services (DHS) includes other qualified mental health professionals who have at least a bachelor's degree in a relevant area of education or human services and a minimum of one year of combined experience providing mental health services, or work experience and training equivalent to a bachelor's degree, including a minimum of four years of work experience providing mental health services. [s. DHS 34.21 (3) (b) 14., Wis. Adm. Code.]

Each hospital manages its inpatient facility independently. [s. 51.15 (2) (d), Stats.; and *City of Madison v. DHS*, 2017 WI App 25.]

A "treatment facility" means any publicly or privately operated facility or unit that provides treatment for alcoholic, drug dependent, mentally ill, or developmentally disabled persons. Treatment may include inpatient and outpatient treatment programs, community support programs, and rehabilitation programs. [s. 51.01 (19), Stats.]

When an individual is detained in a treatment facility, the facility may evaluate, diagnose, and treat the individual during the detention, if the individual consents.[4] The individual must be advised of the right to refuse medication and treatment. [s. 51.15 (8), Stats.]

DHS reports that across the state, beds are available for both emergency detention and voluntary care. Not all beds are available for all ages or conditions, and as noted above, admission of a minor held on an emergency detention is at the discretion of each hospital (other than Winnebago). DHS reports that 214 average daily inpatient beds for children and adolescents under age 18 are set up and staffed, and 59 average daily beds are available.[5]

In all cases, the individual must be afforded the least restrictive treatment placement that is appropriate to the individual's situation. [s. 51.15 (1) (ag), Stats.]

CONTINUING CARE OR CUSTODY PROCEDURES

A minor who has been taken into custody under emergency detention procedures may be subject to continuing court jurisdiction under either the procedures for civil involuntary commitment or as a child or juvenile in need of protection or services.[6] A proceeding for a child in need of protection or services is commonly referred to as a CHIPS proceeding, and a proceeding for a juvenile in need of protection or services is commonly referred to as a JIPS proceeding. If a minor has multiple needs, concurrent cases may proceed under both involuntary commitment and CHIPS, JIPS, or juvenile delinquency jurisdictional grounds.

Involuntary Commitment

Grounds for Involuntary Commitment

Largely similar to the grounds for emergency detention, a minor may be subject to a civil commitment on the basis of all of the following statutory criteria: (1) the minor is mentally ill, developmentally disabled, or drug dependent; (2) the minor is a "proper subject for treatment,"

[4] The procedures for Milwaukee County are similar, but require a treatment facility to determine whether an individual shall be detained within 24 hours after the individual has been delivered to the facility. The 72-hour time period for an emergency detention applies to the total time a person taken into custody in Milwaukee County may be under an emergency detention. [s. 51.15 (4), Stats.]

[5] See Wisconsin Hospital Association (WHA), webpage on Psychiatric Bed Locator Trend Data, WHA Information Center Portal Home (accessed August 7, 2024).

[6] Voluntary admission to a facility for treatment is also possible, under additional safeguards. In particular, if a minor is age 14 or older, both the minor's and the parent's consent are required for inpatient admission to a mental health treatment facility, unless a court approves the admission. For more information, see Legislative Council, *Minor's Right to Refuse Admission to Inpatient Treatment Facility*, Issue Brief (June 2024). [ss. 51.13 and 51.61 (6), Stats.]

meaning capable of rehabilitation;[7] and (3) the minor is "dangerous," as defined by statute. [s. 51.20 (1) (a), Stats.]

As described under the due process discussion in the next part, a number of steps must be taken, including a probable cause hearing, examinations by two mental health professionals, and a final commitment hearing. At the conclusion of the hearing, the court may either dismiss the petition and release the individual, or order the individual committed to the care or custody of the county. [s. 51.20 (7), (9), (10), and (13), Stats.]

Treatment Facility and Administration of Medication

If committed to the care or custody of the county, the court must designate the facility or service that is to receive the individual into the mental health system. Disposition into the care of the county may include either inpatient or outpatient treatment. When the county arranges for services, the treatment must be in the least restrictive manner that is consistent with the individual's requirements, in accordance with a court order designating the maximum level of inpatient facility that may be used for treatment. [s. 51.20 (13) (a) 3. and (c), Stats.]

In an involuntary commitment order, a court may also address required medications. Generally, customary and usual treatment may be provided with written, informed consent of a patient. However, consent is not required for medication and treatment of a minor in any of the following circumstances: (1) the minor has been found not competent to refuse medication and treatment; (2) the minor is age 14 or older and is receiving services for alcoholism or drug abuse; or (3) the minor is under age 14 and is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In particular, a minor is not competent under the first exception if the minor meets the involuntary commitment standard of being dangerous to the minor's own health or safety due to a mental illness that renders the minor incapable of understanding the advantages and disadvantages of accepting medication or treatment. [ss. 51.61 (1) (g) and (6), Stats.]

Court Assignment

For a minor, the involuntary commitment proceedings must be held before the children's court or juvenile court assigned to exercise jurisdiction for children or juveniles in need of protection or services. The children's court or juvenile court has exclusive jurisdiction over a civil involuntary commitment proceeding that applies to a minor. [ss. 48.14 (5), 51.20 (6), and 938.135 (1), Stats.]

CHIPS and JIPS Care or Custody

In addition to the emergency detention and involuntary commitment procedures, a minor could be a proper subject of assistance under the child welfare or juvenile justice procedures. If a minor is not already subject to a CHIPS or JIPS order, a minor could be directed to those services either at the time of an initial crisis assessment, or in determining further appropriate services following an emergency detention. A minor may be subject to concurrent cases for involuntary commitment and CHIPS, JIPS, or juvenile delinquency.

In CHIPS and JIPS cases, a "child" or "juvenile" generally means a person under age 18. The term "child" is used for a minor in need of protection or services for abuse, neglect, or other harm to a child under the grounds in ch. 48, Stats. The term "juvenile" is used for a minor in

[7] An individual may be subject to emergency detention if the person is reasonably believed to be unable or unwilling to cooperate with voluntary treatment, rather than being a proper subject for treatment. [s. 51.15 (1) (ag) 3., Stats.]

need of protection or services when a parent needs help in controlling a child under the grounds in ch. 938, Stats. In a juvenile delinquency case, a minor age 10, but under age 17, may be adjudicated delinquent for violating any state or federal criminal law. [ss. 48.02 (2) and 938.02 (3m) and (10m), Stats.]

