



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #376

Mental Health Crisis Service Grants and Emergency Detention Procedures (Health Services -- Institutions and Mental Health)

[LFB 2015-17 Budget Summary: Page 236, #9]

CURRENT LAW

Chapter 51 of the statutes establishes the state's policies for the care and treatment of persons with mental illness. Included in Chapter 51 are procedures for the emergency detention of those who are believed to be mentally ill, chemically dependent, or developmentally disabled, and who evidence a substantial probability of causing physical harm to themselves or to others. Generally, only a law enforcement officer may initiate the emergency detention process, and may take a person into custody only if: (a) the person is believed to be unable or unwilling to cooperate with voluntary treatment; and (b) taking the person into custody is the least restrictive alternative appropriate to the person's needs.

The procedures and requirements applying to emergency detention in Milwaukee County are different than those used in other counties. In Milwaukee County, the law enforcement officer who takes a person into custody must transport the person to a treatment facility. Upon arrival at the facility, the treatment director of the facility has 24 hours to determine if the person meets the criteria for detention (excluding time needed to evaluate and treat a non-psychiatric medical condition). In all other counties, the county department of human services (or other county agency responsible for mental health programs) must agree for the need for detention before a law enforcement proceeds with the detention. In order to approve detention, the county must reasonably believe that the individual will not voluntarily consent to evaluation, diagnosis, and treatment. If approved, the officer is required to transport the person to a treatment facility, if the facility agrees to take the person, or to a state treatment facility. The treatment director of the facility is not required to determine whether the emergency detention criteria have been met within any specified time period, but must discharge the person when, upon the advice of the treatment staff, he or she determines that the criteria are no longer met. In all counties, the person may not be held in detention for a period exceeding 72 hours from the time that the

person was taken into custody, exclusive of Saturdays, Sundays, and legal holidays. During this period, a court may hold a probable cause hearing for involuntary civil commitment, which may result in continued detention pending a final commitment hearing.

The law enforcement officer who initiates a detention must complete a statement detailing the individual's actions leading to the decision to take the person into custody. In all counties except for Milwaukee County, this statement is delivered to the treatment facility and to the court, which initiates the probable cause hearing process. In Milwaukee County, the statement is delivered to the treatment facility, but is not filed immediately with the court. Only if the treatment staff determine that the criteria for emergency detention are met within the 24-hour time limit is the statement filed with the court.

Under a pilot program that applies only in Milwaukee County and that will expire after May 1, 2016, certain mental health professionals employed by, or under contract with, the Milwaukee Behavioral Health Division, or their designees may take a person into custody for the purposes of emergency detention.

GOVERNOR

Provide \$1,500,000 PR in one-time funding in 2015-16 for DHS to distribute as grants to counties for mental health crisis services. Funding for these grants would be budgeted in a current program revenue appropriation that supports the Department's institutional operations.

Make the following statutory changes, effective on July 1, 2016:

Crisis Assessments. Modify provisions related to the emergency detention of persons for reasons of mental illness, drug dependency, or developmental disability to specify that a county human services department may not approve the detention of a person unless a physician who has completed a residency in psychiatry, a licensed psychologist, or a mental health professional has performed a crisis assessment on the individual and agrees for the need for detention.

Emergency Detention Procedures in Milwaukee County. Repeal provisions that establish special procedures for emergency detention in Milwaukee County and repeal a pilot program for alternative emergency detention procedures in Milwaukee County.

DISCUSSION POINTS

1. The bill would provide \$1,500,000 for making one-time grants for crisis services, but would not specify how the funding would be distributed, nor would it establish specific criteria or requirements. The Department of Health Services indicates that the funds would be distributed to assist counties in complying with some of the bill's statutory changes related to emergency detention. Of the proposed statutory changes, one would affect all counties, while two others would affect Milwaukee County only. The following points describe the proposed statutory changes, as well as their relationship to the grant funding, in more detail.

Crisis Assessment Requirement for All Counties

2. Since 2010, law enforcement officers have been required to get approval from the county department of human services prior to transporting a person to a treatment facility for the purpose of emergency detention, a change that was made with the intent of ensuring that emergency detention was used only in cases where all of the statutory criteria are met. Counties use different models to comply with this requirement. Some counties have 24-hour mobile crisis teams composed of mental health workers to respond to crisis situations, allowing for an in-person assessment for potential emergency detention cases. Others have some crisis team capacity, but do not have sufficient capacity to respond to all situations on a 24-hour basis, meaning that approval is sometimes given by telephone. In still other counties, the approval for emergency detention is provided primarily by telephone correspondence.

