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Waukesha police acted correctly in not arresting Jaren Kuester, ruling says

Mental health specialists say 2009 law sometimes used to prevent detentions, save money

By Lydia Mulvany of the Journal Sentinel
May 15, 2013

The Waukesha Police Department has ruled that officers acted appropriately in not detaining Jaren Kuester - the man accused of killing three Lafayette County residents - after he was arrested at the humane society, where he had exhibited delusional behavior.

Kuester had dropped off his dead puppy at the Humane Animal Welfare Society in Waukesha, then returned two weeks later believing it was alive. When he learned his puppy had been cremated, he threatened staff members, who called police. Kuester was arrested on an unrelated municipal warrant. After being released on bail, he drove to Lafayette County and killed three people, according to a criminal complaint.

Waukesha Police Capt. Ron Oremus, who released the results of the department's investigation, said in an email Wednesday that Kuester had acted strangely, but he added that's not unusual for people with mental illness. In hindsight he was a threat, but officers have to be judged by what they knew at the time, he said.

The Humane Animal Welfare Society ultimately decided not to file a complaint against Kuester for his actions.

"It was clear Kuester had mental issues, but that alone does not mean these individuals should be taken into protective custody," Oremus said. "These people are often seen as weird by others, but are able to function in society without being a threat to themselves or others."

In an arrest detail document obtained by the Journal Sentinel, the arresting officer said Kuester didn't seem suicidal, his behavior wasn't unusual, and the officer wasn't aware of any medical problems or conditions.

Guy Taylor, Kuester's public defender, who has done mental commitment cases for 25

years, said he thought police would more than likely have detained Kuester before a 2009 law made it more difficult for them.

Previously, law enforcement officials decided whether a person was dangerous enough to detain in an involuntary hospitalization. In 2009, a gatekeeper function was added, and police now need approval from county human services to make the detention.

"I wasn't at the Humane Society when my client had his incident, but what I'm hearing about it would suggest to me that most law enforcement officers in the old days probably would have detained him," Taylor said, stressing that this opinion is his and not that of the state public defender's office, where he works. "When you add another layer of bureaucracy onto the process, the only function of that is to prevent detentions."

While it's impossible to know for sure if this played a part in Kuester's case, Taylor said, the law has a chilling effect in which people in similar cases aren't getting the resources they need. Waukesha has "a good reputation for doing a good job," he said.

The law's original purpose was to deflect people from hospitalization, which is expensive and less effective than community-based services, said Kit Kerschensteiner, a lawyer at Disability Rights Wisconsin.

County and state officials have said the law has resulted in fewer emergency detentions.

Joyce Allen, director of the Bureau for Prevention, Treatment and Recovery in the Department of Health Services, said figures collected from Wisconsin counties show a drop in emergency detentions, and admissions to state mental health institutes also have fallen. In rural Grant and Iowa counties, for instance, emergency detentions fell from 300 a year to between 80 and 100 because of the law, said Neal Blackburn, director of Unified Community Services.

Kerschensteiner said that while detentions were down, there was no data showing that people deflected from hospitals were receiving community-based treatment. Disability Rights Wisconsin gets reports that the statute is used to turn people away from services to keep costs down, she said.

"What has happened so often with mental health services in Wisconsin is there's a good intent to keep people out of restrictive situations that are not best practices, but they never get around into putting money into what does work," she said.

Wisconsin relies heavily on local funding for mental health services, and that has created "tremendous disparities" around the state, said Shel Gross, public policy director for Mental Health America of Wisconsin. More state dollars could raise the level of care in the state.

"There are still waiting lists everywhere you go," said Bonnie Loughran, executive

director at Dane County's National Alliance on Mental Illness.

Taylor said county human services departments have a financial incentive to veto an emergency detention.

"I think it's clear that law was changed in order to detain fewer people and save money," Taylor said. "The result is that there are people who need to be detained who are not being detained."

Ellen Gabler of the Journal Sentinel staff contributed to this report.

Find this article at:
http://www.jsonline.com/news/waukesha/waukesha-police-acted-correctly-in-not-arresting-jaren-kuester-ruling-says-m49uq7c-207622601.html

Check the box to include the list of links referenced in the article.

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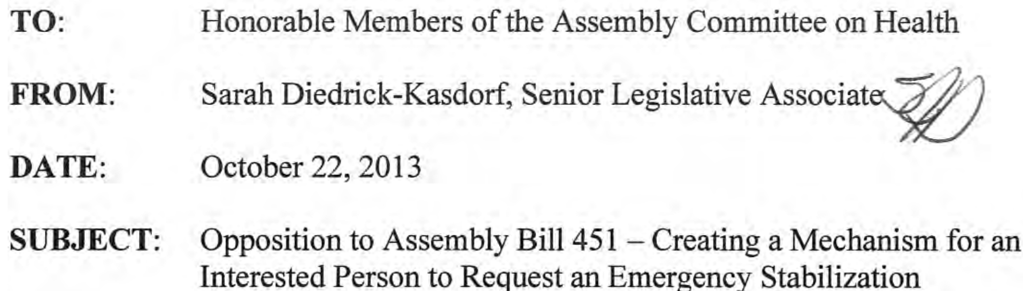
MEMORANDUM



TO: Honorable Members of the Assembly Committee on Health

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate

DATE: October 22, 2013

SUBJECT: Opposition to Assembly Bill 451 – Creating a Mechanism for an Interested Person to Request an Emergency Stabilization

The Wisconsin Counties Association (WCA) opposes Assembly Bill 451, which creates a mechanism for an interested person to request an emergency stabilization. While WCA respects the work completed by the Speaker's Task Force on Mental Health and supports most of the bills originating from Task Force members, our members have identified numerous concerns with this bill.

Emergency "Stabilization" Versus Emergency "Detention"

The bill substitutes the term "emergency stabilization" for "emergency detention." A question has been raised regarding the purpose of the change in terminology and if the change in terminology has a legal effect given the significant difference in meaning between the two terms.

Requests to Initiate and Approve an Emergency Stabilization

Under the bill, any person may make a formal request for a county department and law enforcement to initiate and approve an emergency stabilization. The county department then has 24 hours (six hours if an individual is in a hospital) to respond to the request. If the county or law enforcement chooses not to move forward with the request, a written response must be provided to the requester containing a statement of the decision, the reason for the decision, and how the requester may initiate a judicially ordered emergency stabilization.