Grounds for CHIPS Proceeding

The children's court has exclusive jurisdiction over a **child** alleged to be in need of protection or services. This commonly includes circumstances in which a child is the victim of abuse or neglect, but also includes other circumstances that may apply to a child with substantial mental health needs. For example, any of the following grounds could potentially provide children's court jurisdiction:

- A child's parent or guardian signs a petition requesting court jurisdiction, alleging that the parent or guardian is unable, or needs assistance, to care for or provide necessary special treatment or care for the child. [s. 48.13 (4), Stats.]
- A child's guardian is unwilling or unable to sign a petition requesting court jurisdiction, but the guardian is unable, or needs assistance, to care for or provide necessary special treatment or care for the child. [s. 48.13 (4m), Stats.]
- A child is at least 12 years old, signs a petition requesting court jurisdiction, alleging that the child is in need of special treatment or care that the parent, guardian, or legal custodian is unwilling, neglecting, unable, or needs assistance to provide. [s. 48.13 (9), Stats.]
- A child is suffering emotional damage for which a parent, guardian, or legal custodian has neglected, refused, or been unable and is neglecting, refusing, or unable, for reasons other than poverty, to obtain treatment or to take necessary steps to ameliorate the symptoms. [s. 48.13 (11), Stats.]
- A child is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which a parent, guardian, or legal custodian is neglecting, refusing, or unable to provide treatment. [s. 48.13 (11m), Stats.]

Grounds for JIPs Proceeding

Similarly, the juvenile court has exclusive original jurisdiction over a **juvenile** alleged to be in need of protection or services under a number of circumstances. Primarily, this includes circumstances in which a juvenile's parent or guardian signs a petition requesting jurisdiction, alleging that the parent or guardian is unable, or needs assistance, to control an "uncontrollable" juvenile. [s. 938.13 (4), Stats.]

It also includes circumstances in which a juvenile has been determined to be not responsible for a delinquent act by reason of mental disease or defect, has been determined to be not competent to proceed, or if a juvenile under age 10 has committed a delinquent act. [s. 938.13 (12) and (14), Stats.]

Treatment Facility and Administration of Medication

A child or juvenile alleged to be in need of protection or services, or adjudicated delinquent, may be held in physical custody in a number of nonsecure places. In many cases this includes the home of a parent or guardian, the home of a relative or like-kin, a licensed foster home, a licensed group home, or a nonsecure facility operated by a licensed child welfare agency. A child or juvenile in need of protection or services may not be placed in a secured residential or detention facility, except in certain very limited circumstances. [ss. 48.207 (1), 938.207 (1), 938.245 (1) (a) and (g), and 938.34 (3), Stats.]

A child in need of protection or services may be placed in a hospital, mental hospital, or psychiatric hospital only if the child's custody is on the grounds that the child needs special treatment or care and the parent or guardian petitions that they are unable or need assistance to provide the care. Placement in a secured psychiatric treatment facility is not authorized. [s. 48.207 (1) (g), Stats.]

If authorized by county resolution, a juvenile adjudicated delinquent who is in need of special treatment or care may be committed to a county department of community programs in an inpatient facility. The evaluation of the juvenile must indicate that the juvenile has an alcohol or other drug abuse impairment, is a proper subject for treatment, and appropriate treatment is not available on an outpatient basis. The commitment is limited to 30 days or less. If a county department is ordered to provide the special treatment or care because the parent fails or is financially unable to do so, the provision of the special treatment or care is subject to the conditions for involuntary commitment, except the commitment is limited to 30 days or less and cannot be extended. [s. 938.34 (6), Stats.]

A court is prohibited from ordering the administration of psychotropic drugs for a child or juvenile in need of protection or services, or juvenile adjudicated delinquent. This differs from an involuntary commitment order, under which a court may order medication and treatment without the individual's consent in certain circumstances. [ss. 48.345 (6) (a), 938.34 (6) (ar), and 938.355 (2) (a), Stats.]

Court Assignment

If a child or juvenile alleged to be in need of protection or services appears to have a developmental disability or mental illness or to be drug dependent or suffering from alcoholism, the children's court or juvenile court may proceed under the involuntary commitment or protective service procedures under chs. 51 and 55, Stats. In addition, with some exceptions for initiating custody, chs. 51 and 55, Stats., govern involuntary admission of a minor for 24-hour care to a hospital inpatient facility that provides diagnosis, treatment, and rehabilitation of mental illness, developmental disability, alcoholism, or drug abuse. [ss. 48.135 and 938.135, Stats.]

Placement Outside the State

State law generally requires a county department of community services to authorize all care of any patient in a state, local, or private facility under a contractual agreement, unless the county department governs the facility. [s. 51.42 (3) (as) 1r., Stats.] This provides general authority to contract for services, while two other provisions additionally allow interstate placement.

First, state law specifies that a county department of human services, community programs, or developmental disabilities services may enter into interstate contracts to provide treatment in qualified facilities across state lines. The provision specifically allows a county department to contract for secure services with a public or private agency in states bordering Wisconsin, and to conversely provide services in Wisconsin for persons from bordering states. [s. 51.87 (3), (4), and (8), Stats.]

The interstate contract provision specifies that the purpose of the provision is to enable appropriate treatment for individuals across state lines from the individual's state of residence, if qualified facilities are closer to the home of the individual than are facilities in the individual's home state. [s. 51.87 (1), Stats.]

Second, Wisconsin has entered into the Interstate Compact on Mental Health, which allows for proper and expeditious treatment in any party state. Specifically, whenever a person physically

present in a party state is in need of institutionalization by reason of mental illness or mental deficiency, the person is eligible for care and treatment in that state, irrespective of residence qualifications. Additionally, any patient may be transferred to an institution in another state whenever clinical factors indicate that the care and treatment of the patient would be facilitated or improved by the transfer, and other procedural requirements are met. [ss. 51.75 (1), and (3) (a) and (b), and 51.77, Stats.]

The compact principles hold that community safety and humanitarianism require that facilities and services should be made available for all who are in need of them, regardless of residency.[8] [s. 51.75 (1), Stats.]

[8] Forty-five states and the District of Columbia have entered into the Interstate Compact on Mental Health. [National Center for Interstate Compacts, Compact on Mental Health.]

PART II | SUMMARY OF DUE PROCESS PRINCIPLES UNDER THE COMMITMENT PROCEDURES

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that neither the United States nor any State shall deprive any person of life, liberty, or property, without due process of law. Both emergency detention and involuntary commitment deprive the individual who is subject to these procedures of his or her liberty. The liberty interests affected may range from the right to be free from confinement to the right to make one's own decisions about his or her treatment for mental illness or alcohol or drug abuse.

Because emergency detention and involuntary commitment deprive an individual of his or her liberty, these processes must comply with both substantive and procedural due process principles. Many of these principles have been articulated in court decisions and subsequently codified by statute. This part summarizes key aspects of Wisconsin's emergency detention and involuntary commitment due process procedures.