3. All counties are required to have an emergency mental health services program. At a minimum, emergency programs must offer 24-hour crisis telephone service and 24-hour in-person service on an on-call basis. In order to receive reimbursement under the state's medical assistance (MA) program or private insurance, an emergency mental health services program must have additional features, such as a mobile crisis team that is available for at least eight hours per day, walk-in services, and short-term voluntary or involuntary hospital care when less restrictive alternatives are not sufficient to stabilize an individual experiencing a mental health crisis.

4. Currently, 63 counties have emergency service programs that meet the MA program standards (or are served by a multi-county certified program) and nine counties (Bayfield, Buffalo, Douglas, Dunn, Iron, Pepin, Taylor, Trempealeau, and Washburn) do not have such a program. Three of the counties that do not currently have a certified program (Buffalo, Dunn, and Pepin) are currently seeking certification, while the other six counties are not currently taking actions toward MA certification.

5. Under the bill, all counties would be required to provide a crisis assessment prior to the transport of a person to a treatment facility. The Department indicates that it is the intention that crisis assessments would generally be conducted by a mental health professional on a face-to-face basis or using some mode of distance technology, such as videoconferencing. Department staff believe that having a face-to-face crisis assessment would allow a more thorough review of each individual's needs, and would reduce inappropriate emergency detentions. Individuals who do not meet the criteria for emergency detention, but who are experiencing a crisis may then be more likely to be referred to community-based treatment options and support, such as crisis centers, peer supported resources, and psycho-social rehabilitation programs. Although face-to-face assessments would be the goal, the Department indicates that telephonic approval may still be appropriate in some circumstances. The policies for crisis assessment would be established by administrative memorandums.

6. Since the bill would require a crisis assessment prior to any emergency detention decision, every county would need to have a 24-hour crisis service capable of providing this type of approval. Counties that do not currently have an MA-certified emergency mental health services program would likely need to allocate additional resources toward developing emergency services capacity (although they may not need to have all elements necessary for MA certification). In

addition, some counties that have an MA-certified emergency mental health services program may not have sufficient capacity in their programs to comply with the proposed crisis assessment requirement. These counties would also need to invest additional resources into crisis services.

7. The Department indicates that the \$1,500,000 in crisis assessment grants would be distributed to assist counties in complying with the crisis assessment requirement. Counties that do not meet MA certification as well as counties that do not have sufficient crisis assessment capacity would be eligible for funds, and counties could cooperate to create regional programs. The Department would plan on using an application or request for proposal process for allocating funding.

8. Although the bill would provide funding with the intent of increasing counties' capacity for emergency mental health services, it would be provided on a one-time basis and so counties may need to devote their own resources to meet any ongoing need. However, since one of the goals of the policy would be to reduce the use of emergency detention, it is possible that some counties may be able to shift resources away from inpatient services toward community-based services, including crisis services.

9. Not all counties may be able to offset additional crisis services costs with savings associated with a reduction in the use of emergency detention, at least in the short term. That is, maintaining a 24-hour crisis service capability that is sufficient to meet the demand may require more ongoing funding than any resulting ongoing savings. Furthermore, just having a 24-hour crisis services capability may not be sufficient to achieve the desirable outcomes. Persons who have mental health crises may need other services, such as access to psychotherapy or other outpatient treatment, supported housing, targeted case management, employment support, or other psychosocial rehabilitation services. If there are not sufficient community-based services to provide ongoing care, persons that may be diverted from emergency detention initially may continue to experience mental health crises.

10. Advocates of community-based services assert that there are other benefits associated with avoiding unnecessary emergency detention, even if this may require additional investment of resources. Since the process of emergency detention can be traumatic for someone undergoing a mental health crisis, the use of community-based services is preferable when possible. This is particularly true in cases involving a lengthy trip to a facility that accepts persons in crisis. [Many times persons must be taken to Winnebago Mental Health Institute, near Oshkosh, if there is no hospital that is able and agrees to accept them.] Law enforcement agencies also favor increasing the diversion to community-based facilities, since the process of transporting a person to an emergency detention facility often involves considerable law enforcement officer time.

11. Subsequent to the introduction of the bill, the Department of Administration submitted a budget erratum related to the persons who are authorized to conduct a crisis assessment and the setting for the assessment. As introduced, the bill would permit the county department to approve the detention only if a physician who has completed a residency in psychiatry, a licensed psychologist, or a mental health professional has performed a crisis assessment on the individual and agrees with the need for detention. The administration has requested that this provision be modified to state that a county department may approve the detention only if a mental health

professional, as defined by the Department, has performed a crisis assessment in a setting other than a psychiatric hospital on the individual and agrees with the need for detention. If the Committee adopts the Governor's provision with respect to emergency detention procedures, this provision could be modified to reflect the Governor's intent [Alternative A1].

