



Wisconsin State Public Defender

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October 23, 2013

Representative Joel Kleefisch
Chair, Assembly Committee on Criminal Justice
P.O. Box 8952
Madison, WI 53708

Chairman Kleefisch and members,

Thank you for having this hearing on Assembly Bill 360 which is the product of three years of work by the Legislative Council Special Committee on Review of Emergency Detention and Admission of Minors under Chapter 51. The State Public Defender would like to thank Senator Lazich and Representative Pasch for their leadership of this committee, and particularly Legislative Council Attorney Laura Rose.

AB 360 makes a number of changes to the Chapter 51 civil mental health emergency detention and commitment process. As a matter of process, this bill is worthy of your support. The bill was crafted by a committee composed of subject matter experts who practice every day in this area of the law. The study committee ultimately approved the draft that has been introduced as AB 360 without a single dissenting vote. The Speaker's Task Force on Mental Health also recommended adoption of the legislation offered by the Legislative Council study committee.

There are several provisions of the bill which bear mentioning to the committee. First, Section 2 of the bill, specifically the new language located on page 4 beginning at the end of line 4, reiterates the intent statement contained in s. 51.001 which says that the state will "...assure all people in need of care access to the least restrictive treatment alternative appropriate to their needs..." By reinserting this statement in s. 51.15 to ensure that the practice in the field when law enforcement is considering detention under Ch. 51 matches the intent of the legislature.

In general, one of the most significant changes made by the bill deals with clarification and consistency in defining what constitutes "detention" and "custody" as well as what event delineates the deprivation of liberty for the commitment to begin tolling the 72 hours until a probable cause hearing.

Custody is clarified primarily in section 6 of the draft, but there are also other references to custody versus detention throughout the bill. The pertinent language begins on page 6, line 18 and reads "An individual is in custody when the individual is under the physical control of the law enforcement officer, or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938, for the purposes of emergency detention." It continues to clarify that this custody is transferred to the treatment facility upon arrival. The intent of this language is to preserve due process for the constitutional rights of the individual by clarifying that their liberty has been deprived once they are placed in the physical control of a law enforcement officer. Practically, law enforcement will easily be able to determine and track when an individual has been placed in their physical control. Under current law, the individual may actually have functionally been deprived of their liberty for several hours before the probable cause process technically begins.

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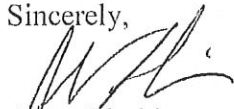
Along these same lines, Milwaukee County has an additional requirement for the treatment director to file a supplemental report on the emergency detention within 24 hours. Section 9 of the draft creates new language which would "pause" the 24 hour clock for any non-psychiatric medical treatment. This allows time to provide necessary medical treatment which would not count against the time to file the treatment director's supplemental report.

There is no question that balancing the treatment needs of a patient against the constitutional right to liberty is a difficult task. We feel that the changes contained in AB 360 provide the most comprehensive and consistent application of this balance and are based on the work on experts in this field. On the whole, however, we will achieve better consistency statewide and make an effort to clarify how these interests can best be balanced.

We urge the committee to support Assembly Bill 360.

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Sincerely,



Adam Plotkin

Legislative Liaison, Office of the State Public Defender



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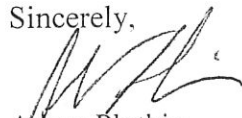
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There is no question that balancing the treatment needs of a patient against the constitutional right to liberty is a difficult task. We feel that the changes contained in AB 360 provide the most comprehensive and consistent application of this balance and are based on the work on experts in this field. On the whole, however, we will achieve better consistency statewide and make an effort to clarify how these interests can best be balanced.

We urge the committee to support Assembly Bill 360.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Plotkin', written over a horizontal line.

Adam Plotkin
Legislative Liaison, Office of the State Public Defender



JOAN BALLWEG

VISCONSIN STATE REPRESENTATIVE

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41ST ASSEMBLY DISTRICT

AB 460: Emergency detention, involuntary commitment, and privileged communications and information.

