



---

---

## WISCONSIN LEGISLATIVE COUNCIL

---

---

### REVIEW OF EMERGENCY DETENTION AND ADMISSION OF MINORS UNDER CHAPTER 51

Legislative Council Conference Room  
Madison, Wisconsin

December 6, 2010  
10:00 a.m. - 4:00 p.m.

[The following is a summary of the December 6, 2010 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 November 15, 2010 Meeting**

Chair Pasch called the meeting to order. The roll was called and it was determined that a quorum was present.

*Representative Hraychuck moved, seconded by Mr. Kerwin, that the minutes of the Special Committee's November 15, 2010 meeting be approved. The motion was approved by unanimous voice vote.*

COMMITTEE MEMBERS PRESENT: Rep. Sandy Pasch, Chair; Sen. Dave Hansen, Vice-Chair; Reps. Ann Hraychuck and Joe Parisi; and Public Members Michael Bachhuber, Dr. Jon Berlin, Kristin Kerschensteiner, George Kerwin, Michael Kiefer, Dr. Gina Koeppel, Tally Moses, Brian Shoup, and Galen Strebe.

COMMITTEE MEMBERS EXCUSED: Public Members Brenda Wesley and Carianne Yerkes.

COUNCIL STAFF PRESENT: Laura Rose, Deputy Director, and Richard Sweet, Senior Staff Attorney.

**Discussion of Memo No. 1, *Potential Recommendations for the Committee's Consideration in the Areas of Emergency Detention, Treatment of Minors, Involuntary Commitment, and Other Mental Health Issues***

Mr. Sweet recapped the decisions of the committee at its November meeting. These included:

- Modifying the third standard of dangerousness to include harms to others.
- Adding “least restrictive” to s. 51.15.
- Clarifying s. 51.15 (2), Stats., regarding which facilities will be used for emergency detentions. Mr. Sweet said that he, Ms. Rose, and Mr. Strebe met with Department of Health Services (DHS) staff and will develop a draft for review at the next meeting.

Mr. Bachhuber reviewed data that he had obtained on emergency detention.

The committee continued its discussion of the *Delores M.* case. Mr. Bachhuber stated that the ch. 51 time limits should continue to be strictly construed. Dr. Berlin stated concern with releasing a suicidal person before they had been treated. Mr. Bachhuber said that the time limits for emergency detention start running at the time of detention, not when the person is first brought in. Chair Pasch said that perhaps the 72-hour time limit could start when the person who is detained becomes aware of what is happening. There would need to be an assessment of when the person becomes decisional, such as when they are aware and able to communicate.

The committee discussed language that would address when the emergency detention period would begin. Dr. Berlin stressed the need for change, because in Milwaukee County, the combination of the 24-hour requirement and *Delores M.* makes it very difficult to detain someone with serious medical complications.

The committee then discussed the interplay between the federal Emergency Medical Treatment and Active Labor Act (EMTALA) and emergency detention requirements. Mr. Kerwin said that hospitals are responsible for stabilizing a suicidal person under EMTALA. Ms. Koepl suggested that the 72 hours would start to run “when a physician determines that person is medically stable and is able to perform an assessment as to whether the person meets the standards in 51.15.” Mr. Bachhuber stated he would still like to retain a judicial determination within 72 hours, but if the person cannot be interviewed because of a physical condition, they could obtain an extension. After further discussion, it was agreed that Ms. Koepl’s suggested language would be drafted for the next meeting.

The committee then began a discussion of the treatment director supplement (TDS) requirement. Several suggestions had been made at past meetings regarding the TDS requirement. Mr. Strebe emphasized that he did not support a TDS requirement for Dane County, which is a growing concern because the county is approaching 500,000 in population which will trigger the application of Milwaukee County requirements to Dane County. Ms. Kerschensteiner said that if the TDS requirement was eliminated in Milwaukee County, and the county implemented the same county approval process as existed in other counties, it may become merely a “pro forma” county approval. Dr. Berlin commented that the TDS requirement is not clinically enhancing for patients, and that it should sunset because it is not fulfilling its purpose. He also commented that the TDS requirement was not a real problem until the *Delores M.* case was decided.

Lee Jones, Principal Assistant Corporation Counsel of Milwaukee County, who was present at the meeting, said that the only time the 24-hour requirement is a problem is if the person is taken to a medical facility. Rhoda Riccardi, a state public defender present at the meeting, said that if a person is routed to a medical hospital from Psychiatric Crisis Service (PCS), the 24-hour rule should not apply, and the 72-hour rule should apply, instead. The committee directed staff to draft this language, and agreed that this provision should apply to counties with a population of 750,000 or more.

Sarah Diedrick-Kasdorf and Matt Stanford of the Wisconsin Counties Association and Wisconsin Hospital Association, respectively, were invited to address the committee regarding their December 6, 2010 memorandum to the committee. In that memorandum, the Associations proposed to create a Wisconsin Emergency Detention Collaboration Council and develop emergency detention process and outcome measures. Ms. Kerschensteiner commented that it was important to include advocates on this council. Chair Pasch suggested that this council could review the miscellaneous emergency detention issues on the top of page 7 of Memo No. 1. There was consensus to send a letter from the committee to support the creation of this council, and to require periodic reports to an entity.