Milwaukee County Emergency Detention Procedure

12. In Milwaukee County, law enforcement officers transport persons whom they believe meet the criteria for emergency detention to Psychiatric Crisis Services (PCS) at the Milwaukee County Mental Health Complex (unless the person has a non-psychiatric medical condition that first must be treated at a general hospital). Once at the facility, PCS staff must determine whether the person meets the criteria for detention within 24 hours of the time that the person was taken into custody, exclusive of any time that the person had to be evaluated and treated for a non-psychiatric medical condition. Only if the person is determined to meet the criteria for emergency detention is the person detained and is case filed with the court.

13. The 24-hour rule, also known as the treatment director supplement (TDS), has been part of the Milwaukee County procedure for several decades, and is intended to ensure that individuals who are experiencing a crisis and who are transported to PCS, but who do not meet the criteria for emergency detention, are discharged or are provided other treatment.

14. 2013 Act 203 transferred primary oversight of mental health policy and budgeting from the Milwaukee County Board to a newly-established Milwaukee County Mental Health Board. In addition, the act required DHS to arrange for a programmatic audit of mental health services in the County. To comply with this requirement, DHS contracted for an assessment of the Milwaukee County Behavioral Health Division, and, following the completion of the assessment, developed several recommendations for changes to the delivery of Milwaukee County mental health services. Among these recommendations was that the state consider changes to align the emergency detention process in Milwaukee County with other Wisconsin counties. The bill, by eliminating the TDS requirement, would implement this recommendation. Milwaukee County would then also be subject to the bill's provision requiring that a crisis assessment be conducted prior to transport for emergency detention.

15. Milwaukee County indicates that the proposed changes may not necessarily change the procedure that the county currently uses if the assessment conducted at PCS is deemed sufficient to comply with the bill's crisis assessment requirement. However, if the bill would require a face-to-face assessment to be conducted in the field by a mobile crisis team, rather than at PCS, the county estimates that it would need to spend an additional \$2.7 million annually to expand mobile crisis capacity.

16. As with the proposed change to the emergency detention procedures affecting all counties, it is presumed that Milwaukee County would have to invest in additional community-based emergency crisis services, but that this could involve shifting resources away from institutionalized care.

17. The Act 203 Milwaukee County behavioral health system assessment notes that the

County has made progress transitioning from inpatient services to community-based care. Between 2010 and 2014, for instance, the number of inpatient admissions at the Behavioral Health Complex declined by over 40%, allowing the Complex to reduce the number of staffed beds at the facility. At the same time, the County has expanded the use of mobile crisis teams, enhanced existing psycho-social rehabilitation services, and expanded crisis resource centers.

18. Although community-based mental health resources can allow some individuals to avoid more expensive inpatient care, the transition from a heavy reliance on emergency detention and inpatient care to community-based care is not necessarily possible without investing additional resources in the system as a whole. In its recommendations, DHS notes that despite the reduction in the number of staffed beds at the Behavioral Health Complex, there are continuing, fixed costs associated with maintaining the aging facility. In addition, the facility must maintain enough bed capacity to serve as a safety net hospital in cases where there is no other alternative.

19. Mental health advocacy groups have long been in support of reducing reliance on emergency detention in Milwaukee County, as well as in other counties, as they believe that emergency detention is traumatizing and counterproductive. Consequently, these advocates are in favor of putting in place procedures, like an up-front crisis assessment, that result in diverting individuals who are experiencing crisis to other treatment and support options if emergency detention is not necessary. However, in testimony before the Assembly Committee on Mental Health Reform, representatives of the Milwaukee Mental Health Task Force (a coalition of advocacy organizations and providers) warned that there are not sufficient community-based resources, including mobile crisis teams, to sufficiently address the demand for crisis assessment and diversion in Milwaukee County. They indicated, furthermore, that there is a danger that if the law is changed without these resources in place, then persons experiencing a mental health crisis may be more likely to be placed in jail. The Task Force recommends, therefore, that additional community-based treatment and support services be developed before the law is changed.

Milwaukee County Emergency Detention Pilot Program

20. The Milwaukee County emergency detention pilot program was authorized under 2013 Act 235, which took effect on April 10, 2014. Supporters of the program asserted that allowing mental health professionals to initiate an emergency detention would reduce the number of crisis situations requiring law enforcement involvement. They also claim that mental health professionals are trained to recognize when crisis situations can be deescalated and to know when alternatives to emergency detention are appropriate. Finally, they note that avoiding law enforcement involvement reduces the stigmatization and trauma associated with emergency detention. Some advocates for persons with mental illness opposed the change, indicating that they feared the authority to initiate emergency detention by mental health professionals would be misused in situations that would otherwise be managed with less restrictive intervention. They also indicated that there were not sufficient resources for mobile crisis teams to allow the pilot program to adequately address the needs in Milwaukee County.