Testimony of State Representative Joan Ballweg
Assembly Committee on Health
October 24, 2013

Thank you, Chair Kleefisch and members of the Criminal Justice Committee, for hearing Assembly Bill 360 today. This bill was part of the Legislative Council Special Committee on Chapter 51, which originally began work on this topic during the 2010 interim. Assembly Bill 360 does the following:

- Expands the criteria for taking an individual into emergency detention to include a determination "...that detention is the least restrictive alternative appropriate to the person's needs."
- Creates a "purpose" statement for the emergency detention statute. The statement says that the purpose of emergency detention is to provide, on an emergency basis, treatment by the least restrictive means possible, to individuals who meet all of the following criteria: (a) are mentally ill, drug dependent, or developmentally disabled; (b) evidence one of the statutory standards of dangerousness; and (c) are reasonably believed to be unable or unwilling to cooperate with voluntary treatment.
- Provides that the county department may approve the detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others.
- Modifies the emergency detention statute applicable to Milwaukee County that requires the treatment director of the facility in which the person is detained, or his or her designee, to determine within 24 hours whether the person is to be detained. The bill provides that when calculating the 24 hours, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual shall be excluded from the calculation.
- Eliminates that provision in the statutes that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365-day period.
- Repeals the provision that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision.

The Speaker's Task Force on Mental Health reviewed the Legislative Council special committee and recommended legislation. As a member of the Speaker's Task Force, I can attest to how thoroughly we vetted this Chapter 51 Legislative Council bill. I ask for your support today to further this important legislation.

Thank you for your time and to Laura Rose from Legislative Council and the office of Senator Lazich for their work on this issue. I'm happy to answer any questions.



Assembly Committee on Criminal Justice
October 24, 2013
Assembly Bill 360 and Senate Bill 127

Good morning committee members. I had the pleasure serving as Chair of the Joint Legislative Council Special Study Committee on Review of Emergency Detention and Admission of Minors under Chapter 51. The Study Committee met eight times between August 31, 2010, and October 30, 2012. Assembly Bill 360 (AB 360) and Senate Bill 127 (SB 127) make numerous changes to emergency detentions, involuntary mental health commitments, and the treatment of privileged information in the course of detention.

The changes in AB 360 and SB 127 are the result of the Joint Legislative Council's Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51. AB 360 and SB 127 balance the interest of the public to provide reasonable mental health treatment to prevent harm to the person and others while protecting civil liberties of the person.

Under current law, law enforcement officers detaining a person for reasons under Chapter 51 are required to complete a Statement of Emergency Detention outlining the rationale for the detention. AB 360 and SB 127 modifies the requirements of emergency detention by requiring the officer to specify inpatient treatment is the least restrictive placement available and the rationale for believing the person would not consent to treatment. AB 360 and SB 127 allow a county to pursue a commitment in the event the county reasonably believes the subject will not consent to treatment and medication. AB 360 and SB 127 allow for counties to deliver care under emergency detention in approved treatment facilities in addition to county approved hospitals.

AB 360 and SB 127 clarify common situations in Chapter 51 emergency detentions. First, AB 360 and SB 127 redefines procedures for emergency detentions occurring in counties larger than 500,000 by reclassifying the requirements to only apply to counties of 750,000. This modification ensures the special requirements only apply to Milwaukee County. Second, AB 360 and SB 127 clarify detention occurs at the time the subject is physically taken into custody rather than arrival at a treatment facility. Third, AB 360 and SB 127 clarifies the subject must be informed of their rights upon arrival at the treatment facility rather than specifying the notification of rights be delivered by the facility director. Fourth, AB 360 and SB 127 require the probable cause hearing be conducted within 72 hours of the time of physical detention.

AB 360 and SB 127 expand treatment options under Chapter 51. Current law limits mental commitments based on substance abuse to 45 days in a 365 day period. AB 360 and SB 127 repeal this limitation allowing for multiple substance abuse commitments within the same one year period. Current law requires an incarcerated person's mental health commitment end upon incarceration. AB 360 and SB 127 allow a mental health commitment to extend beyond the person's incarceration. Both provisions create more options for treatment than is permissible under current law.



Assembly Committee on Criminal Justice
Assembly Bill 360 and Senate Bill 127
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The provisions of AB 360 and SB 127 address common problems with commonsense solutions. AB 360 and SB 127 will allow counties to pursue treatment options not currently available and provide greater civil liberty protection to a person subjected to emergency detention.

I ask the committee approve AB 360 and SB 127. Thank you for your attention to AB 360 and SB 127.



OFFICE OF THE COUNTY EXECUTIVE

Milwaukee County

CHRIS ABELE • COUNTY EXECUTIVE

Testimony of Eric Peterson, on behalf of Milwaukee County Executive Chris Abele
Assembly Bill 360 – Emergency Detention & Involuntary Commitment
Assembly Committee on Criminal Justice
Thursday, October 24, 2013

Honorable Chairman Kleefisch and members,

Thank you for taking testimony today on Assembly Bill 360, the Joint Legislative Council bill on emergency detention, involuntary commitment and privileged communications. The County Executive extends his thanks to the members of the Joint Legislative Council's Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51 for their inclusion of this bill in their final report. County Executive Abele, on advice of the professionals in the Behavioral Health Division, supports this bill with particular emphasis of support for the provisions relating to tolling the 24 hour period in Sections 8 and 9 of the bill.