BACKGROUND

Until the early 1970s, state emergency detention and involuntary commitment statutes provided significantly fewer due process protections than current statutes. Wisconsin's 1971 statutes, for example, permitted law enforcement to take into custody and detain for five days any person "who is violent and or who threatens violence and who appears irresponsible and dangerous," and allowed the person to be detained for a maximum of 145 days without a hearing. The statutes also allowed a court to order a person be involuntarily committed if the court was "satisfied that [the subject individual was] mentally ill or infirm or deficient and … is a proper subject for custody and treatment." [s. 51.02 (5) (c), 1971 Stats.] Some commenters have opined that, under this standard, "In practical terms, the sole fact that a person was mentally ill was sufficient to support a commitment petition."[9]

In 1972, however, a federal court held that Wisconsin's civil commitment process was unconstitutional for failing to provide various due process protections. [*Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis., 1972).] In that case, the court contrasted the procedural safeguards that protect the rights of individuals accused of a crime with the less stringent protections in involuntary commitment cases and rejected various justifications that had been used to impose these lower standards.

Among other problems, the court concluded Wisconsin's involuntary commitment statute was deficient because it did not provide sufficient notice to the individual and an opportunity to a timely hearing; did not provide a right to counsel; permitted hearsay evidence; allowed psychiatric evidence to be presented without the patient having been given the benefit of the privilege against self-incrimination; authorized commitment without the constitutionally sufficient level of proof that the person is both mentally ill and dangerous; and failed to require those seeking commitment to consider less restrictive alternatives. In response to this decision, the Legislature enacted a new mental health act in 1976.[10] The new act specified three standards of dangerousness upon which a commitment could be based and included various procedural requirements.

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[9] Erickson, Steven K., Vitacco, Michael, J., and Van Rybroek, Gregory J., Beyond Overt Violence: Wisconsin's Progressive Civil Commitment Statute as a Marker of a New Era in Mental Health Law, 89 Marq. L. Rev. 359 (Winter, 2005).

[10] *Id.*

U.S. Supreme Court Cases

Also in the 1970s, the U.S. Supreme Court issued a variety of decisions that began to define the contours of due process requirements for state civil commitment laws.

In *Jackson v. Indiana*, 406 U.S. 715 (1972), the Court held that a state cannot constitutionally commit a person who is incompetent to stand trial for an indefinite period of time. There, the Court held that "a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." If capacity is unlikely, the Court explained, "then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant." [*Id.* at 738.]

In *O'Connor v. Donaldson*, 422 U.S. 563 (1975), the Court concluded that there is no constitutional basis for confining a person solely on the basis that the person is mentally ill. That case involved Kenneth Donaldson, a fifty-five-year-old man who was committed to confinement as a mental patient in a Florida state mental hospital. He was kept in custody against his will for nearly 15 years despite his protestations that he was neither mentally ill nor dangerous. At trial, the jury found that Donaldson was not dangerous to himself or others and that, if he was mentally ill, had not received treatment. The Court held that "a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members and friends." [*Id.* at 576.]

In *Addington v. Texas*, 441 U.S. 418 (1979), the Court considered the question of what standard of proof is required in an involuntary commitment. Citing *Jackson*, among other cases, for the principle that "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," the Court concluded that "the individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence." [*Id.*, at 425-27.] Despite the need for a heightened standard of proof, the Court rejected the "beyond a reasonable doubt" standard that applies in criminal proceedings, because, "given the uncertainties of psychiatric diagnosis, it may impose a burden the state cannot meet and thereby erect an unreasonable barrier to needed medical treatment." [Id., at 433.] It therefore held that the intermediate standard of proof, which requires an allegation be proven by "clear and convincing evidence," is the appropriate standard of proof in civil commitment proceedings.

A little over a decade later, in *Louisiana v. Foucha*, 504 U.S. 71 (1992), the Court held that a state may not continue the commitment of an individual who was no longer alleged to be mentally ill, solely on the basis that the individual is dangerous. In that case, the Court held it was unconstitutional to continue the confinement of Terry Foucha, who had been committed to a mental facility after being found not guilty by reason of insanity of various offenses after multiple doctors concluded he no longer suffered from the drug-induced psychosis that had impaired his ability to distinguish right from wrong at the time of his offense. The Court explained that the state's interest in imprisoning convicted criminals for the purposes of deterrence and retribution could not justify Foucha's continued detention because the state had exempted him from criminal responsibility by virtue of his acquittal. And while a state "may also confine a mentally ill person if it shows by clear and convincing evidence that the individual is mentally ill and dangerous," this basis cannot justify the confinement of an individual the state no longer contends is mentally ill. [*Id.,* at 80.]

DUE PROCESS PROTECTIONS IN WISCONSIN'S DETENTION AND COMMITMENT LAWS

In the years since the Legislature modified Wisconsin's emergency detention and involuntary commitment laws in response to the *Lessard* decision, it has modified those laws from time to time to include additional standards of dangerousness and other procedural requirements. Wisconsin's current emergency detention and involuntary commitment statutes incorporate both "substantive" as well as "procedural" due process principles.

Very generally, "substantive due process" refers to the concept that the Due Process Clause protects individuals from government conduct that "shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." [*United States v. Salerno*, 481 U.S. 739, 746 (1987) (internal punctuation and citations omitted).] In other words, the substantive component of the Due Process Clause bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them. [*Foucha*, at 73.]

"Procedural due process," on the other hand, requires the government to provide fair procedures when implementing an action that complies with substantive due process. As the U.S. Supreme Court has explained, "When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. This requirement has traditionally been referred to as 'procedural' due process." [*Salerno*, at 746.]

Substantive Due Process

As discussed above, the U.S. Supreme Court has held that a state may, consistent with due process principles, "confine a mentally ill person if it shows by clear and convincing evidence that the individual is mentally ill and dangerous." [*Foucha*, at 80 (internal punctuation and citation omitted.)] These holdings implicate the substantive component of the Due Process Clause, and are reflected in Wisconsin's standards for emergency detention and involuntary commitment as described below.

Emergency Detention Standards

A law enforcement officer or other person authorized to take a child or juvenile into custody under the emergency detention statute may take an individual into custody under this statute only if the person initiating the detention has cause to believe that: (1) the individual is mentally ill, drug dependent, or developmentally disabled; (2) taking the person into custody is the least restrictive alternative appropriate to the person's needs; and (3) the person evidences acts indicating he or she may be a danger to himself or herself or others.

Section 51.15 (1) (ar), Stats., provides additional detail regarding behavior necessary to show the person is a danger to himself or herself or others. Under the statute, the individual must evidence one of the following:

- A substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.
- A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm on his or her part.

- A substantial probability of physical impairment or injury to himself or herself or other individuals due to impaired judgment, as manifested by evidence of a recent act or omission.
- Behavior manifested by a recent act or omission that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness.

Involuntary Commitment Standards

As described in Part I, Wisconsin law permits the involuntarily commitment of an individual only if he or she is: mentally ill, developmentally disabled, or drug dependent; a proper subject for treatment; and meets one of five statutory standards of dangerousness.

