

December 12, 2011

To: Chapter 51 Study Committee

From: Jon Berlin, MD

Re: Recommendations of the Milwaukee Contingent of the Chapter 51 Study Committee

Purpose

Since the last meeting of the Chapter 51 Study Committee, Ms. Kerschensteiner and Dr. Berlin continued their discussion of Chapter 51 issues unique to Milwaukee County. Key stakeholders from Milwaukee also participated and contributed.

This "Milwaukee Contingent" reached a compromise agreement on a tolling recommendation it will submit to the Chapter 51 Study Committee. This tolling is to mitigate an unintended consequence of the *Delores M.* ruling when it occurs in a county of 500,000 or more.

The reason for this memorandum is to explain, from Milwaukee County's perspective, how it achieved this compromise and where it feels there is room for ongoing discussion.

The County would also like to express its thanks to Ms. Kerschensteiner for graciously traveling to Milwaukee for these meetings and to say that the discussions led to increased understanding and appreciation of each other's point of view. The fact that a compromise agreement could be reached underscores the rationale for another of the recommendations, that if the Study Committee dissolves, it propose some official format for these fruitful discussions to continue.

Background

Prior to *Delores M.*, 1998, the 24-hour clock on Milwaukee County ED's started when the person on an ED was delivered to the Psychiatric Crisis Service (PCS). If this person first needed treatment at a medical hospital, e.g., for the adverse effects of a suicide attempt, the number of days this treatment required was never an issue. Their ED would arrive at PCS without a time violation.

Delores M. held that the clock on the ED starts when a person is taken to any treatment facility. Therefore, if medical treatment required more than 24 hours, the ED would expire unless a Treatment Director went into the field to fill out a Treatment Director Supplement (TDS). This was impractical from a workload standpoint.

Over the years, the mental health court approved, and then disallowed, a number of maneuvers to make sure ED'd individuals received appropriate psychiatric attention.

First, law enforcement was asked not to write the ED until medical stabilization was completed, or else to write a new one when the patient was medically stabilized. These approaches proved hard to operationalize and were eventually ruled not in keeping with the spirit of *Delores M.*

Next, law enforcement was permitted to transfer the individual to PCS on an expired ED, and if a PCS psychiatrist felt a person needed hospitalization, he or she was allowed to complete a Treatment Director Affidavit (TDA).

After a year or two, this type of TDA was also disallowed, bringing us to the current system. A PCS psychiatrist is permitted to place a TDS on an expired ED and, if clinically appropriate, hospitalize the patient. If the individual needs to go to a probable cause hearing, the TDS is automatically dismissed for its time violation. However, if the patient has continues to demonstrate significant potential for dangerousness, based on new information and still needs hospitalization, the inpatient doctor is permitted to complete a TDA.

Compromise Recommendation

The compromise agreement being recommended to the Committee is that the 24-hour rule be tolled when an ED'd individual is medically hospitalized for medical stabilization. This would allow for 72 hours of medical clearance before the ED would expire and insure psychiatric evaluation as quickly as required in all other counties of the state. (Note: hospital-based, consult psychiatrists can see patients sooner than a PCS doctor and can recommend lifting an ED before the 72 hours is up.

Milwaukee County Position on the TDS

Milwaukee County is happy to endorse the compromise recommendation. However, it also wishes to go on record that, from the very beginning, it has recommended that it is time to sunset the TDS requirement and special limitation of 24 hours for ED's in counties over 500,000. The original purpose of this special limitation was to insure that a psychiatrist evaluated all individuals placed on ED's within 24 hours. However, for more than 15 years, it has been Mental Health Complex policy to evaluate ED'd individuals as soon as they arrive, and under no circumstances in more than three hours. Not only is prompt evaluation better for patient care, but also the federal statute EMTALA requires it, and operational efficiency demands it. The County will also continue its now longstanding practice to lift as many ED's at the front door as possible.

Eliminating the TDS serves no clinical purpose and does nothing to strengthen an individual statutory right to refuse involuntary treatment. The main reason the Public Defender wants to uphold the TDS requirement is that it decreases the number of ED's that are being filed with the court. We appreciate that this workload issue must be addressed, but feel that it must be possible to find a satisfactory solution without continuing an arcane legal provision that the rest of the state has never found necessary. A 72-hour hold is also the standard for most states in the country.

Delores M

Milwaukee County is of the opinion that the Chapter 51 Study Committee should continue its analysis of *Delores M*. In our experience, individuals who have made the most serious suicide attempts and need the most protracted medical hospitalizations are sometimes the ones that need the safeguard of a valid Chapter 51 commitment the most. There must be better ways to insure their rights than *Delores M*.

Thank you.

JB

51.15 Emergency detention (1) Basis For Detention...

(2) Facilities For Detention...

(3) Custody...

(4) Detention Procedure; Milwaukee County.

(a) In counties having a population of 500,000 or more, ...

(b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and treatment are permitted under sub. (8), and shall either release the individual or detain him or her for a period not to exceed 72 hours after delivery of the individual, exclusive of Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee determines that the individual is not eligible for commitment under s. 51.20(1)(a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer or other person, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer or other person. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

Here is the Time Tolling Provision I've drafted:

1. Excluded Time Periods. In computing the treatment director's compliance to determine within 24 hours whether the individual shall be detained or released as set forth in s. 51.15(4)(b), a period of delay directly attributable to the individual receiving an evaluation of medical conditions and related stabilizing treatment shall be excluded.