Our concern with this provision is two-fold. First, 24 hours (or six hours) may not be enough time to complete an investigation, which includes verifying the statements contained in the formal request. Second, in response to the "formal request," a county may have a good reason not to detain (the county may already be involved with the

Mark D. O'Connell, Executive Director

subject) but cannot legally share the information with the petitioner due to confidentiality concerns.

Direct Petition to the Court

Under the bill, any person may petition the court to order that an individual be taken into custody for emergency stabilization. The court then has 24 hours to respond to the request. In essence, this provision allows an individual to bypass the county human services department or department of community programs and directly seek an order for an emergency stabilization. This provision is of particular concern to our counties.

Given the high cost of institutional placements, as well as the statutory requirement that counties provide services in the least restrictive environment appropriate for an individual's needs, counties place a high value on providing effective community-based mental health programs. In the 2009-11 state biennial budget counties, along with advocacy organizations, requested language requiring any emergency detention of an individual be approved by the local county department of community programs in the county in which the individual was taken into custody before the individual can be admitted to a facility. Counties believe that this language has been a positive step forward for the state and its mental health consumers on many fronts. First and foremost, the inclusion of county crisis workers in the decision-making process has diverted individuals from unnecessary hospitalizations in favor of less restrictive options that respect the rights of individuals while continuing to ensure their safety and the safety of others. Second, our highly-trained crisis workers are familiar with most of the individuals they are called upon to assess, are educated on the diversion services available within the local community, and are well-positioned to determine if an emergency detention petition is warranted based on statutory criteria. Avoiding unnecessary emergency detentions also frees up scarce resources that can be utilized to expand community-based mental health services throughout the county. The decrease in the use of emergency detention beds throughout the state since the implementation of the 2009-11 budget language has produced better outcomes for individuals and shows our commitment to protecting client rights by providing services in the least restrictive environment appropriate for an individual's needs. Eliminating county involvement in the decision-making process will increase the number of emergency detentions across the state, decrease the use of community-based diversion programs, and significantly increase county costs.

County corporation counsel also have significant experience in working with local judges to determine whether or not probable cause exists to move a petition forward. Bypassing the county will result in increased workload for the court system for cases in which the "dangerousness" standard is not close to being met.

County Payment of Fees

Under the bill, if a county corporation counsel does not participate in a direct petition to the court and the court orders an emergency stabilization, the corporation counsel's county is required to pay all court costs, as well as the petitioner's attorney fees, including costs related to the use of "special counsel." Also under the bill, if a court orders an emergency stabilization after the county refuses to approve an emergency stabilization, the county must pay all court fees and the petitioner's attorney fees.

Under the current law "three-party petition" process, counties are often approached by family members seeking treatment for an individual, who is actually doing quite well, but not at the level the family expects. County staff works with families in those situations to explain the standards that need to be met and the need to protect civil liberties. The new process penalizes counties by forcing corporation counsel to participate in an emergency stabilization hearing, even in cases where it is clear the emergency detention standards will not be met, simply to avoid a potential penalty.

In addition, the bill lacks a statutory timeframe between the time a county refuses to approve an emergency detention and a direct petition to the court. If the direct petition to the court occurs two weeks after the county refuses to approve an emergency stabilization or two months after, will a county still be required to pay all legal fees if the petition is approved? A standard of dangerousness may not be met on the day the county refuses to approve, but could be met days later.

Rather than create a whole new statutory process to request an emergency detention, counties are open to discussions regarding potential modifications to the current three-party petition. We believe that will better protect an individual's civil rights and continue Wisconsin down the path of decreasing, rather than increasing, emergency detentions across the state.

Thank you for considering our comments.

WISCONSIN ASSOCIATION OF COUNTY CORPORATION COUNSEL

TO: Honorable Members of the Public Health Committee

FROM: Attorney Todd J. Liebman, Sauk County Corporation Counsel

DATE: October 22, 2013

SUBJECT: Opposition to Assembly Bill 451

The Wisconsin Association of County Corporation Counsels has authorized me to convey our organization's opposition to Assembly Bill 451 pertaining to involuntary mental commitments. In particular, the provisions creating a new process for individuals to seek the emergency stabilization of subjects under Chapter 51 is impractical and unworkable, and will surely lead to increased costs for counties, increased detentions, and may be detrimental to subject's legal rights.

County corporation counsels take our obligations to represent the interests of the public under Chapter 51 very seriously. Corporation counsel work daily with departments of human services, families, public defenders, the courts and advocacy groups to ensure that individuals receive the treatment and services they need and that proceedings are conducted in a manner which provides full due process for subjects being detained.

Our concerns center on the new process that allows any person to seek an emergency stabilization. There are several specific concerns that make this procedure unworkable and unwise.

1. The time frames are unreasonable. If an individual is in the hospital, the time frame is an extremely abbreviated six hours for a response from a county department. Under the circumstances, this may not be reasonable or practical.

2. The proposed process for individuals to bypass counties and law enforcement has significant potential for abuse. It takes a process where the interests are represented by corporation counsel as a representative of the public, and has the potential to turn it into a contest between two individuals.

3. The bill seeks to remove the discretion from corporation counsel's office, law enforcement, and county human services, and impose penalties on counties for good faith actions of public officers.

4. The bill tilts the law towards a finding of probable cause giving corporation counsel an incentive to argue for probable cause. As a representative of the public, there should not be a financial incentive to corporation counsel's client county to advocate for the deprivation of an individual's liberty.

5. Counties will incur increased transportation costs on cases that potentially, the county agencies and law enforcement believe do not meet criteria.

6. Having judges screen requests for emergency stabilization will have the practical effect of moving every case to a probable cause hearing and lead to increase hospitalizations and away from the positive progress made in providing community treatment programs. Judges do not have the resources to independently exercise their responsibilities under this new law, nor the time to, nor do counties have the opportunity to provide needed information. Judge will not be able to rely on county department's expertise or the corporation counsel's application of the law to the facts, benefits they have under the current process, in making these decisions.

