

# ANDRÉ JACQUE

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*Testimony before the Senate Committee on Judiciary and Public Safety  
State Senator André Jacque  
June 2, 2021*

Chairman Wanggaard and Colleagues,

Thank you for the opportunity to testify before you today in support of Senate Bill 239, and I am pleased to have Rep. Tittl join me in bringing this important legislation forward.

The main goal throughout the emergency detention process is for the patient to get proper care to address their mental health issues. One of the effects of Wisconsin's shortage of mental health providers is that there is often not quick access for a psychiatric evaluation when individuals are detained by law enforcement during an episode where they present a threat to themselves or others.

Unfortunately, there is presently no clear understanding when the allowed 72 hour maximum emergency detention period starts. This is causing an issue for local law enforcement because sometimes placement and medical clearance takes a long time, and law enforcement officials do not have the same training when it comes to mental health care as the mental health professionals at the receiving facility.

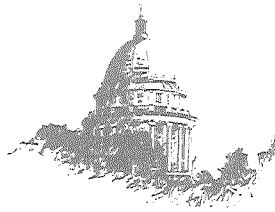
When these delays occur, the at-risk individual is not at the treating location long enough to do an assessment and get the treatment in place. It is important to do a proper assessment of the person to figure out the treatment pattern before they are released back into society, or it is likely that the issues will remain unresolved and recur, sometimes with tragic consequences and physical damage or loss of life.

Senate Bill 239 was drafted at the request and with the assistance of local law enforcement, the Brown County Crisis Center and family members of individuals experiencing serious mental health issues to exclude from the 72-hour time limit that an individual may be detained without a hearing for the purposes of emergency detention any period during which the individual's behavior is not observable that is directly attributable to evaluation or stabilizing treatment of a nonpsychiatric medical condition.

Senate Bill 239 is supported by the Badger State Sheriff's Association, the Wisconsin Sheriffs and Deputy Sheriffs Association, the Wisconsin Chiefs of Police Association and the American Association for Marriage and Family Therapy.

I am pleased to note that the Assembly companion to SB 239 has already passed unanimously out of committee, and Rep. Tittl and I continue to engage stakeholders regarding potential changes to the bill.

Thank you for your consideration of Senate Bill 239.



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# PAUL TITTL

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STATE REPRESENTATIVE • 25<sup>TH</sup> ASSEMBLY DISTRICT

Senate Committee on Judiciary and Public Safety

Senate Bill 239

June 2, 2021

First of all, I would like to thank you, Chairman Van Wanggaard and committee members, for allowing me to testify before you concerning Senate Bill 239 relating to emergency detention.

Under current law, law enforcement may be called to an incident in which a person is exhibiting behaviors that could be a threat to that individual or to others. In those instances, law enforcement has the authority to place the person in custody for 72 hours for purposes of emergency detention.

In some cases, the 72-hour period is not sufficient for medical personnel to evaluate and treat the individual, for example if the individual requires evaluation or stabilizing treatment of a non-psychiatric medical condition. As a result, the 72-hour period may expire before the individual receives the proper assessment and necessary treatment.

This bill addresses that situation by clarifying that the 72-hour period does not include any time necessary to provide evaluation or stabilizing treatment of a non-psychiatric medical condition.

Here's an example that may help to clarify the importance of this change. Suppose someone phones law enforcement and expresses concern that a relative has not phoned for a week, even though they normally have daily phone contact. When law enforcement arrives at the scene, the person is unresponsive and appears to have attempted suicide.

Law enforcement takes the person to a local hospital. At that point, the medical personnel immediately work to stabilize the person from the suicide attempt. It may be several hours before they are able to communicate with the person, and the 72 hours may expire before they are able to evaluate the individual's mental health.

That result is not good for the patient, and the simple change in this bill is an important step in the right direction.

Thank you for the opportunity to testify before you today. Senator Jacque and I would be happy to answer any questions you might have.

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## MEMORANDUM

**TO:** Honorable Members of the Senate Committee on Judiciary and Public Safety

**FROM:** Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

**DATE:** June 2, 2021

**SUBJECT:** Comments on Senate Substitute Amendment 2 to Senate Bill 239

The Wisconsin Counties Association (WCA) appreciates the opportunity to comment on Senate Bill 239.

Under Wisconsin's emergency detention statutes, an individual may not be detained by a law enforcement officer and the receiving facility for more than a total of 72 hours after the individual is taken into custody for the purposes of emergency detention, exclusive of Saturdays, Sundays, and legal holidays. During that 72-hour period, the receiving facility may evaluate, diagnose, and treat the individual during detention if the individual consents. Within 72 hours after an individual is taken into custody, a probable cause hearing must be held with regard to the allegations made in the detention petition.

There are instances in which an individual's medical needs make it difficult, if not impossible, to perform a psychiatric evaluation prior to the probable cause hearing. In those cases, counties are forced to drop the petition, or counties lose the probable cause hearings. Once the individual's medical issues are resolved, the individual is then free to leave without a completed psychiatric evaluation.

