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## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

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### Civil Immunity Under Wisconsin's Good Samaritan Laws

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To encourage persons to assist others in emergencies, Wisconsin law provides immunity from civil liability in certain circumstances under statutes informally referred to as “Good Samaritan” laws. Specifically, Wisconsin law grants civil immunity to any person rendering emergency care to another at the scene of an emergency or accident. In addition, the Legislature recently passed 2015 Wisconsin Act 103, which provides civil immunity to any person for damages resulting from forcible entry into a vehicle to prevent imminent bodily harm to a person or animal inside the vehicle. This Information Memorandum provides the history and an overview of Wisconsin’s “Good Samaritan” laws that afford civil immunity for acts related to emergency care and protection from imminent danger.

While Wisconsin law provides for immunity in various civil and criminal contexts, this memorandum focuses on the emergency-related immunity provisions set forth in s. 895.48, Stats., and the recently enacted s. 895.484, Stats.<sup>1</sup>

#### **EMERGENCY CARE**

##### ***CURRENT LAW***

Under current law, **any person** who renders **emergency care** at the scene of any emergency or accident in good faith is **immune** from civil liability for the person’s acts or omissions in rendering such emergency care. [s. 895.48 (1), Stats.] Known as the “Good Samaritan” law, the provision encourages members of the public to aid others who need prompt emergency care, without fear of being sued.

However, the immunity afforded under the Good Samaritan law does not apply when employees trained in health care or health care professionals render emergency care for compensation and within the scope of their usual and customary employment or practice at a hospital or other

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<sup>1</sup> Chapter 895, Stats., provides statutory exemptions from civil liability in an array of contexts. Beyond ch. 895, Stats., several statutes provide persons with immunity from civil or criminal liability in certain circumstances, including the following non-exhaustive examples: s. 450.11 (1i) (c) (providing immunity from civil or criminal liability to persons who deliver, dispense, or administer an opioid antagonist to another person, subject to exceptions); s. 961.443 (providing immunity from criminal prosecution for specific crimes to a person who aids another in certain overdose situations); and s. 939.48 (providing a presumption of immunity for criminal actions involving force that is intended or likely to cause death or great bodily harm in certain self-defense circumstances). For more information on the opioid- and overdose-related examples, which includes legislation from the 2015-16 Legislative Session, see Information Memorandum 2016-11, “Opioid Epidemic: Wisconsin’s Legislative Response,” November 30, 2016 at: <https://legis.wisconsin.gov/lc>.

institution equipped with hospital facilities, at the scene of any emergency or accident, enroute to a hospital or other institution equipped with hospital facilities, or at a physician's office. [s. 895.48 (1g), Stats.] In other words, "on duty" health care professionals do not qualify for immunity when rendering emergency care.

### **LEGISLATIVE HISTORY**

The immunity's application to **any person** rendering emergency care in good faith at the scene of an emergency or accident was part of a 1977 amendment to the original Good Samaritan law, which exempted only **doctors and nurses** from civil liability when rendering emergency care in good faith at the scene of an emergency. [1963 Wis. Laws s. 94 and 1977 Wis. Laws ch. 164.] In the original law, "scene of an emergency" was defined as "those areas not within the confines of a hospital or other institution which has hospital facilities, or a physician's office." [ss. 147.17 (7) and 149.06 (5), 1963 Stats.] In 1977, the Legislature created s. 895.48, Stats., which in effect revised the Good Samaritan law to extend the immunity to all persons and to create an exception for "on duty" health care professionals, both of which remain under current law. [1977 Wis. Laws ch. 164.<sup>2</sup>]

### **JUDICIAL INTERPRETATION**

In the decades following the 1977 expansion, the Legislature has amended the Good Samaritan law to include civil liability exemptions in other circumstances, such as: any person providing, in good faith, assistance or advice in mitigating the effects of the discharge of a hazardous substance [1987 Wis. Act 14]; certain medical professionals rendering voluntary health care to participants in athletic events in specific circumstances [1993 Wis. Act 109]; and certain qualifying people rendering emergency care using a defibrillator [1999 Wis. Act 7]. However, none of the amendments have defined the statute's key terms, such as "care," "emergency," or "scene of emergency."