7. The method of allocating court costs is extremely unusual in that it penalizes individuals who bring emergency stabilization actions and counties who oppose them in good faith, where the county is ultimately unsuccessful.

10. The cost to counties to hire special counsel will increase costs to counties over what they currently receive from corporation counsel for already budgeted amounts. This will act as an unfunded mandate for counties in addition to the already mentioned increase in number of hospitalizations.

Thank you for considering our comments today.

NAMI Wisconsin Testimony **October 22nd, 2013**
Public hearing - Committee on Health

Contact: Annabelle Potvin, Advocate, NAMI Wisconsin, annabelle@namiwisconsin.org, 608-268-6000, 4233 W Beltline Hwy, Madison, WI, 53703

AB 451

Good afternoon, Chairperson Severson and Members of the Committee. I want to sincerely thank you for taking the time to talk with us today.

My name is Annabelle Potvin and I am a staff member of NAMI Wisconsin, the Wisconsin state chapter of the National Alliance on Mental Illness.

We are the nation's largest grassroots organization on mental health, representing not only people living with mental illnesses, but also their family members and friends. So, you can imagine that something called the Family Empowerment bill drew the attention of many of our members.

NAMI Wisconsin strongly opposes AB 451. On behalf of our members, I'd like to present their main concerns.

1) We see many potential problems with anyone being able to individually petition the court. Even if the petition does not result in commitment, it is still very stigmatizing and disempowering for someone living with a mental illness to find out that someone believes their only option is commitment.
2) The term "family empowerment" implies that there is something empowering about having to commit someone. This shows a lack of insight into the trauma of that experience.
3) It is not clear who was involved in developing AB 451, but we are concerned that the lived experience of people living with mental illness and their families was not thoroughly consulted.
4) The bill does not define emergency stabilization and how this would differ from the current understanding of emergency detention.
5) It seems that someone could petition the court directly without first being required to petition the county via a 3-party petition. Many family members feel that they have gained a better understanding of civil commitment through the 3-party process and learned of other, less extreme options.
6) The bill requires counties to pay court fees if a judge finds probable cause, if the county had previously denied a request. This does not take into account changes that may have occurred in the person that is the subject of the petition.

(over, please)

I often hear from family members around the state who feel a commitment is necessary, but their petition does not go through. We strongly empathize with their situations, but, based on their input, I do not feel that AB 451, as it stands, will make their incredibly difficult situations any easier. NAMI Wisconsin recommends that this bill not move forward until the various impacted stakeholders can be brought together for a meaningful discussion.

Thanks again for your time.

AB 459:

Good afternoon, Chairperson Severson and Members of the Committee. Thank you again for taking the time to hear from us.

My name is Annabelle Potvin and I am a staff member of NAMI Wisconsin, the Wisconsin state chapter of the National Alliance on Mental Illness.

NAMI Wisconsin strongly supports AB 459, which would provide funding for Individual Placement and Support (IPS), an evidence-based supported employment program for individuals living with mental illness.

Extensive research has shown employment to be a key factor in recovery and increased quality of life. It also fits in well with the Legislature's interest in increasing employment.

Rather than reeling off facts and figures about the value of IPS, I'd like to read a brief testimony from an IPS program participant here in Madison.

"I think with mental illness there is a stereotype that it's really nothing, but it really is something. I had been looking for a job for almost a year before I got my job. It felt great when they said; 'You're hired.' I was like WHAT?! Chrysalis provided support when I felt frustrated with the job search. My employment specialist and I met weekly to complete job applications and talk about my anxiety. I am proud of myself because I am pushing myself out of my comfort zone; I am making friends and making money. My favorite thing about the job is meeting new people. It has been nice to work in a school district because people are really friendly. I also get peer support services at Chrysalis from Eric. We talk about my family situation and everyday life. It's helpful to talk to him because he has also been through some difficult things. He is someone I can talk to and relate with. My advice to someone who has been looking for work for a long time is to stay positive and keep applying, because you never know!"

Although we strongly support this bill, we see that the bill has a lot of detail that would be better dealt with at an administrative level within DHS and DVR, with the input of various stakeholders.

Thank you again for your time.

AB 450:

Good afternoon, Chairperson Severson and Members of the Committee. Thank you again for taking the time to hear from us.

My name is Annabelle Potvin and I am a staff member of NAMI Wisconsin, the Wisconsin state chapter of the National Alliance on Mental Illness.

We strongly support AB450, which would provide funding for crisis intervention training (CIT). NAMI has been a leader in CIT for many years and we have seen strong relationships between NAMI, law enforcement, mental health agencies and other stakeholders develop in communities with CIT.

CIT will improve safety, cut costs in the long-term and reduce the stigma of mental illness. We have recently been contacted by many law enforcement departments around the state are interested in CIT but do not have access to it in their community. This bill would open doors for them. We want to stress that any CIT programs established as a result of this funding should be based on the Memphis Model of CIT. In the Memphis Model, CIT is not just a training, but a meaningful and long-lasting partnership between law enforcement, NAMI, mental health agencies and other community stakeholders. It becomes not just a training, but, in the words of a CIT officer I recently spoke with "The new way of doing business, of doing the right thing." CIT officers speak passionately about how sensitivity to stigma and better understanding of mental health symptoms can completely change an interaction from one of needless escalation and arrest to connecting people to the community resources they need.

Our only concern about the bill is whether these are new funds being allocated or whether the legislation requires the Department of Health Services to fund this from an existing allocation. If it is the latter, this is problematic in that it will likely detract from other important initiatives.

Thank you again for your time.

WISCONSIN HOSPITAL ASSOCIATION, INC.

October 22, 2013

To: **Members of the Assembly Health Committee**

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

Re: **WHA supports Assembly Bill 451 – The Family Empowerment Bill**

The Wisconsin Hospital Association (WHA) supports Assembly Bill 451, the Family Empowerment Bill, a bipartisan bill that would empower families and treating health care providers to help an individual with mental illness that they believe is an imminent danger to themself or others get necessary involuntary emergency stabilization.