This provision of the bill is of particular importance to the professionals in our county who work every day in this field. It is why the Executive supported this measure throughout the Speaker's Taskforce on Mental Health process. This provision will allow a thorough qualified determination for detention of a patient after they are stabilized for non-psychiatric conditions.

Too often under current law, the 24 hour period for a determination of detention is simply wasted while the patient receives medical care or other medical evaluation. Hence, the time actually allowed for determination for detention may be too short or in some cases, expire before a determination may begin. Tolling this period to begin following medical stabilization will allow for better evaluations for determinations for detention or release.

On behalf of the County Executive, I urge your support of this bill throughout the committee process and forward to its consideration in both houses.

Thank you.

WISCONSIN HOSPITAL ASSOCIATION, INC.



October 24, 2013

To: Members of the Assembly Committee on Criminal Justice

**From: Matthew Stanford, WHA VP Policy & Regulatory Affairs, Associate General Counsel
Kyle O'Brien, VP Government Relations**

Re: WHA Supports Assembly Bill 360, But Recommends Important Technical Changes Before Passage

The Wisconsin Hospital Association (WHA) was pleased that the Joint Legislative Council in 2010 formed the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51," (the "Study Committee"), and appreciates the work undertaken by the Study Committee on a challenging area of patient care, law, and public policy. Guided by a Mental Health Task Force formed by WHA in late 2008, WHA has been engaged in the work of the Study Committee, the Joint Legislative Council, the Speaker's Task Force on Mental Health and other efforts to identify and enact public policy that will increase the likelihood that individuals with mental health needs throughout Wisconsin consistently receive the right care, at the right time, and in the right setting. Assembly Bill 360 is one output of the Study Committee's work, and WHA offers the following comments on the bill for your consideration.

WHA supports Assembly Bill 360, but recommends important technical changes before passage to increase the likelihood that individuals with urgent mental health needs consistently receive the right care, at the right time, and in the right setting.

WHA expressed concerns (and suggested changes to address the concerns) to the Study Committee and the Legislative Council regarding proposed changes to Wisconsin emergency detention law that are now in Assembly Bill 360. Because the Study Committee's recommendations were within the scope of their charge, members of the Joint Legislative Council recommended that WHA seek amendments to the Bill in the standing committees rather than in the Joint Legislative Council.

Recommended Change #1 – Replace the proposed earlier start of the emergency detention "72 hour clock," to give mental health care providers time to psychiatrically stabilize an individual in "imminent danger" and avoid a full, long-term commitment.

When an individual is brought to a hospital psychiatric unit under an emergency detention, the psychiatrist's goal is to work to stabilize the individual's condition so that an imminent danger no longer exists and the person can avoid long term commitment. Because of this care, many individuals on an emergency detention can be released without having to proceed to a probable cause hearing for a full, long-term commitment.

Point 11 of the Prefatory Note of Assembly Bill 360 (page 3) describes a technical change to Wisconsin law that will give health care providers less time to stabilize an individual that is subject to an emergency detention. Hospitals that provide psychiatric services have concerns that this change in some cases will make it more difficult for them to achieve their goal of stabilizing an individual under an emergency detention, and either result in more individuals proceeding to a full, long-term commitment, or result in individuals that remain dangerous being

released after 72 hours because not enough time was available to complete the required evaluations and paperwork for a probable cause hearing.

If an individual is under an emergency detention, current law states that the emergency detention be ended or commitment proceedings must begin within 72 hours of the individual's arrival at "the emergency detention facility." Assembly Bill 360 amends Wisconsin law so that the "72 hour clock" starts earlier, at the time the individual is taken into custody by law enforcement. This change could be particularly problematic for individuals that may have life threatening physical injuries (such as from a suicide attempt) that require treatment before an individual can be transferred to an emergency detention facility for psychiatric stabilization. Further, this change will particularly impact the time available under an emergency detention to psychiatrically stabilize individuals in rural areas, as the change in the start of the "72 hour clock" does not take into account that significant travel may be required to transport an individual to an emergency detention facility.

To ensure that an individual can receive up to 72 hours of psychiatric care under an emergency detention before court action is required, WHA recommends that before Assembly Bill 360 is passed, the bill be amended to provide that the "72 hour clock" not begin until the individual actually arrives at a psychiatric unit for detention.