In 2006, the Wisconsin Supreme Court decided *Mueller v. McMillan Warner Insurance Co.*, 290 Wis. 2d 571 (2006), a case requiring the court to interpret and apply the Good Samaritan law. Specifically, in *Mueller*, the court analyzed whether the civil immunity afforded by s. 895.48, Stats., applied to persons who initially evaluated, assisted, and treated another person who arrived at their home immediately after an accident, and subsequently called 911 six to seven hours after their initial evaluation and treatment. In performing this analysis, the court interpreted the language of s. 895.48, Stats., and defined the terms "scene of emergency or accident" and "emergency care."

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<sup>2</sup> The original Good Samaritan law consisted of two statutes, one governing licensed nurses [s. 149.06 (5), 1963 Stats.], and the other governing professionals licensed to "treat the sick." [s. 147.17 (7), 1963 Stats.] 1977 Wis. Laws ch. 164 repealed the statute providing immunity from civil liability to nurses, amended the companion statute in the chapter governing licensed medical practices, and created one Good Samaritan statute, s. 895.48, Stats., that applies to all persons. The term "scene of emergency" is not defined under s. 895.48, Stats., though that term remains defined under the chapter governing licensed medical practices, now ch. 448, Stats., but is applicable only to that chapter. [See s. 448.01 (9s), Stats.]

In *Mueller*, the Wisconsin Supreme Court first clarified that the Good Samaritan law contained the following three elements, all of which must be met in order for the civil immunity to apply:

- Emergency care must be rendered **at the scene of an emergency**.
- The care rendered must be **emergency care**.
- Any emergency care must be rendered **in good faith**.

[*Id.* ¶¶ 23-24 (emphasis in original).]

Second, the *Mueller* court examined the requirement that care be rendered at “the scene of emergency or accident.” While the statute did not define the term, the court noted the original Good Samaritan law’s definition of “scene of an emergency” as “areas not within the confines of hospital or other institution which has hospital facilities or the office of a person licensed or certified under this chapter.” [*Id.* ¶ 28 (citing s. 448.04, 1975 Stats.).] The court agreed with the circuit court’s reasoning that, in order to achieve the statutory purpose of encouraging individuals to provide emergency care to an injured person, the emergency’s “scene” should follow the person in peril, and the fact that an accident’s site is a distance away does not diminish a person’s need for assistance. [*Id.* ¶ 30.]

In light of the law’s history and purpose, the court concluded that the “scene of any emergency” is sufficiently broad to include not only the location where an incident or injury occurred but also the place to which an injured person moves. [*Id.* ¶ 32.] In other words, the “‘scene of any emergency’ may follow the injured person.” [*Id.*] Applying this interpretation, the court held that the “scene of any emergency” is sufficiently broad to include the home where an injured person arrived immediately after an accident. [*Id.*]

Next, the *Mueller* court turned to the term “emergency care,” noting that it could not establish a bright-line definition due to the variety of circumstances that may qualify. That said, it looked to the plain meaning of each individual word, defining “emergency” as “a sudden, unexpected happening or unforeseen occurrence or condition” and “care” generally as “evaluation, intervention, assistance and treatment.” [*Id.* ¶ 37.] The court also relied upon the background and purposes for the Good Samaritan law cited at the time of the law’s 1997 expansion, noting a consistent theme of encouraging more individuals to provide prompt care until professional medical assistance is available. [*Id.* ¶¶ 40-45.] In light of the foregoing, the court established a working definition of “emergency care,” concluding that it refers only to “the initial evaluation and immediate assistance, treatment, and intervention at the scene of an emergency during the period before care can be transferred to professional medical personnel.” [*Id.* ¶ 46.]