Under current law, an individual with mental illness may be temporarily detained (no more than 72 hours) to receive emergency stabilizing treatment if the person evidences a danger to themself or others and is not willing to agree to treatment. Such temporary detention (renamed stabilization under the bill) is generally initiated by law enforcement and must be approved by a county crisis agency. **Under current law, there is no mechanism for family members or treating health care providers to independently challenge a decision by law enforcement or a county crisis agency to deny such emergency, temporary detention/stabilization.**

WHA has long expressed concerns from families and health care providers that sometimes county crisis agencies unreasonably deny requests to approve temporary, emergency, involuntary stabilizing treatment for individuals with mental illness that the treating health care provider believes is a danger to themselves or others. WHA has also noted that such denials may be related to the fact that Wisconsin is one of only 2 states in the country that places a significant share of the funding responsibility on county government for mental health care.

WHA supports this bill, because it gives families and treating health care providers an ability to challenge a decision by a county crisis agency to not approve and initiate a temporary, emergency, involuntary treatment for a mentally ill individual that the health care provider believes is a danger to themselves or others. The bill accomplishes this in two key ways:

1) Families and treating health care providers would gain the right to formally request that a county crisis agency initiate and approve an emergency stabilization (formerly called an emergency detention), and have a right to receive from the county a written explanation of a denial of such request.

2) Families and treating health care providers would gain the right to petition a court to order a temporary (no more than 72 hours) emergency stabilization (formerly called an emergency detention) if the county crisis agency denied the request. **Besides the safeguard of having a judge reviewing the petition and making the order, safeguards have been built into the bill to limit the use of this right so as to not significantly increase the number of emergency stabilizations/detentions in Wisconsin.**

Importantly, this bill does not modify any consumer/patient rights regarding proceedings for a full, long-term commitment.

We ask to you to vote in support of Assembly Bill 451. 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.

STATE OF WISCONSIN, CIRCUIT COURT, ______________________ COUNTY

For Official Use

IN THE MATTER OF THE CONDITION OF

____
Name of Subject

____
Date of Birth

Statement of Emergency Detention by Law Enforcement Officer

Law Enforcement
Agency No. ______________
Court Case No. ______________

- ***File this statement with the detention facility and court immediately. A probable cause hearing must be held within 72 hours of detention.*** ***(In Milwaukee County, file this statement with detention facility only.)***
- ***Please print or type all information below. All blanks must be filled in.***

I am a law enforcement officer and have cause to believe:

- The subject is mentally ill, drug dependent, or developmentally disabled.
- The subject evidences behavior which constitutes a substantial probability of physical harm to self or to others, or as otherwise set forth in §51.15(1), Wisconsin Statutes.

My belief is based on specific and recent dangerous acts, attempts, threats or omissions by the subject as observed by me or reliably reported to me as stated below:

Dangerous Behavior:
When: ______________________

Where: ______________________

Describe Behavior: ______________________

____

____

____

☐ ***See attached page***

Witnesses to the dangerous behavior: (including officers who observed behavior)

Name of Witness	Telephone	Mailing Address	Relationship

(Name) ______________ of the ______________ County department of community programs (§51.42(3) Board) approves the need for this detention.

The subject was detained at (Name of §51.15(2) Facility) ______________________,
on (Date) ______________, at (Time) __________ ☐ am. ☐ pm.

Subject's Street Address	City	County	State	Zipcode

DISTRIBUTION:
1. Court – Original
2. §51.15(2) Detention Facility
3. Subject with Notice of Rights

Signature of Officer	Department
Name Printed or Typed	Telephone

This form shall not be modified. It may be supplemented with additional material.

Wisconsin State Public Defender

315 N. Henry St. - 2nd Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087 / Fax Number: 608-267-0584
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Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

October 21, 2013

Representative Erik Severson
Chair, Assembly Committee on Health
P.O. Box 8953
Madison, WI 53708

Chair Severson and members,

The Office of the State Public Defender has identified two concerns with the language included in Section 13 of Assembly Bill 451.

The first concern is language on **page 16, line 19** which reads "Notwithstanding the emergency stabilization procedures under subs. (4) and (5)..." The sections referred to in that language are s. 51.15(4) and (5). Language in subs. (4)(b) and (5) requires that treatment directors examine the patient and determine if grounds exist for detention.

The intent of the bill as it's been explained is to allow another path to initiate an emergency detention via a petition filed by a family member, but that once the petition is granted, the Chapter 51 detention process runs similar to current law. Removing the ability for a treatment director to continue detention or discharge a patient prior to the probable cause hearing works against the ability of a treatment professional to provide care that is in the best interests of the patient and in the least restrictive treatment alternative available.

Removing this language from the draft would allow treatment facilities to preserve their current ability to make additional detention decisions based on the mental condition of the patient.

The second concern is the language on **page 16, lines 23-25** which reads "...except that the court may order the probable cause hearing to take place at a later time if it determines that the timing is unreasonable…" In the context of the bill, this language would allow the judge to set the probable cause hearing at an indefinite time when the judge grants the petition under this new process. There is a well-established body of caselaw that supports the current requirement that the probable cause hearing occur within 72 hours of delivery of the individual to the treatment facility.

Removing this language would ensure that this process would continue to follow existing statute and case law.

We have had several conversations with the bill author's office and he has been very receptive to looking at this language. We intend to meet with Representative Jagler later this week to discuss these issues and possible amendments.

Sincerely,

Adam Plotkin
Legislative Liaison, Office of the State Public Defender

Kathryn A. Ackley CPS
114 Talmadge St.
Madison, WI. 53704

Let's look at our history so we don't repeat bad legislation and cause more harm than has already been done to the mental health addiction community.

Michelle R. Smith of the Associated Press has an excellent article regarding the history of how the system has evolved. 50 years ago in 1963, JFK signed legislation for "The Community Mental Health Act", which helped transform the way people with mental illness are treated and cared for in the US". He said "the idea was to successfully and quickly treat patients in their own communities and then return them to "a useful place in society." It is clear that Kennedy's vision was never fully realized.

Deinstitutionalization dumped a lot of people out to fend for themselves, frequently turning to drugs and alcohol, filling the jails, homeless shelters and streets. This spurred a movement to guarantee rights to people with mental illness; laws were changed in every state to limit involuntary hospitalization so people can't be committed without their consent, unless there is a danger of hurting themselves or others.