Similar to the emergency detention statute, s. 51.20 (1) (a) 2., Stats., provides additional detail regarding behavior necessary to show a person is dangerous for the purposes of involuntary commitment. Under that statute, a person is dangerous if he or she satisfies any of the following:

- Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.
- Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.[11]
- Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself or other individuals.
- Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness.
- For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical

[11] If the petition is filed under a court order in a juvenile delinquency proceeding in which the court found the juvenile was either not responsible because of mental disease or defect or not competent to proceed, a finding by the juvenile court that the juvenile committed the act or acts alleged in the delinquency or JIPS petition may be used to prove that the juvenile exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt, or threat to do serious physical harm.

harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions.

Wisconsin law provides an additional way in which dangerousness may be shown with respect to an individual who is subject to recommitment. In cases where the individual has been the subject of inpatient treatment immediately prior to the commencement of involuntary commitment proceedings, s. 51.20 (1) (am), Stats., provides that the requirements of a recent overt act, attempt or threat to act, pattern of recent acts or omissions, or recent behavior may be satisfied if there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn.

In *Langlade County v. D.J.W.*, 2020 WI 41, the Wisconsin Supreme Court held that in a proceeding in which a county seeks to recommit an individual, the trial court must make specific factual findings with reference to the statutory subdivision paragraph on which the recommitment is based. In that case, the Court noted that the record contained conflicting messages from the court of appeals and the county regarding the statutory basis for commitment. The Court required factual findings that reference the specific standard of dangerousness under which commitment is sought, in order to "provide clarity and extra protection to patients regarding the underlying basis for recommitment" and ensure "meaningful appellate review of the evidence presented in recommitment hearings."

Standard of Proof

Under s. 51.20 (13) (e), Stats., "The petitioner has the burden of proving all required facts by clear and convincing evidence." This requirement is consistent with the burden of proof the U.S. Supreme Court adopted for civil commitment proceedings in *Addington*.

Procedural Due Process

The U.S. Supreme Court has explained that it is not the deprivation, by state action, of a constitutionally protected interest in "life, liberty, or property" itself that procedural due process rules safeguard, but rather the deprivation of these interests without due process of law. [*Zinermon v. Burch,* 494 U.S. 13, 125 (1990).] While due process is "a flexible concept that varies with the particular situation," at a minimum it requires "*some* kind of notice and . . . *some* kind of hearing." [*Id.*, at 127.] Wisconsin's emergency detention and involuntary commitment laws establish various notice and hearing rights as well as other procedural requirements, including the right to counsel and the right to demand a jury trial.

Notice

Emergency Detention

Section 51.15 (9), Stats., requires that an individual who is detained under emergency detention procedures be informed, at the time of arrival at the facility, both orally and in writing of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, and the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual must also be provided with a statement of emergency detention. As mentioned in Part I, the individual must also be advised of the right to refuse medication and treatment. [s. 51.15 (8), Stats.]

Involuntary Commitment

Once a petition for examination has been filed, the court must review the petition within 24 hours after the petition is filed, excluding Saturdays, Sundays, and legal holidays, to determine whether an order of detention should be issued. The individual may only be detained if there is

cause to believe he or she is mentally ill, drug dependent, or developmentally disabled, and is eligible for commitment based upon specific recent overt acts, attempts or threats to act, or on a pattern of recent acts or omissions made by the individual.

If the person is detained, a law enforcement officer must present the subject individual with a notice of hearing, a copy of the petition and detention order, and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed, and the right to a hearing to determine probable cause for commitment within 72 hours after the individual is taken into custody under the emergency detention statute, excluding Saturdays, Sundays and legal holidays. If the individual is not detained, the law enforcement officer must serve these documents on the subject individual and also orally inform the individual of these rights. If the individual is a minor, his or her parent or guardian, if known, must receive notice of all proceedings. [s. 51.20 (2) (b), Stats.]

Right to Counsel

Emergency Detention

As mentioned above, a person who is emergency detained under s. 51.15, Stats., must be notified of his or her right to contact an attorney and to have an attorney appointed at public expense.

Involuntary Commitment

Wisconsin law provides a person who is subject to involuntary commitment the right to counsel, and the right to an attorney appointed by the state public defender. Under s. 51.20 (3), Stats., the court, at the time of the filing of the petition, must assure that the individual who is the subject of the petition is represented by adversary counsel by referring the individual to the state public defender, who must appoint counsel for the individual without a determination of indigency.

Hearings

Emergency Detention

A person may not be detained for longer than 72 hours, exclusive of Saturdays, Sundays, and legal holidays, after the person is taken into custody for the purposes of emergency detention unless the court holds a probable cause hearing within this timeframe. [s. 51.15 (5), Stats.]

Involuntary Commitment

Section 51.20 (5) (a), Stats., requires hearings "held under this chapter [to] conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested …." For proceedings involving a minor, the statute provides the minor's parent or guardian a right to participate in the hearing and to be represented by counsel.

If the subject individual is a minor, every hearing is closed, except that the minor may demand an open hearing through his or her counsel. [s. 51.20 (12), Stats.] As noted in Part I, above, all hearings for minors must be before a court authorized to exercise jurisdiction under the Children's Code or the Juvenile Justice Code.

Probable Cause Hearing

After a petition for involuntary commitment is filed, in cases in which the subject individual is detained under s. 51.15, Stats., or taken into custody under s. 51.20, Stats., the court must hold a hearing to determine whether there is probable cause to believe the allegations made in the petition within 72 hours after the individual is detained or taken into custody. The subject may request that the probable cause hearing be postponed, but any postponement may not exceed seven days from the date of the detention. If the subject individual is not detained or taken into custody, the court must schedule the probable cause hearing within a reasonable time of the filing of the petition.

Final Hearing

If the court determines that probable cause exists to believe the allegations, it must schedule the matter for a hearing within 14 days from the time of the subject individual's detention. If the subject individual requested a postponement of the probable cause hearing, the court must schedule the matter for a hearing within 21 days of the subject individual's detention. If the subject individual is not detained or taken into custody, the court must schedule the hearing within 30 days of the probable cause hearing.

Within a reasonable time prior to a final hearing, the petitioner's counsel must notify the subject individual and his or her counsel of the time and place of the final hearing. The statute requires each party to notify all other parties of all witnesses he or she intends to call at the hearing and the substance of their proposed testimony. Counsel for the subject individual must have access to all psychiatric reports 48 hours in advance of the final hearing.

Right to a Demand a Jury Trial

Section 51.20 (11), Stats., allows an individual who is the subject of an involuntary commitment petition to demand a jury trial. A jury trial is deemed waived unless it is demanded at least 48 hours in advance of the time set for final hearing. If a jury trial is demanded, a jury of six determines whether the allegations in the involuntary commitment are true. At least five jurors must agree that the allegations are valid for a person to be committed following a jury trial.

