



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF EMERGENCY DETENTION AND ADMISSION OF MINORS UNDER CHAPTER 51

Legislative Council Conference Room
Madison, Wisconsin

May 14, 2012
9:30 a.m. – 12:30 p.m.

[The following is a summary of the May 14, 2012 meeting of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call; Approval of the Minutes of the December 19, 2011 Meeting

Chair Lazich called the meeting to order. The roll was called and a quorum was determined to be present. It was noted that page two of the minutes of the December 19, 2011 meeting of the Special Committee contained an error. The vote on a motion by Mr. Bachhuber, seconded by Mr. Strebe, to recommend adoption of WLC: 0112/1, as amended, should read: “Ayes, 11; Noes, 0; Absent 5.”

Also, Dr. Berlin stated he believed the numbering needed to be corrected on page five of the minutes. After reviewing the numbering, it was determined that the numbering was correct.

Representative Ballweg moved, seconded by Dr. Berlin, to correct the vote total on page two of the minutes of the December 19, 2011 meeting of the Special Committee, as described above, and to approve the minutes, as corrected. The motion was approved by unanimous consent.

COMMITTEE MEMBERS PRESENT: Sen. Mary Lazich, Chair; Rep. Sandy Pasch, Vice-Chair; Sen. Dave Hansen; Rep. Joan Ballweg; and Public Members Dr. Jon Berlin, Kristin Kerschensteiner, George Kerwin, Brian Shoup, and Galen Strebe.

COMMITTEE MEMBERS EXCUSED: Public Members Michael Bachhuber, Ann Hraychuck, Michael Kiefer, Dr. Gina Koepl, Tally Moses, Brenda Wesley, and Carianne Yerkes.

COUNCIL STAFF PRESENT: Laura Rose, Deputy Director, and Brian T. Larson, Staff Attorney.

Review of Bill Drafts

WLC: 0112/2, relating to requiring county community programs board appointees to include consumers, law enforcement personnel and hospital employees or representatives and increasing the size of county community program boards

Laura Rose, Legislative Council staff, explained the changes in WLC: 0112/2 over the previous draft.

Mr. Shoup raised objections concerning the addition of board representation to include law enforcement and hospital representatives. The concerns included an increased potential for conflicts of interest on the board, and other concerns, as reflected in the memorandum from the Wisconsin County Human Services Association (WCHSA) and the Wisconsin Counties Association (WCA) submitted at Mr. Shoup's request. A discussion followed regarding the potential for conflicts of interest on the board and the possibility of avoiding conflicts by making new positions non-voting positions. Ms. Kerschensteiner expressed support for the creation of non-voting positions. Mr. Kerwin acknowledged Mr. Shoup's concerns but stated that conflicts could be handled through disclosure and recusal and that the changes in the draft reflect best practice. Several members indicated their agreement that the changes in the draft reflect best practice.

Mr. Shoup moved, seconded by Ms. Kerschensteiner, that the provision adding law enforcement and hospital representatives be removed from the draft. After some discussion, the motion was withdrawn.

Mr. Shoup moved, seconded by Ms. Kerschensteiner, that the law enforcement and hospital representatives should be made non-voting representatives. The motion was defeated on a vote of Ayes, 3; Noes, 6; Absent, 7.

Ms. Rose requested feedback regarding the phrase "each of" on line 7 of page 2 of the draft and on line 6 of page 3 of the draft. A committee member also suggested using the phrase "intellectual disability" as opposed to the phrase "developmental disability."

By unanimous consent, the committee agreed to remove "each of" from line 7 of page 2 and from line 6 of page 3 of the draft and to use "intellectual disability" as opposed to "developmental disability," as described above.

Rep. Pasch moved, seconded by Dr. Berlin, to recommend adoption of the draft, as amended. The motion was approved on a vote of Ayes, 8; Noes, 1; Absent, 7.

WLC: 0073/2, relating to emergency detention, involuntary commitment, and privileged communications and information

Ms. Rose explained the changes in WLC: 0073/2 over the previous draft.

Ms. Rose explained that, in SECTIONS 2 and 8 of the draft, the third standard of dangerousness for emergency detention is modified to allow for detention if there is a substantial probability of an injury or impairment to others due to an individual's impaired judgment. Ms. Rose asked the committee

to review the places where “or others” is inserted to ensure that it reflects their intent. A discussion followed regarding the use of the phrase “or others” in SECTIONS 2 and 8 of the draft.

Mr. Strebe moved, seconded by Rep. Pasch, to delete the references to “or others” on page 4 on lines 5, 7, 10, and 11; on page 8 on lines 20 and 21; and on page 9 on lines 6 and 7 of the draft. The motion was approved on a vote of Ayes, 9; Noes, 0; Absent, 7.