The goal of Senate Bill 239 is to find a way in which to toll the 72-hour clock under the state's emergency detention statutes such that a psychiatric evaluation can be performed on an individual once their non-psychiatric medical condition is addressed. WCA appreciates the work done to date by Senator Jacque and Representative Tittel to draft a bill that accomplishes this goal, while at the same time protecting the civil rights of the subject individual. We believe putting the tolling decision in the hands of the judiciary takes us in the right direction. However, WCA believes that additional work is necessary on Senate Substitute Amendment 2 to meet these goals.

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The Chapter 51 statutes regarding emergency detention/involuntary commitment are extremely complicated and little understood. In reviewing the substitute amendment, we believe modifications need to be made to:

- Address technical errors,
- Ensure due process/protect civil rights,
- Meet county operational needs (practical implications), and
- Develop evidentiary standards for the courts to consider when making the tolling decision.

To ensure we do this correctly, our counties respectfully request additional time to work through this extremely complicated issue. If we do not get this right, individual civil liberties could be at risk and counties could be subject to litigation.

Thank you for considering our comments.



# Wisconsin State Public Defender

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Senate Committee on Judiciary and Public Safety  
Senate Bill 239  
Wednesday, June 2, 2021

Good afternoon Chair Wanggaard and members,

Thank you for having this hearing on Senate Bill (SB) 239 related to the timeline for evaluation of medical conditions as part of a Chapter 51 mental health commitment. Our testimony today focuses on both the bill as well as Senate Substitute Amendment 2.

Chapter 51 mental health commitments are meant to treat emergency mental health crises that make an individual a danger to themselves or the community. They are meant to provide involuntary mental health treatment for emergency situations, not as a quasi-criminal detention.

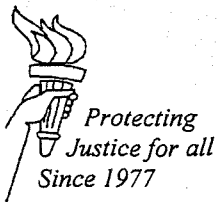
Chapter 51 itself is an arcane and complex law that is difficult for practitioners, let alone individuals who are being committed, to understand all of the aspects of both the statute and case law. One area that has been a frequent source of discussion and debate is the time frame, or clock, from the time a person is taken into custody until they must be seen by a judge at a probable cause hearing. The need to assess the individual, both mentally and psychologically, must be balanced with the fact that the person is being deprived of their liberty. Due process is a rigorous and necessary constitutional process.

The original version of SB 239 language raises concerns that a person could be detained with an open-ended detention without judicial oversight. Attached is a copy of the written information that we submitted for the Assembly hearing.

Following the hearing in the Assembly, the bill authors worked with a group of organizations, including the State Public Defender, about a way to allow a very limited extension of the existing 72-hour timeline with judicial oversight and clear statutory direction on the circumstances in which an extension can be granted.

Senate Substitute Amendment 2 was intended to be the outcome of that meeting. However, in addition to language that raises additional concerns beyond the original bill, we believe the amendment did not include several of the concepts discussed at that meeting and requires additional change if the goal of balancing liberty interests and treatment of mental health is to be achieved. We are respectfully asking the committee to delay a vote on the proposal until the amendment language has been further reviewed to ensure that this extremely complicated issue has been fully vetted.

Thank you to the authors for being open to changes to the bill. We look forward to future discussions.



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April 28, 2021

Representative Michael Schraa, Chair  
Committee on Corrections  
107 West, State Capitol  
Madison, WI 53708

Dear Representative Schraa and Committee Members,

The State Public Defender would like to provide these written comments expressing concerns regarding Assembly Bill (AB) 228, related to time tolling for medical evaluation in an emergency detention.

The intersection of personal liberty and treatment of emergency mental health situations is a delicate balance between public safety and important due process protections in the Constitution. The lack of resources and facilities to handle emergency situations exacerbates the issue.

We believe AB 228 tips the balance too far towards the resources side of the equation at the expense of due process and individual liberty. Under current law, if a person is taken into custody under s. 51.15 (5), statute provides 72 hours to transport the person to a facility for both medical and initial psychological evaluation prior to a probable cause hearing before a judge.

The language in the bill on page 3, line 4 that states "...the individual's behavior is not observable that is directly attributable to evaluation or stabilizing treatment..." is unclear and highlights the concern that this change would allow for open ended detention without judicial oversight. This means that a person detained by law enforcement and transported to a medical or mental health treatment facility could be detained almost indefinitely with no immediate legal recourse or due process rights.

We recognize and appreciate the need to have a mechanism for emergency detention in mental health cases, but depriving people of their liberty must come with due process protections. AB 228 removes some of these protections by allowing for nearly indefinite detention without judicial oversight.

We are happy to provide additional information to the committee. Thank you for the opportunity to provide this feedback.

Sincerely,

Adam Plotkin  
Legislative Liaison  
Office of the State Public Defender