Now, instead of following through with JFK's original legislation, the legislators want to take our laws back to the dark ages when all a husband or someone had to do was make a phone call to have his wife/family member etc. committed against their will.

LET'S FIX THE MENTAL HEALTH SYSTEM THAT HAS PROVEN TO WORK IN THE BEST INTEREST OF EVERYONE. NOT CHANGE THE LAWS

Let's implement JFK's original legislation by:

- Opening respite centers/houses where a person can go when symptoms flair up and they feel safe instead of avoiding a hospitalization. This has proven to be fiscally smart and compassionate to those in need.
- Develop housing for the homeless
- Creating workshops where people can regain their social skills etc.
- Invest in duel diagnosis treatment centers
- Invest in "bullying" training
- Break the stigma of addiction/mental illness

These are just a few of the things society (legislators) can to turn around the mayhem that is occurring throughout the country.

Kennedy's Vision for Mental Health Never Realized

PROVIDENCE, R.I. October 20, 2013 (AP)
By MICHELLE R. SMITH Associated Press

The last piece of legislation President John F. Kennedy signed turns 50 this month: the Community Mental Health Act, which helped transform the way people with mental illness are treated and cared for in the United States.

Signed on Oct. 31, 1963, weeks before Kennedy was assassinated, the legislation aimed to build mental health centers accessible to all Americans so that those with mental illnesses could be treated while working and living at home, rather than being kept in neglectful and often abusive state institutions, sometimes for years on end.

Kennedy said when he signed the bill that the legislation to build 1,500 centers would mean the population of those living in state mental hospitals — at that time more than 500,000 people — could be cut in half. In a special message to Congress earlier that year, he said the idea was to successfully and quickly treat patients in their own communities and then return them to "a useful place in society."

Recent deadly mass shootings, including at the Washington Navy Yard and a Colorado movie theater, have been perpetrated by men who were apparently not being adequately treated for serious mental illnesses. Those tragedies have focused public attention on the mental health system and made clear that Kennedy's vision was never fully realized.

The legislation did help to usher in positive life-altering changes for people with serious illnesses such as schizophrenia, many of whom now live normal, productive lives with jobs and families. In 1963, the average stay in a state institution for someone with schizophrenia was 11 years. But only half of the proposed centers were ever built, and those were never fully funded.

Meanwhile, about 90 percent of beds have been cut at state hospitals, according to Paul Appelbaum, a Columbia University psychiatry professor and expert in how the law affects the practice of medicine. In many cases, several mental health experts said, that has left nowhere for the sickest people to turn, so they end up homeless, abusing substances or in prison. The three largest mental health providers in the nation today are jails: Cook County in Illinois, Los Angeles County and Rikers Island in New York.

"The rhetoric was very highfalutin. The reality was a little more complicated, and the funds that were provided were not adequate to the task," said Steven Sharfstein, president

and CEO of Sheppard Pratt Health System, a nonprofit behavioral health organization in Baltimore.

"The goals of deinstitutionalization were perverted. People who did need institutional care got thrown out, and there weren't the programs in place to keep them supported," said former U.S. Rep. Patrick Kennedy, the president's nephew. "We don't have an alternate policy to address the needs of the severely mentally ill."

He is gathering advocates in Boston this week for the Kennedy Forum, a meeting to mark the 50th anniversary of his uncle's legislation and an attempt to come up with an agenda for improving mental health care.

The 1963 legislation came amid other changes in treatments for the mentally ill and health care policy in general, Appelbaum said. Chlorpromazine or Thorazine, the first effective antipsychotic medicine, was released in the 1950s. That allowed many people who were mentally ill to leave institutions and live at home.

In 1965, with the adoption of Medicaid, deinstitutionalization accelerated, experts said, because states now had an incentive to move patients out of state hospitals, where they shouldered the entire cost of their care, and into communities where the federal government would pick up part of the tab.

Later, a movement grew to guarantee rights to people with mental illness. Laws were changed in every state to limit involuntary hospitalization so people can't be committed without their consent, unless there is a danger of hurting themselves or others.

Kennedy's legislation provided for $329 million to build mental health centers that were supposed to provide services to people who had formerly been in institutions, as well as to reach into communities to try to prevent the occurrence of new mental disorders. Had the act been fully implemented, there would have been a single place in every community for people to go for mental health services.

But one problem with the legislation was that it didn't provide money to operate the centers long-term.

"Having gotten them off the ground, the federal government left it to states and localities to support," Appelbaum said. "That support by and large never came through."

Later, during the Reagan administration, the remaining funding for the act was converted into a mental health block grant for states, allowing them to spend it however they chose. Appelbaum called it a death knell because it left the community health centers that did exist on their own for funding.

Robert Drake, a professor of psychiatry and community and family medicine at Dartmouth College, said some states have tried to provide good community mental health care.

"But it's been very hard for them to sustain that because when state budget crunches come, it's always easiest to defund mental health programs because the state legislature gets relatively little pushback," he said. "Services are at a very low level right now. It's really kind of a disaster situation in most states."

Sharfstein points out that most mentally ill people are at a very low risk of becoming violent. He said it's unthinkable we would go back to the era when people were housed in "nightmare" conditions at overcrowded, understaffed and sometimes dangerous state hospitals.

"The opportunity to recover is much greater now than it was in 1963," he said.

But for those who do not take their medication, don't recover from their first episode of illness and don't seek treatment and support from professionals, they are vulnerable to homelessness, incarceration and death, he said.

Linda Rosenberg, president and CEO of the National Council for Behavioral Health, counts among its 2,100 member organizations many of the original community mental health centers that were built under the 1963 legislation.

"Whenever you pass a piece of legislation, people would like to think that you've solved the problem," she said. "It did some very important things. It laid some ground work. It's up to us now to move forward."

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Associated Press news researcher Judith Ausuebel in New York contributed to this report.

WISCONSIN BOARD FOR PEOPLE
WITH DEVELOPMENTAL DISABILITIES

October 22, 2013

Assembly Health Committee
Representative Severson, Chair
State Capitol, 221 North
Madison, WI 53707

Dear Rep. Severson and members of the Committee:

Thank you for the opportunity to comment on proposed Assembly Bill 451.