Ms. Rose explained that, in SECTION 9 of the draft, references to “drug dependency” are added to the fourth standard of dangerousness for involuntary commitment, in order to be consistent with the current fourth standard of dangerousness for purposes of emergency detention.

Mr. Strebe raised objections concerning the use of the phrase “drug dependency” in the fourth standard of dangerousness for involuntary commitment. It is better to differentiate between drug dependency issues and mental health issues, he stated. A discussion followed regarding the statute’s impact on individuals with drug dependency in need of treatment, the differentiation of drug dependency issues and mental health issues, and the need for consistency among the standards.

Mr. Strebe moved, seconded by Mr. Shoup, that the phrase “drug dependency” should be deleted from (or otherwise not included in) both the fourth standard of dangerousness for involuntary commitment and the fourth standard of dangerousness for purposes of emergency detention. The motion was approved on a vote of Ayes, 9; Noes, 0; Absent, 7.

Ms. Rose explained that, in SECTIONS 3 and 11 of the draft, there is a consolidation of the references to types of facilities in which emergency detentions can be made. Pursuant to the change, detention may occur in a treatment facility approved by the department or county department, if the facility agrees to detain the individual, or a state treatment facility.

After discussion, the committee agreed to the change by unanimous consent.

Ms. Rose explained that, in SECTION 6 of the draft, the requirement of a determination within 24 hours of a detention, in a county with a population of 750,000 or more, is changed so that any period delaying the determination that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual shall be excluded from the calculation.

After discussion, the committee agreed to the change by unanimous consent.

Ms. Rose explained that, in SECTIONS 13 and 14 of the draft, two circumstances are added in which a hearing for a person who is detained may be postponed beyond 72 hours. For a person who is detained, current law requires that a hearing be held within 72 hours, excluding Saturdays, Sundays, and legal holidays. Current law allows this to be extended at the request of the detained individual or his or her counsel, but in no case may postponement exceed seven days from the date of detention. The draft provides two additional circumstances in which a postponement may be granted. Under the first circumstance, if the individual is in a facility and the director of the facility or designee determines that the individual cannot be safely moved due to a non-psychiatric medical condition, or the hearing cannot be safely held at the facility, and if the individual or his or her attorney objects to holding the hearing at

that facility (which is permitted under current law), the court may postpone the hearing. In the second circumstance, if the individual is comatose or, in the opinion of the director of the facility or designee, otherwise incapable of being evaluated or participating in the hearing, the court may postpone the hearing. In either of these circumstances, the postponement may not exceed seven days from the date of detention.

After a lengthy discussion of constitutional due process issues arising when a hearing is postponed by someone other than the detained individual, balanced against an apparent need for postponement in some cases, particularly in Milwaukee County, Chair Lazich announced the establishment of a working group to consider the proposed changes to SECTIONS 13 and 14 of the draft. Committee members who volunteered for the working group included Dr. Berlin, Ms. Kerschensteiner, Mr. Kerwin, and Mr. Strebe. Several other individuals in attendance signaled their interest in the topic and were encouraged by Chair Lazich to contact Ms. Rose in order to be added to the group.

The committee agreed by unanimous consent to remove the changes to SECTIONS 13 and 14 from the draft in order to allow the working group to consider the changes as a separate, stand-alone draft.

Ms. Rose explained that, in SECTION 17 of the draft, the 45-day time limit is repealed for an involuntary commitment under the fourth standard of dangerousness.

The committee agreed to the change by unanimous consent.

Ms. Rose explained that, in SECTION 18 of the draft, the provision specifying an end date for an involuntary commitment of an inmate in a state prison or county jail or house of correction is repealed, such that the involuntary commitment will no longer automatically end on the inmate's date of release on parole or extended supervision.

After discussion, the committee agreed to the change by unanimous consent.

Ms. Rose explained that, in SECTION 19 of the draft, concerning privileged communications, references to "hospitalization" are changed to "commitment" and language is added to refer to "probable cause or final proceedings" to commit the patient for mental illness. Ms. Kerschensteiner expressed concerns about the effects of limitations on privileged communication. Mr. Strebe stated that the change was necessary to allow doctor testimony when an individual is subject to commitment outside the hospital setting, in some cases.

After discussion, the committee agreed to the change by unanimous consent.

WLC: 0114/1, relating to admission of minors for inpatient treatment

Chair Lazich indicated that she would entertain a motion to postpone discussion of WLC: 0114/1.

Mr. Shoup moved, seconded by Rep. Pasch, to postpone discussion of WLC: 0114/1. The motion was approved by unanimous consent.

Other Business

There was no further business before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held at the call of the chair.

Adjournment

The meeting was adjourned at 12:30 p.m.

BTL:jal