21. The bill would eliminate the Milwaukee County emergency detention pilot program, in response to the Department's Act 203 recommendation to align the Milwaukee County procedures with those used in other counties.

22. Under Act 235, the pilot program was intended to be a time-limited demonstration of alternative emergency detention methods. The program is set to expire on May 1, 2016, after which time the Legislative Audit Bureau (LAB) is required to conduct a performance evaluation audit of the program. The audit must include an evaluation of the feasibility and likely outcomes of continuing the pilot program in Milwaukee County, or of expanding the program to other counties or statewide, but additional legislation would need to be enacted to authorize such an extension or expansion.

23. Although the bill would end the pilot program prior to when it was initially scheduled to expire, it would not eliminate the requirement for LAB to conduct a performance evaluation. If the intent is to eliminate the program in order to have all counties use the same procedures, then the Committee could also eliminate the requirement for LAB to conduct an evaluation, on the grounds that no additional study is necessary [Alternative C2]. On the other hand, a case could be made that there has been insufficient time to evaluate the impact of the pilot program, and that it should be allowed to continue until the currently-scheduled end date [Alternative C3]. Under this alternative, the Legislature could make a determination on the future emergency detention policies used in Milwaukee County as well as the rest of the state based on LAB's performance evaluation.

General Considerations on Statutory Changes and Crisis System Grants

24. The Wisconsin Council on Mental Health, which advises the Governor and Legislature on mental health policy matters, has recommended that all of the changes to the emergency detention law be removed from the budget bill. The Council takes the position that emergency detention procedures are complex policy issues, and that any potential modifications should be considered in separate legislation. For similar reasons, the Wisconsin Counties Association (WCA) has also recommended that the emergency detention provision be removed from the bill. WCA indicates that it would prefer that any changes to the emergency detention procedures be formulated after discussion with a workgroup composed of counties, advocates, consumers, public defenders, law enforcement, and other interested parties. If the Committee agrees that the changes to the emergency detention should be considered outside of the budget bill deliberations, or only after more discussion with interested parties, these provisions could be removed from the bill [Alternatives A2, B2, and C3].

25. The Department makes the case that the changes in the bill reflect evidence-based practice and are supported by research evaluations, the Milwaukee County behavior health services audit, as well as feedback from stakeholders.

26. Even if the statutory changes to the emergency detention procedure are removed from the bill, the Committee could decide to retain the \$1,500,000 in emergency system grants, on the grounds that additional funding would allow counties to increase crisis services team capacity in preparation for any future change to the emergency detention procedures [Alternative D1]. Funding for the grants would be provided from unexpended balances in the Department's PR appropriation for the mental health institutes. Revenues in this appropriation are received as payments from counties, private insurance, and the MA program for the institutes' programs.

27. The Committee may decide that without statutory changes to the emergency detention

system, there is no need to provide additional funding for counties to change their emergency crisis systems at this time [Alternative D2]. Additional funding could be provided at a later time if statutory changes are enacted as part of separate legislation.

ALTERNATIVES

A. Crisis Assessment Requirement Prior to Emergency Detention

1. Approve the Governor's recommendation to require that counties conduct a crisis assessment prior to approval of transport for the purposes of emergency detention (modified to reflect the administration's intent as described in Point 11).
2. Delete provision (retain current law procedure).

B. Milwaukee County Emergency Detention Procedure

1. Approve the Governor's recommendation to eliminate current law provisions that establish special procedures for emergency detention in Milwaukee County (the 24-hour rule).
2. Delete provision (retain current law procedure).

C. Milwaukee County Emergency Detention Pilot Program

1. Approve the Governor's recommendation to delete a current law pilot program that authorizes certain mental health professionals to take a person into custody for the purposes of emergency detention in Milwaukee County.
2. Approve the Governor's recommendation to delete the pilot program, but modify the bill to also delete a requirement that the Legislative Audit Bureau conduct an evaluation of the pilot program.
3. Delete provision (retain pilot program).

D. Crisis Service Grants

1. Approve the Governor's recommendation to provide one-time funding of \$1,500,000 PR in 2015-16 for mental health crisis service grants for counties.
2. Delete provision.

ALT D2 Change to Bill	
PR	- \$1,500,000

Prepared by: Jon Dyck