The Wisconsin Board for People with Developmental Disabilities (BPDD) advocates on behalf of people with developmental disabilities such as autism, brain injury, cerebral palsy, epilepsy, Prader-Willi syndrome, and intellectual disability, and is charged with representing the interests of the disability community in Wisconsin. Sixty percent of the board—appointed by the Governor— are people with developmental disabilities or family members of people with developmental disabilities.

The Board appreciates the effort to help individuals in crisis who are in danger to themselves or others. However, the Board feels that the bill as proposed unintentionally creates a mechanism that can be abused, and that will ultimately not result in improved mental health for the individual or improved public safety for the community.

Public policy for people with developmental disabilities has come a long way in the past forty years. Wisconsin has recognized that segregation and institutionalization of people with disabilities have been detrimental to individuals and costly to taxpayers. Although there is still progress to be made, today people with developmental disabilities are living, working, and participating in our communities.

This bill takes us back in the opposite direction by codifying a process whereby anyone can anonymously file a request or go to court to have someone involuntarily committed if they believe a person is a danger to themselves or others.

People with developmental disabilities face stereotypes and discrimination in their daily lives. Some common stereotypes of people with developmental disabilities are that they are not intelligent, that they cannot learn, or they cannot do things for themselves. Some people believe that the presence of a developmental disability is an indication that the person is dangerous. None of these things are true—as public policies that have successfully fostered employment, inclusion, education, and self-determination for people with disabilities demonstrate. But unfortunately old ways of thinking persist.

The proposed "emergency stabilization" process empowers any member of the public to assess another's behavior as atypical, and initiate a response from law enforcement, county mental health, or the courts that results in the respondent being taken into custody and held. However, a lay person's opinion may not be an accurate reflection of whether a person with a developmental disability is a threat to the community or themselves.

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People with conditions such as autism and similar developmental disabilities can experience sensory stimuli that are fundamentally different from the typical population, and their reactions to their environment can appear different or even alarming to an untrained eye. An expert observing the same individual with autism might recognize the same behaviors as very common for a person with autism. Sometimes people with developmental disabilities are not able to communicate in the same ways—for example, they may be non-verbal or have difficulty speaking—and frustration might be interpreted as anger or threat. Allowing lay people to act on their assumptions without any formal training or even basic knowledge about a specific disability is a dangerous direction for public policy.

Law enforcement officers are trained to evaluate whether behaviors of individuals meet the legal criteria to be taken into custody. County staff evaluate and confirm whether an individual taken into custody by law enforcement should be detained. Currently there is a check and balance between two sets of trained professionals to evaluate whether an individual's acts, attempts to act, or omissions of action observed by or reported to the officer are a threat to themselves or others and warrant removal from the community and confinement. This bill would enable persons with no training to initiate an involuntary commitment process, and do so anonymously. And if law enforcement or county staff does not agree that there is a need for detention, the complaining party could bypass law enforcement and county assessments via the court.

The "emergency stabilization" process could also be abused as a convenient way to remove people from the community whose behavior may make others uncomfortable, but may pose no threat to the community or the individual's safety. Some people with developmental disabilities have been targeted by neighbors because of their disability. For example, in August 2013 a family in Toronto received an anonymous letter from a neighbor complaining about their son's behavior. The letter referred to the family's 13 year old autistic son as a "nuisance" and "wild animal," and recommended the family move or "euthanize" the child. If this bill was law, that neighbor could file a formal complaint triggering law enforcement, county, and/or court response. The proposed bill does not restrict the number of times someone can file a formal request for "emergency stabilization" nor require new information be included in subsequent complaints. An ill-willed neighbor could use this process—over and over—as a tool to harass individuals they do not want in their community – all at taxpayer expense.

Historically, people with developmental disabilities sometimes ended up being institutionalized for someone else's convenience. As a population, people with disabilities often rely on caregivers and community supports to maintain their independence. The threat of instituting an involuntary commitment process could be used by unscrupulous caregivers/family members/acquaintances as leverage to get individuals with disabilities to make financial or other decisions that are in the caregiver's favor or set up a climate to cover abuse.

The Board cannot support this bill in its current form.

Thank you for your consideration,

Beth Swedeen, Executive Director
Wisconsin Board for People with Developmental Disabilities

disability**rights** | WISCONSIN

Assembly Committee on Health Public Hearing
October 22, 2014
Testimony from Disability Rights Wisconsin

Barbara Beckert, Milwaukee Office Director
Kristin M. Kerschensteiner, Managing Attorney

Thank you for the opportunity to present testimony today regarding bills advanced by the Speaker's Task Force on Mental Health, as well as the Chapter 51 Legislative Council Study Committee.

Disability Rights Wisconsin (DRW) is the protection and advocacy agency for people with disabilities in our state. DRW is part of a national network of protection and advocacy agencies, mandated by Congress to protect the rights of people with disabilities, address abuse and neglect, and support the right of people with disabilities to live as independently as possible in the community. Our three offices – in Madison, Milwaukee, and Rice Lake - assist Wisconsinites with mental illness and other disabilities with a wide range of advocacy needs including concerns about neglect and abuse, poor quality mental health services and discharge planning, difficulties accessing community mental health services, difficulty accessing special education services, and disability related discrimination.

Wisconsinites with mental health needs have often struggled to access services because of a system which has an overreliance on costly and traumatizing institutional and crisis services and a shortage of recovery oriented community mental health services. We were pleased to work with Governor Walker, the Department of Health Services, and legislators to advance proposals in the biennial budget that will move Wisconsin forward by increasing access to quality community services, including Comprehensive Community Services (CCS), Coordinated Service Teams (CST), and peer run respite. We were also pleased to have the opportunity for dialogue with legislative committees that have focused on mental health.

We commend Speaker Vos, Chairman Severson, Vice Chair Pasch, and members of the Speakers Task Force on Mental Health, as well as members of the Chapter 51 Legislative Council Study Committee, for their dedication to improving mental health in Wisconsin. DRW Managing Attorney Kristin Kerschensteiner served on the Study Committee and took an active role the Committee's deliberations and development of recommendations. Thank you for your consideration of our recommendations:

Strongly Oppose (AB451)

DRW strongly opposes AB451 and are concerned that this bill was developed without input from people with mental illness and developmental disabilities whose lives and civil rights would be most directly impacted. We served on the recent Legislative Council Study Committee on Chapter 51 which included a broad group of stakeholders representing people with lived experience of mental illness, advocates, family members, corporation counsels and hospital. The study committee deliberated carefully on potential changes to commitment procedures and did not choose to make this recommendation. In contrast, AB451 was not developed in partnership with stakeholders and has generated grave concerns.