PART III | SUMMARY OF RECENT ENACTMENTS

The Legislature has enacted legislation related to emergency detention and civil commitment in recent years, including legislation specific to minors. Topics of particular interest include emergency detention and involuntary commitment procedures, the care or custody determinations, and the establishment and regulation of treatment facilities. In addition to legislation proposed in the general session, the Legislature has also previously proposed legislation on this topic through the study committee process. In 2011 the Legislature convened the Joint Legislative Council Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51. This part first summarizes recent enactments in ch. 51, Stats., by the Legislature generally, and second summarizes enactments initiated by the 2011 special committee.

RECENT ACTS

The following summary describes legislative enactments from 2013 through 2024 that directly impact Wisconsin law on emergency detention, involuntary commitment, the care or custody determination, and treatment facilities.

Emergency Detention

Recent acts that impacted emergency detention allowed a law enforcement agency to contract with certain other entities for emergency detention transportation, specified certain emergency department transportation procedures and disclosures, and revised the Milwaukee County mental health functions.

2019 Wisconsin Act 105 allowed a law enforcement agency to contract with another law enforcement agency, an ambulance service provider, or a third-party vendor to transport an individual for emergency detention if the agency, provider, or vendor agrees to provide the transport. Generally, an individual in custody transported for emergency detention remains in the custody of the law enforcement officer or other authorized person who placed the individual in custody for purposes of emergency detention. However, if a law enforcement agency contracts with another law enforcement agency to transport an individual for the purposes of emergency detention, then custody is transferred to the transporting law enforcement agency.

2017 Wisconsin Act 140 prohibited a law enforcement officer or other authorized person who has taken an individual into custody from transporting the individual from a hospital's emergency department for emergency detention until a hospital employee or medical staff member determines that the transfer is medically appropriate. Additionally, Act 140 authorized any health care provider or law enforcement officer to disclose information that an individual poses a substantial probability of serious bodily harm to another person in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. The act also specified certain actions that a health care provider can take to fulfill any duty to warn a third party of the dangerousness of an individual.

2013 Wisconsin Act 203 made various changes relating to Milwaukee County mental health functions, programs, and services, and created the Milwaukee County Mental Health Board. The act required DHS to perform or arrange for an operational and programmatic audit of the behavioral health division of the Milwaukee County Department of Health and Human Services. The act required the audit to include recommendations regarding state oversight responsibility for emergency detention services and the psychiatric hospital of the Milwaukee County Mental Health Complex, among other topics.

Involuntary Commitment

2013 Wisconsin Act 340 modified the involuntary commitment procedures in two ways. First, in determining whether a detention order should be issued, the act specified that the court must review a petition for examination within 24 hours after the petition is filed, excluding Saturdays, Sundays, and legal holidays. Second, the act specified that when a person believes that a petition for examination of an individual should be brought, but the corporation counsel does not believe that involuntary commitment is appropriate for the individual, then the corporation counsel must inform the person seeking the petition that the person may either discontinue pursuing the involuntary commitment or request that corporation counsel file the petition under a limited appearance.

Care or Custody Determination

Recent acts on care or custody established procedures for certain county of residence determinations for individual facility placements, and created and expanded an internet site to show the availability of certain mental health care beds statewide.

2023 Wisconsin Act 68 addressed county of residence determinations for certain individuals, including an individual with serious and persistent mental illness, when the individual is placed into a facility. Act 68 specified that when a care management organization places or arranges for placement of an individual into a facility, the individual remains a resident of the county in which the individual resided immediately before the individual's initial placement.

2015 Wisconsin Act 153 required DHS to award a grant to develop an internet site and system to show the availability of inpatient psychiatric beds statewide. The password protected internet site must allow an inpatient psychiatric unit or hospital to enter certain information and to enable any hospital emergency department in the state to view certain information reported to the system.[12] 2021 Wisconsin Act 58 expanded the internet site and system on the availability of inpatient psychiatric beds statewide to include peer run respite beds and crisis stabilization beds in a unit, facility, center, or program.

Treatment Facilities

Other recent acts related to crisis urgent care and observation facilities and required DHS to expand the Mendota Juvenile Treatment Center.

2023 Wisconsin Act 249 established crisis urgent care and observation facilities. A crisis and urgent care facility is a treatment facility that admits an individual to prevent, deescalate, or treat the individual's mental health or substance use disorder, and includes the necessary structure and staff to support the individual's needs relating to the mental health or substance use disorder. A crisis urgent care and observation facility must accept an adult for emergency detention and may accept a minor for emergency detention. If the facility does not have capacity to accept an adult for purposes of emergency detention or if the facility does not accept a minor for purposes of emergency detention, that individual must be transported to another appropriate facility. DHS is in the process of developing the regulations for this facility type.

2017 Wisconsin Act 185 required DHS to construct an expansion of the Mendota Juvenile Treatment Center for juveniles placed in a juvenile correctional facility. The treatment center provides psychological and psychiatric evaluations and treatment for juveniles whose behavior

[12] For available data, see WHA, webpage on Psychiatric Bed Locator Trend Data, WHA Information Center Portal Home, also hyperlinked in footnote 5.

presents a serious problem to themselves or others in other juvenile correctional facilities and whose mental health needs can be met at the center.

2011 Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51

The Joint Legislative Council convened a Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51 in 2011. The committee was directed to review the following provisions in ch. 51, Stats.: (1) the appropriateness of, and inconsistencies in, the utilization of emergency detention procedures under s. 51.15, Stats., across this state, and the availability and cost of emergency detention facilities; (2) the inconsistent statutory approaches to emergency detention between Milwaukee County and other counties in the state; and (3) the inconsistent application of procedures relating to admission of minors under s. 51.13, Stats. The special committee proposed legislation on these issues. The following section describes the proposed legislation that addresses either emergency detention or civil commitment of minors.

The 2011 committee proposed 2013 Senate Bill 126, enacted as 2013 Wisconsin Act 161, and 2013 Assembly Bill 360, enacted as 2013 Wisconsin Act 158. These acts address inpatient mental health treatment of minors, emergency detention, and involuntary commitment.

2013 Wisconsin Act 161

2013 Wisconsin Act 161 made various changes related to the admission of minors for inpatient treatment under s. 51.13, Stats. Specifically, Act 161 eliminated the following petition requirements from s. 51.13, Stats.:

- The requirement to file a petition for review of an admission of a minor for treatment if the minor is under age 14 and is admitted for the treatment of mental illness, alcoholism or drug abuse, or developmental disability.
- The requirement to file a petition for a minor age 14 or older who voluntarily participates in inpatient treatment for mental illness.