Recommended Change #2 –Replace "least restrictive" legal jargon in the bill with explicit language that would prohibit law enforcement from initiating an emergency detention on an individual willing to receive care.

One policy goal that the Study Committee discussed was to work to clarify in law a principle that individuals that truly agree to stabilizing treatment should not be subject to an emergency detention. This policy goal resulted in the changes in law proposed in points 1, 4, and 5 of the Prefatory Note of Assembly Bill 360. The changes in points 4 and 5 of the Prefatory Note explicitly state this goal. However, unlike points 4 and 5 which explicitly state this goal, the change described in point 1 of the Prefatory Note uses legal jargon that will require law enforcement, before they initiate an emergency detention, to determine "that taking the person into custody is the least restrictive alternative appropriate to the person's needs." While county crisis workers may be in a position to determine what is a "least restrictive alternative," WHA has concerns that law enforcement is not in the best position to make such determination.

Because emergency detentions are often initiated in a hospital emergency department, WHA is concerned that **the jargon used in the change described in point 1 of the Prefatory Note will result in inconsistent interpretation and practice by law enforcement across Wisconsin, and ultimately will result in some individuals not getting the emergency help that they need.** To avoid this unintended consequence, WHA recommends that before Assembly Bill 360 is passed, the change described in point 1 of the Prefatory Note be removed and recreated to plainly state that law enforcement may not take individuals that truly agree to stabilizing treatment into custody under an emergency detention.

If you have any questions, please feel free to contact Kyle O'Brien (kobrien@wha.org) or Matthew Stanford (mstanford@wha.org) at 608-274-1820.

Technical Explanation of Amendments to Assembly Bill 360

Recommended Change— Replace the bill’s earlier start of the emergency detention “72 hour clock,” to give mental health care providers time to psychiatrically stabilize an individual in “imminent danger” and avoid a full, long-term commitment.

Technical explanation of Items 1 through 8 below: Under the current statute, an individual can be held at an emergency detention facility for no longer than 72 hours without a probable cause hearing. **AB 360 shortens the time that an individual may be held at an emergency detention facility for stabilization** by requiring that a person must have a probable cause hearing within 72 hours of being taken into custody by a law enforcement officer.

As a result, **health care providers will have less time to stabilize an individual that is subject to an emergency detention than they do under current law.** For some individuals this will have the unintended consequence of increasing the likelihood that the individual will not be stabilized during the emergency detention and result in the initiation of long-term commitment proceedings under 51.20.

The changes in items 1 through 8 removes the bill’s shortened timeframe and restores and clarifies the current laws as follows: 1) Law enforcement must transport an individual to a facility for emergency detention “**without unreasonable delay,**” (this is a safeguard for individuals that is not in current law), 2) provides that an individual can be held for no longer than 72 hours following admission for an emergency detention without a probable cause hearing, and 3) an emergency department is not an emergency detention facility.

Amend Assembly Bill 360 as follows:

1. Page 6, line 5. After “shall,” insert “, without unreasonable delay,”.
2. Page 6, line 14. Before “treatment facility,” insert “emergency detention facility that is a”.
3. Page 6, line 15. After “state treatment facility.” Insert “An emergency department is not an emergency detention facility.”
4. Page 8, line 6-7. Replace lines 6-7 with the following: “to exceed 72 hours after admission of the individual to an emergency detention facility for an emergency detention exclusive of Saturdays, Sundays and legal”.
5. Page 9, line 22, page 10 lines 1-2. Replace page 9, line 22 and page 10 lines 1-2 with the following: “or other person and the facility for more than a total of 72 hours after admission of the individual to an emergency detention facility for an emergency detention exclusive of Saturdays, Sundays and legal holidays.”
6. Page 11, lines 11-12. Replace page 11, lines 11-12 with the following: “to determine probable cause for commitment within 72 hours after admission of the individual to an emergency detention facility for an emergency detention exclusive of Saturdays,”.
7. Page 12, lines 17-18. Replace page 12, lines 17-18 with the following: “allegations made under sub. (1)(a) within 72 hours after admission of the individual to an emergency detention facility for detention exclusive of Saturdays,”.
8. Page 13, lines 19-21. Replace page 13, lines 19-21 with the following: “this paragraph, the court shall hold a probable cause hearing within 72 hours after admission of the individual to an emergency detention facility for an emergency detention, excluding Saturdays, Sundays and legal holidays, or if the probable”.