Our concerns regarding AB451 include the following:

- Recharacterizing an emergency detention as "emergency stabilization" is not reflective of the process embedded in the statutory emergency detention language and is misleading. Detention is a legal term used to indicate the fact that an individual is not free to go. Although the statutory conditions of detention remained unchanged, for example, individuals retain their right to refuse treatment during this time, the use of "stabilization" implies that treatment can be required, and more importantly, interjects the conclusion that any individual so detained is, in fact, unstable.

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- The ability of "any person" to initiate an "emergency stabilization" weakens the legal safeguards to a level far below what is minimally required to meet statutory and constitutional requirements. The proposed process relies on uncorroborated opinions of nonexperts and does not even require that personal knowledge form the basis of a formal request. This could impact county services greatly, since every allegation that someone has a mental illness, is drug dependent or has a developmental disability and has impaired judgment or is dangerous in the eyes of an untrained requestor requires that the county respond in 24 hours or less. Furthermore, the fifth statement required in the proposed petition enlarges on grounds for commitment to include impaired judgment leading to injury of others. Currently, 51.20(1)(a)(2)(c) only refers to "physical impairment or injury to himself or herself."
- In the case where the requestor believes the individual has a mental illness; the simple allegation that the person can't satisfy their basic needs, which is commonly referred to as "the fifth standard," can lead to a detention. For example, a recent loss of a job or apartment could form the grounds for an "emergency stabilization." In fact the fifth statement required in the petition enlarges on grounds for commitment by including impaired judgment leading to injury of others (currently only self)The proposed process in this bill lacks even the most meager due process protections and would likely violate both state confidentiality statutes and the federal constitution. The required county response requires disclosure of protected health information in violation of both state and federal law. Wisconsin courts have held that even an individual's name and information created by law enforcement under Chapter 51 emergency detention procedures are confidential and the written response by either law enforcement or county services would violate §51.30 and federal Hippa laws.
- Under existing law (§51.20(1)(b), at least one petitioner must have personal knowledge of the facts alleged in the petition. Under this bill, the only requirement is that the petitioner include the names of persons observing or reporting the facts in an unsworn petition. This allows petitions based on uncorroborated facts repeated from individual to individual and who are not a party to the proceeding and thus would not be covered by the bill's penalties for false statements. The bill allows for a petitioner, to go directly to court, without even submitting a formal request to the county or law enforcement, and through an ex parte process require a judge to decide within 24 hours whether to take an individual into custody -- without benefit of any objective evaluation or even notice to the person who is the subject of the petition.
- Existing law strongly states that the probable cause hearing on the petition for involuntary commitment must be held within 72 hours (excluding weekends and holidays) – no exceptions, unless the respondent requests a delay. Under this bill the court is authorized to set the probable cause hearing for a later time if it determines that 72 hours is "unreasonable".

Oppose (AB453)

DRW opposes AB453 as it would result in the reduction of the rights individuals currently enjoy under Wisconsin's mental health confidentially law. While the sharing of protected health information may be a desirable goal, the fact remains that studies have shown that when healthcare providers are aware of a patient's mental illness they are more likely to discount the individual's health complaints and concerns. Wisconsin law currently allows for the sharing of certain limited information about an individual's mental health without consent. In order to go beyond this, all that is needed is a discussion with the patient and informed consent. Many people living with mental illness indicate that they would likely give this consent if they were simply consulted. Furthermore, it is unclear what the extent of technological advantage would be gained since federal law continues to require segregation of confidential health information about substance abuse disorders, which are frequently co-occurring with mental illness and would continue to require the maintenance of an electronic "firewall" to protect this information.

trongly Support (AB459)

DRW strongly supports **AB459** which would move Wisconsin forward with increasing the number of people with mental illness in competitive employment, and further advance Governor Walker's commitment to expanding employment supports for people with disabilities. Although many people with serious mental illness want to work in competitive employment, our service delivery system has been slow to respond to this need and to offer the needed services and supports to assist consumers in achieving their employment goals. IPS (Individual Placement and Support) is an evidence-based practice approach that was developed to help promote the recovery of people who have serious mental illness through competitive jobs related to their employment preferences. Wisconsin has made some promising first steps with a pilot of IPS – this proposal would build on that successful pilot and increase the number of people with mental illness in competitive employment. The bill includes very detailed specifics regarding implementation of IPS. We suggest that the legislature provide the broad outlines of the program, and request that DHS and DVR develop a detailed plan on implementation.

Support (AB450, AB452, AB454, AB455, AB456, AB458, AB460)

DRW supports **AB450** which would allocate funds to provide Crisis Intervention Team training to law enforcement. Law enforcement, advocates, and people with lived experienced of mental illness have partnered to develop several successful CIT programs in. The training provides law enforcement with a better understanding of mental illness and of how to most effectively respond in a mental health crisis, as well as knowledge of community resources and contacts. It has been challenging to expand CIT and sustain existing programs, because of the time commitment and related costs to develop and attend the training. Our only concern is whether new funds will be allocated for this initiative or if DHS will be asked to fund this from an existing allocation. If that is the case, we are concerned this may take away needed funds from other important initiatives.

DRW supports **AB452** which would create a Child Psychiatry Consultation Program. There is a nationwide shortage of child psychiatrists which is affecting Wisconsin, and primary care providers are serving children and adolescents with mild or moderate mental health care needs. These primary care providers need expert assistance to provide enhanced care to these children. The most successful model of providing these services include a child psychiatrist, a therapist, a care coordinator and appropriate administrative support, as this bill includes. All of these components are important for this service to actually meet the needs that are currently surfacing. While this is not the answer to all of the unmet needs for youth with mental health issues, it is a step toward providing better care for those who are currently being served by primary care providers, who don't have all of the training that they need. We recommend support of this bill with adequate funding to support the full implementation of a Child Psychiatry Consultation Program.