Additionally, Act 161 eliminated the following provisions on short-term admissions:

- The requirement to file a petition 12 days after the admission if the admission was voluntary on the part of the minor and the parent.
- The provision that allowed for no more than one short-term voluntary admission of a minor every 120 days.

2013 Wisconsin Act 158

Second, 2013 Wisconsin Act 158 changed several provisions of the laws relating to emergency detention, and involuntary commitment for treatment, of persons who are mentally ill, developmentally disabled, or drug dependent.

For emergency detention, Act 158 made the following changes:

- Added the requirement that a law enforcement officer believe "that taking the person into custody is the least restrictive alternative appropriate to the person's needs" when an emergency detention is contemplated.

- Harmonized the standard of dangerousness for emergency detention that pertains to an individual's dangerousness because of impaired judgment with the corresponding standard of dangerousness for involuntary commitment.
- Removed a reference to drug dependence from a circumstance that could constitute dangerousness for emergency detention.
- Required an individual to be informed of their rights when the individual arrives at the emergency detention facility.
- Created a purpose statement for the emergency detention statute.

For an individual in custody, 2013 Wisconsin Act 158 provided that the individual may be detained in a treatment facility approved by DHS or the county department, if the facility agrees to detain the individual, or in a state treatment facility. Act 158 also provided that an individual is deemed to be in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child or juvenile into custody, for the purposes of emergency detention. Under the act, the probable cause hearing must be held within 72 hours after the individual is taken into custody, instead of after the individual arrives at the emergency detention facility.

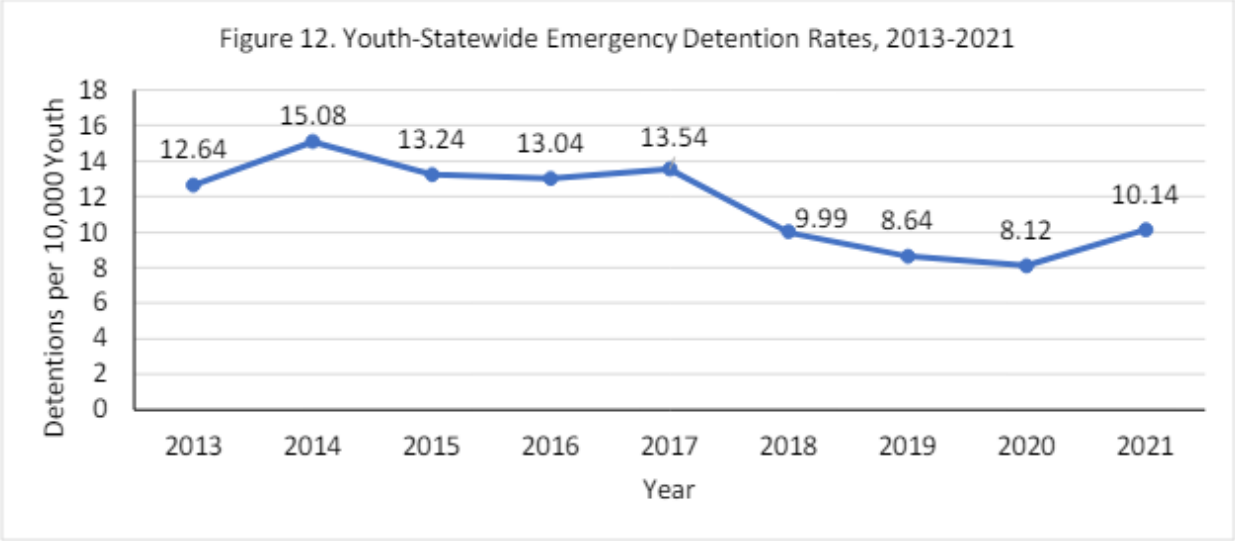
With respect to involuntary commitment, 2013 Wisconsin Act 158 eliminated a limitation that a person committed under the standard of dangerousness that pertains to the individual's inability to satisfy basic needs of nourishment, medical care, shelter, or safety without prompt and adequate treatment may be committed no longer than 45 days in any 365-day period. Act 158 also added to the involuntary commitment third standard of dangerousness the substantial probability of physical impairment or injury to others.

Act 158 also made various other changes, including revisions to Milwaukee County-specific provisions.