Applying this working definition to the care rendered in *Mueller*, the court concluded that the defendants may have rendered emergency care when they provided immediate assistance, treatment, and intervention to the injured person upon the person’s arrival to their home immediately after the accident. [*Id.* ¶¶ 49, 52.] However, professional medical care could have been summoned immediately upon the injured person’s arrival at the house, yet the defendants determined that the circumstances did not require trained medical professionals and decided to provide care for the person throughout the night. [*Id.* ¶¶ 52-53.] Based on these facts, the court concluded that after the initial evaluation and immediate assistance, the defendants’ assistance, treatment, and intervention shifted from emergency care to non-emergency care. [*Id.* ¶ 53.] Thus, the care the defendants rendered to the injured person during the six- to seven-hour

period after their initial evaluation and immediate assistance, treatment, and intervention was “plain non-emergency care” not entitled to immunity under the Good Samaritan statute and therefore subject to a negligence lawsuit. [*Id.*]

Since *Mueller*’s publication in 2006, subsequent published appellate cases have cited the *Mueller* case and its legal principles for precedential value. [See *Oddsden v. Henry*, 2016 WI App 30, 368 Wis. 2d 318; *Clayton v. Am. Family Mut. Ins. Co.*, 2007 WI App 228, 305 Wis. 2d 766.] While the Legislature has amended s. 895.48, Stats., since *Mueller*, the statutory language relevant to the court’s interpretation remains unchanged.

### **FORCIBLE ENTRY INTO A VEHICLE**

As discussed in the previous section, Wisconsin’s traditional Good Samaritan statute, s. 895.48, Stats., grants immunity for negligent acts which might occur while rendering emergency assistance. In the 2015-16 Session, the Legislature enacted an additional “Good Samaritan” statute by creating s. 895.484, Stats. [2015 Wis. Act 103.] Rather than applying to negligent acts, the new “Good Samaritan” law provides immunity from liability for property damage or injury resulting from forcible entry into a vehicle in certain circumstances.

The new Good Samaritan law first applied to entries to vehicles that were made on November 13, 2015, and has several requirements for immunity to apply. Specifically, s. 895.484, Stats., provides that an actor is immune from civil liability for property damage or injury that results from the actor’s forcible entry into a vehicle if all of the following are true:

- A person or a domestic animal<sup>3</sup> was present in the vehicle<sup>4</sup> and the actor had a good faith belief that the person or domestic animal was in imminent danger of suffering bodily harm unless the person or domestic animal exited or was removed from the vehicle.
- The actor determined that the vehicle was locked and that forcible entry was necessary to enable the actor to enter the vehicle or to enable the person or domestic animal to be removed from or to exit the vehicle.
- Before forcibly entering the vehicle, the actor dialed the telephone number “911” or otherwise contacted law enforcement, emergency medical services, or animal control.
- The actor remained with the person or domestic animal until a law enforcement officer, emergency medical service provider, animal control officer, or other first responder arrived at the scene.
- The actor used no more force than he or she reasonably believed necessary to enter the vehicle in order to remove the person or domestic animal or to allow the person or domestic animal to exit the vehicle.

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<sup>3</sup> The statute defines “domestic animal” as a “dog, cat, or other animal that is domesticated and kept as a household pet.” [s. 895.484 (1) (a), Stats.] Farm animals, defined in s. 951.01 (3), Stats., as any “warm-blooded animal normally raised on farms in the United States and used or intended for use as food or fiber,” are explicitly excluded from this definition.

<sup>4</sup> Under the new Good Samaritan law, the term “vehicle” means a “motor vehicle, or any other vehicle, that is used to transport persons or cargo and that is enclosed.” [s. 895.484 (1) (b), Stats.]

- If the actor left the scene before the owner or operator of the vehicle returned to the scene, the actor placed a notice on the windshield of the vehicle that included the actor's name, telephone number, and mailing address, the reason the actor entered the vehicle, and the location, if known, of the person or domestic animal when the actor left the scene.

As evidenced by the testimony in favor of the law's passage, the purpose of the law is to encourage assistance by removing any liability concerns that may cause people to hesitate to act. Thus, the new law shares a similar purpose with the previously-enacted Good Samaritan law – to encourage people to help others without fear of subsequent liability.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Amber Otis, Staff Attorney, on May 2, 2017.

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**WISCONSIN LEGISLATIVE COUNCIL**

One East Main Street, Suite 401 • Madison, WI 53703-3382

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: [leg.council@legis.wisconsin.gov](mailto:leg.council@legis.wisconsin.gov)

<http://www.legis.wisconsin.gov/lc>