DRW support **AB454, c**reation of a primary care and psychiatry shortage grant program. The shortage of primary care physicians and psychiatrists contributes to the barriers people with disabilities face in accessing medical and mental health care. We support these efforts to address provider shortages and improve access.

DRW supports efforts to advance development of peer-run respite centers. We commend the intent of **AB455**, but note that this proposal would have DHS contract directly with counties rather than with peer run organizations. We encourage integration with Governor Walker's budget initiative which will have DHS develop expertise to contract directly with peer run organizations.

DRW supports **AB458** which proposes changes to the MA program mental health benefits and reimbursement. We believe this will make it easier for individuals to obtain the services they need in a timely matter, by creating fewer barriers to get the necessary prior authorizations. In particular, we

support the changes regarding in home therapy, to allow children to receive that benefit without first failing outpatient therapy and to allow certain families where a child is getting day treatment to receive in-home therapy. In-home therapy is a different service than outpatient therapy and has better outcomes for many children, so DRW has been in support of changing this law to allow individuals to obtain the services without the currently required failure, which can be a setback for youth. The Survival Coalition has also shared with DHS broader concerns regarding the difficulties posed by the Medicaid prior authorization process which significantly reduces access to a set of services that are essential to people with disabilities. The impact on the quality of life for individuals with disabilities and the willingness of providers to serve them is of tremendous concern. We have requested a meeting to discuss the current process and opportunities for improvement that could benefit providers and recipients while meeting DHS' obligation to the Medicaid program.

DRW recognizes that in certain areas of the state, use of telehealth or telepsychiatry for mental health services is beneficial for accessing necessary services and does not oppose this provision. However, telehealth, including for mental health services, is not a long term solution to the lack of access and shortage of qualified psychiatrists or other physicians in the state.

DRW supports the intent of **AB460**, to provide grants to develop mental health mobile crisis units in rural areas. Having trained mental health professionals respond to crisis situations should be more effective and helpful for consumers, and also reduce the role of law enforcement in many cases. Rural areas in Wisconsin are especially lacking in mobile mental health crisis resources. We support this initiative if there are new funds to support it, rather than reallocating funds from other initiatives.

Joint Legislative Council Proposals. DRW supports **AB435** relating to admission of minors for inpatient treatment and **AB436** relating to county board committee appointees, which were advanced by the Chapter 51 Legislative Council Study Committee. DRW participated in that process and in the collaborative effort by stakeholders to develop these consensus proposals.

Personal Written Testimony Opposing "Emergency Stabilization" in AB 451

Submitted by Sandra Ahrens
3647 Hallie Lane
Eau Claire, WI

I am writing to register my strong opposition to the proposed legislation AB 451, which amends existing law on emergency detention. These proposed changes would allow any person to request that another person be taken into custody for what is termed "emergency stabilization." It would most likely make it easier to detain people for "emergency stabilization." There is no penalty for the person requesting that another person be deprived of their freedom if that request is wrongly based, unless it is intentionally false, but there is a penalty for counties that reject pursuing the request because it is not judged to meet the standards for evidence of dangerousness to self or other. And all of these factors contribute to the likelihood that people who are neither dangerous or in need of treatment will undergo the traumatizing experience of being deprived of their freedom, meanwhile diverting time, energy, attention and funds to solutions grounded in democratic principles, evidence-based community mental health programs, public education and common sense.

I suspect that many people believe that the common sense approach to the threat embodied in recent mass shootings is such legislation as AB 451. But as legislators, you have a duty to inform yourselves beyond that of the average citizen, who has little access to the research that proves that people with a mental health diagnosis are no more likely than the general public at large to be violent. Nor is the average citizen likely to find in the popular media the considerable body of evidence that exists and can demonstrate that forced treatment not only does not work, it very often propels people farther from services, community and the possibility of recovery because it is traumatizing, stigmatizing, and, very important to remember, often just not helpful for any of the issues it is supposed to address. Foremost among the reasons that it's not helpful is that it excludes any meaningful participation by the person that holds the answers of what will be helpful to them. Members of the general public are not likely to come across the lively and very far from resolved debate in the scientific community about whether there is in fact any biological basis for mental illness. And finally, unless they know someone like me and the people I work with and for, they will not know that mental health recovery is not only possible, it happens all the time, and the things that are proven to support mental health recovery cannot be delivered by force. People with mental health needs first and foremost have the same needs as everyone else: safe housing, decent employment, good health care, a community in which they can participate. Among those needs is the need to have their rights

preserved, guarded and protected against threats that are not founded in good science, good law, or informed public opinion.

I am a person who is currently working in the field of peer-led mental health recovery. The proof of recovery that is most compelling for me is not the evidence that you will be able to find amply documented in good scientific research, but my own personal struggle for mental health and wellness, which included multiple hospitalizations over a period of decades. I am fortunate that my experiences led me to wellness and recovery. Among the reasons they did: I had decent insurance coverage which provided access to services, I was given choices in what those services were, and I eventually found a significant community of peers who supported my recovery.

I was only detained once, many years ago; fortunately, that detention did not result in my commitment. What I remember so clearly is that all of my actions were viewed through a lens of assumption. When I missed breakfast, it was documented as "refusing to eat," when in actual fact I did not wake up right away due to the exhausting and dehumanizing process that brought me to the hospital. After hearing the stories of many of my peers, I know that this example is pretty benign. It did serve to instruct me that when people are predisposed to see someone as "mentally ill," there is a distinct, but I think largely unconscious distorting lens that begins to be applied. And so I foresee that well-meaning but ill-informed people will engage in a process that they think will enhance personal and public safety, when in fact it will not.

If you want to increase the mental health of Wisconsin citizens, please support the direction of funds into good, evidence-based community services at all levels. Support community education that could begin to counteract the alarmist and erroneous picture created by irresponsible and sensationalist media coverage. When there is a clear need to protect an individual, the community or both, make sure that the protection of individual rights is given the weight it deserves. I believe that this proposed change undermines rights in a way that is unnecessary and would be ineffective. It would be punitive to individuals and counties. I do not think that rights can be traded for safety, and in this case, I think there would be no gain in safety, only a serious loss of rights.

Respectfully,

Sandra Ahrens
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