PART IV | BACKGROUND DATA

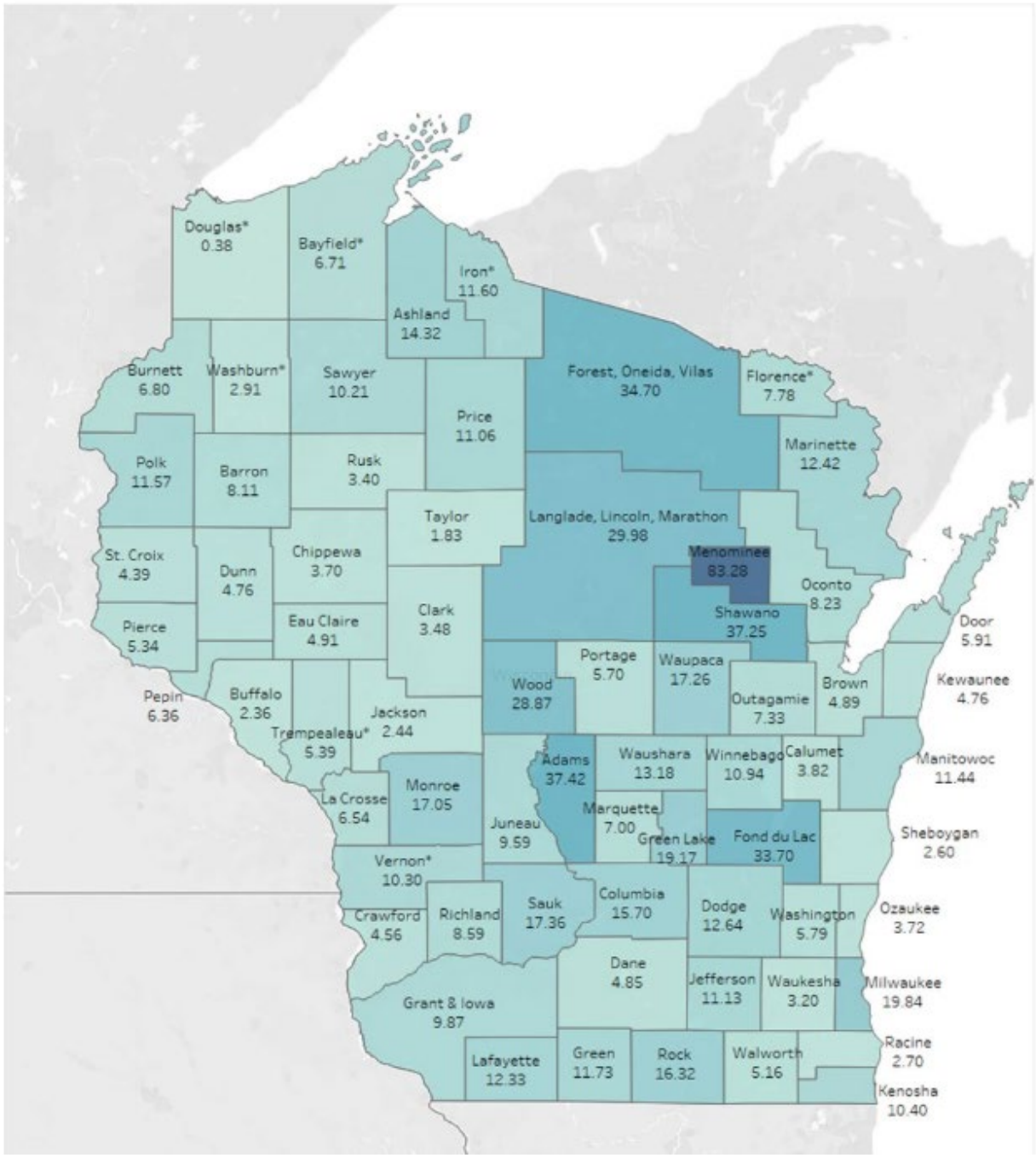
DHS DATA ON THE USE OF EMERGENCY DETENTIONS FOR YOUTH

The following youth-related emergency detention figures are excerpted from DHS's report on *Crisis Services and Emergency Detentions Statewide, 2013-2021*, Publication #P-02517 (April 2024). The report examined statewide trends in emergency detentions and crisis services, including rates per number of residents, and actual numbers of unique individuals who received one or more crisis services, over a nine-year period. Data sources included the program participation system[13] (PPS), Medicaid claims data, Wisconsin interactive statistics on health (WISH), and the American community survey (ACS).



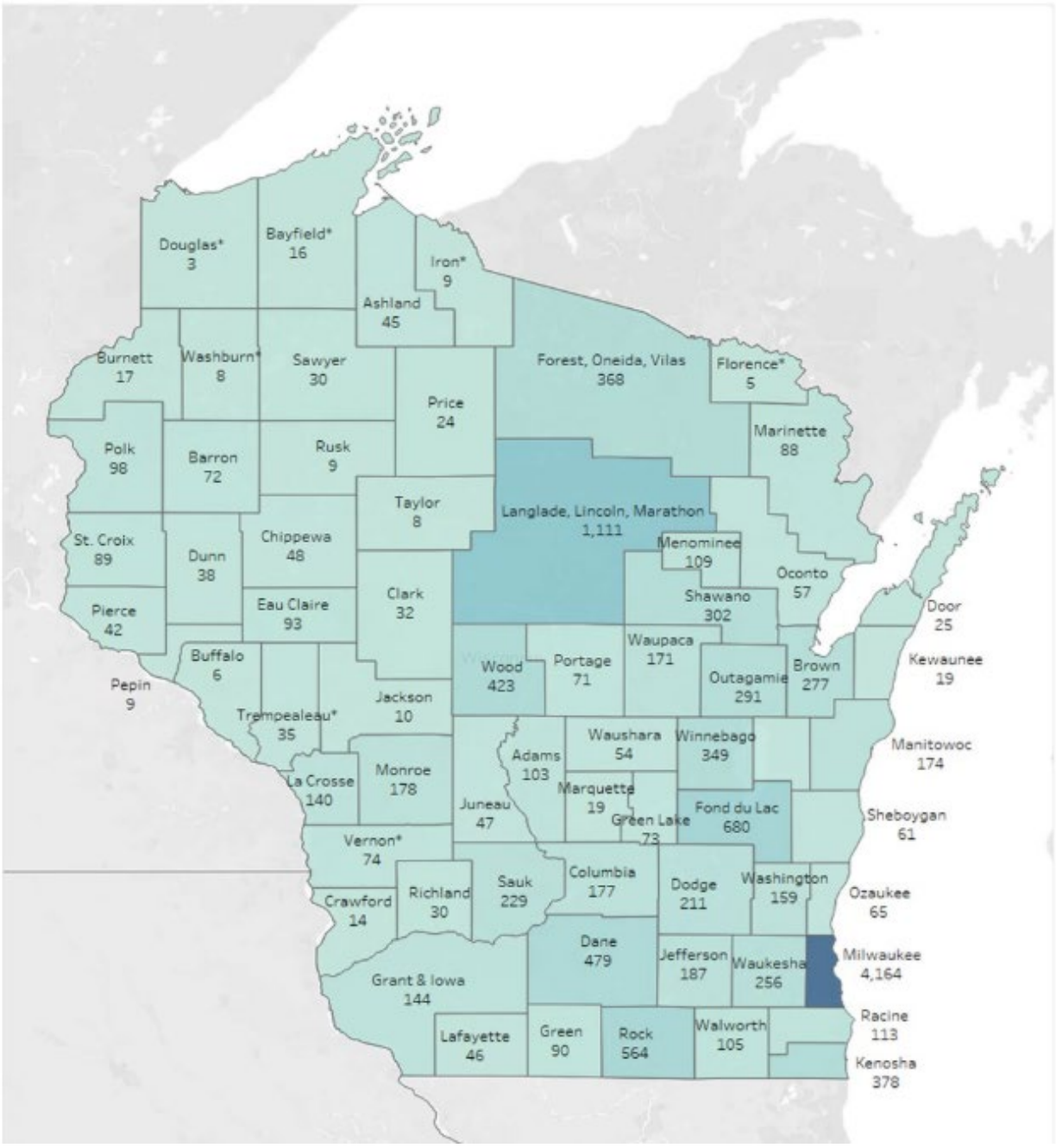
[13] The program participation system is a web-based system developed by DHS to streamline data reporting functions and tasks. Hospitals are not required to report data, but may do so voluntarily. [See also, DHS, webpage on PPS (April 13, 2023).]

Figure 19. Mean Annual Youth Emergency Detention Rate per 10,000 Youth, 2013-2021



Additionally, DHS reports that the data shown in "Figure 20," below, shows the total number of emergency detentions, by county, rather than the number of unique individuals.

Figure 20. Youth Emergency Detentions



COURT DATA ON EMERGENCY DETENTION CASES FOR YOUTH

The Office of the Director of State Courts has provided the following data on the number of involuntary commitment cases filed for minors under s. 51.20, Stats., by county. The data shows cases filed between January 1, 2018, and December 31, 2023, that were classified as a juvenile mental commitment "JM" code, mental commitment "ME" code with a "50504" class code for

minors, or a mental commitment "ME" code filing where the subject's date of birth indicates the person was under age 18 at the time of filing.[14]

County	2018	2019	2020	2021	2022	2023	Average
Adams	22	25	9	14	4	4	13
Ashland	19	23	24	16	15	11	18
Barron	25	12	17	12	8	9	14
Bayfield	6	7	6	4	5	14	7
Brown	225	176	170	212	164	104	175
Buffalo	4	1	5	4	1	2	3
Burnett	7	9	3	9	9	6	7
Calumet	19	19	13	18	10	6	14
Chippewa	28	35	21	24	24	9	24
Clark	9	16	13	10	21	11	13
Columbia	24	29	30	26	13	18	23
Crawford	9	2	1	2	1	5	3
Dane	184	172	162	205	177	194	182
Dodge	50	40	22	25	29	27	32
Door	6	6	9	8	15	8	9
Douglas	8	11	15	4	8	5	9
Dunn	12	20	18	8	6	11	13
Eau Claire	32	7	41	44	45	39	35
Florence	0	2	0	3	0	2	1
Fond du Lac	30	26	41	77	68	50	49
Forest	5	2	5	3	6	3	4
Grant	7	16	8	4	8	7	8
Green	9	8	6	5	6	6	7
Green Lake	8	12	12	14	3	4	9
Iowa	12	11	6	7	5	5	8
Iron	4	3	7	2	3	5	4
Jackson	6	4	3		2	2	3
Jefferson	39	12	7	19	16	15	18
Juneau	5	7	4	5	4	5	5
Kenosha	95	61	47	44	39	27	52
Kewaunee	10	7	10	11	7	6	9
La Crosse	22	22	22	10	10	8	16
Lafayette	4	3	2	3	1	0	2
Langlade	20	25	19	16	4	11	16
Lincoln	13	13	32	20	7	10	16

[14] Multiple case codes are used as the code use may differ by county or by the particular facts of the case. For example, if a case is anticipated to extend into adulthood, a county may assign the general mental commitment "ME" case code. The Office of the Director of State Courts reports that roughly one percent of mental commitment cases do not include a date of birth, which may marginally affect the totals.

County	2018	2019	2020	2021	2022	2023	Average
Manitowoc	29	42	34	40	28	15	31
Marathon	135	86	69	77	36	45	75
Marinette	19	19	23	19	11	6	16
Marquette	1	2	9	2	6	3	4
Menominee	2	1	0	0	1	0	1
Milwaukee	591	663	380	332	353	333	442
Monroe	16	18	7	2	10	17	12
Oconto	16	14	13	10	7	10	12
Oneida	17	9	15	19	14	9	14
Outagamie	66	60	46	67	43	37	53
Ozaukee	9	19	25	23	11	17	17
Pepin	2	4	1	0	1	0	1
Pierce	17	9	6	13	10	11	11
Polk	12	6	2	7	8	7	7
Portage	33	26	21	24	17	21	24
Price	2	3	5	2	2	2	3
Racine	26	36	45	55	49	46	43
Richland	12	6	4	6	1	3	5
Rock	66	57	62	111	79	58	72
Rusk	6	7	1	2	3	2	4
Sauk	52	39	26	30	28	19	32
Sawyer	4	8	1	8	4	6	5
Shawano	23	20	13	13	12	19	17
Sheboygan	38	30	24	46	32	29	33
St. Croix	37	26	22	15	17	20	23
Taylor	4	3	1	2	4	6	3
Trempealeau	8	10	6	2	15	11	9
Vernon	20	24	6	11	7	9	13
Vilas	17	9	12	26	17	14	16
Walworth	34	21	20	26	24	14	23
Washburn	8	7	9	6	3	4	6
Washington	44	24	30	54	36	47	39
Waukesha	92	103	109	132	102	76	102
Waupaca	22	22	21	49	20	26	27
Waushara	9	11	9	3	8	1	7
Winnebago	177	90	56	53	27	40	74
Wood	52	74	41	36	58	69	55
Total	**2,696**	**2,452**	**1,984**	**2,211**	**1,848**	**1,701**	

COURT DATA ON MINORS SUBJECT TO BOTH INVOLUNTARY COMMITMENT AND CHIPS OR JIPS CASES

The Office of the Director of State Courts has also provided the following information regarding minors who may be subject to **both** involuntary commitment and CHIPS or JIPS actions. For the data, the courts queried all juvenile commitment cases filed on or after January 1, 2018, and summarized it to the party level using the first name, last name, date of birth, and county, to isolate juveniles who had commitment cases. The courts also queried all CHIPS and JIPS cases filed on or after January 1, 2018, and summarized it to the party level using the first name, last name, date of birth, and county, to isolate juveniles with CHIPS or JIPS cases. Finally, the courts used the name, date of birth, and county to match which juveniles exist in both the commitment query and the CHIPS and JIPS query. The courts' results are as follows, for cases filed on or after January 1, 2018:[15]

- Of the 12,892 juvenile commitment cases, there were **9,456 unique juvenile** parties. Put another way, 9,456 unique juveniles made up the total 12,892 juvenile commitment cases. [An average of 1,576 unique juvenile parties, statewide, each year.]
- Of the 32,964 CHIPS and JIPS cases, there were **30,434 unique juvenile** parties.
  - Using a query constraint for the commitment to precede the CHIPS or JIPS case, there is a total of **801 juveniles (8.5 percent of the juvenile commitment population)** who had juvenile commitments prior to a CHIPS or JIPS case. [An average of 134 unique juvenile parties, statewide, each year.]
  - Without a query constraint for the commitment to precede the CHIPS or JIPS case, there is a total of **1,209 juveniles (12.8 percent of the juvenile commitment population)** who had both a commitment and a CHIPS or JIPS case. [An average of 201 unique juvenile parties, statewide, each year.]
- When including delinquency cases, the results are as follows:
  - The commitment results remain the same.
  - There were 66,247 CHIPS, JIPS, or delinquency cases with **44,977 unique juvenile parties**. [An average of 7,496 unique juvenile parties, statewide, each year.]
  - Using a query constraint for the commitment to precede the CHIPS, JIPS, or delinquency case, there is a total of **1,756 juveniles (18.6 percent of the juvenile commitment population)** who had juvenile commitments prior to a CHIPS, JIPS, or delinquency case. [An average of 293 unique juvenile parties, statewide, each year.]
  - Without a query constraint for the commitment to precede the CHIPS, JIPS, or delinquency case, there is a total of **2,339 juveniles (24.7% of the juvenile commitment population)** who had both a commitment and a CHIPS, JIPS, or delinquency case. [An average of 390 unique juvenile parties, statewide, each year.]

[15] The Office of the Director of State Courts notes that the following factors may marginally affect the totals: (a) a juvenile who had a commitment in 2017 and a CHIPS, JIPS, or delinquency case in 2018 would not be captured because the commitment is outside of the query time horizon; (b) any spelling or minor changes to the name will result in missing that party; and (c) a missing date of birth will result in missing that party.