After a lunch break, the committee discussed issues relating to the mental health treatment of minors.

Ms. Rose reviewed the suggestions that were made in Memo No. 1 regarding increasing awareness of the changes that had been made in s. 51.13, Stats., by 2005 Wisconsin Act 444; whether the petition requirement in Act 444 should continue to apply to all minors; how to deal with the refusal of some facilities to treat older minors who do not consent to treatment; and issues relating to short-term detention of minors.

The committee discussed the prior requirement that older minors had to consent to their own treatment. The committee also discussed the trend of parents taking their children out of state for mental health treatment. Mr. Strebe expressed concern with eliminating legal protections available now for minors age 14 to 17, especially since 16-year olds can be waived into court. Mr. Bachhuber agreed, saying that when older minors feel coerced, the efficacy of treatment might decline. Dr. Berlin said that this goes both ways; that there is a time to back off and a time to be forceful. Ms. Moses stated that there is no direct data to indicate that children who are cajoled or forced into treatment cannot benefit from it.

The committee then discussed whether some hospitals refuse to treat minors with psychiatric needs. Dr. Berlin stated that some hospitals are better at hard cases than others. Mr. Shoup stated that the issue of "cherry picking" does come up, and raised the issue of the duty of private providers in this situation. Mr. Kiefer said it is important to have better dissemination of 2005 Wisconsin Act 444's provisions.

There was consensus among the committee to adopt the two suggestions on page 9 of Memo No. 1, but not to adopt the first suggestion on page 10. There was consensus to clarify s. 51.13, Stats., which should help in increasing the understanding of the law among providers.

The committee then discussed issues relating to involuntary commitment statutes.

Mr. Sweet briefly reviewed the current law and went over the four suggestions on page 14 of Memo No. 1. The first suggestion was to eliminate the requirement that commitments of persons in state prisons will not extend beyond the inmate's date of release on parole or extended supervision, suggested by Dr. Kallas of the Department of Corrections. There was some discussion of the financial

implications of this provision on counties. Mr. Shoup said that the Department of Corrections should continue financial responsibility for these cases. Ms. Kerschensteiner noted a Supreme Court decision that clearly placed the responsibility for these costs on the county. Mr. Bachhuber suggested that the state pick up costs for treatment during a transition period. There was consensus that the commitment should continue, but no consensus on whether the state or county should pick up the costs. It was agreed that the commitment should continue for prisoners only if they had been committed under one of the dangerousness standards.

The next suggestion on page 14 was to consider eliminating the provision that commitments ordered under the fourth standard of dangerousness may not continue longer than 45 days in any 365-day period. There was consensus to remove the 45-day limit, and to check what other states do in this situation.

The third suggestion on page 14 was to modify the introductory paragraph that precedes the five standards of dangerousness to clarify that the fourth standard applies only to persons who are mentally ill and not to persons who are drug dependent or developmentally disabled. There was consensus to make this change.

The fourth suggestion on page 14 was to modify the provision in the statutes dealing with privileged communications between specified health care providers and patients, to substitute references to “commitment” for “hospitalization.” After extended discussion, there was agreement to come back to this issue at a later time.

The committee then discussed other mental health issues beginning on page 14 of Memo No. 1. Ms. Rose described the current status of Medical Assistance (MA) eligibility for inmates. There was agreement to pursue the suggestion to suspend rather than terminate MA eligibility for someone entering the correctional facility.

Ms. Rose described the suggestion made by University of Wisconsin-Madison Police Chief Riseling at the first meeting of the committee to send a letter to Wisconsin’s Congressional Delegation recommending changes to federal privacy regulations to allow more sharing of information between providers who are treating the same patient. Ms. Rose agreed to contact Chief Riseling for more information on this issue.

The committee directed Ms. Rose to draft a requirement that hospitals and law enforcement personnel be represented on county community programs boards under s. 51.42, Stats. There was agreement to also increase the size of the board to accommodate this change.

Ms. Rose described the suggestion made to increase the MA reimbursement rate for psychiatrists. Chair Pasch said the committee would not be pursuing this, due to budget issues.

Ms. Rose described the suggestion on page 17 to provide incentives to expand partnerships between counties and federally qualified health centers (FQHCs). Mr. Bachhuber commented on incentives in the federal health care reform law to expand funding for FQHCs. Ms. Kerschensteiner asked whether FQHCs that provide county mental health services are also required to pick up the nonfederal share for mental health services as counties are required to do. Ms. Rose said she would find out this information. There was consensus to pursue this suggestion.

Ms. Rose then reviewed current law relating to isolation and restraint of patients. After discussion about requirements that apply to different types of facilities and providers, there was consensus to move forward on this issue and revise the statutes.

Ms. Rose then described the issue relating to psychiatric advance directives and a power of attorney for mental health treatment. There was consensus to develop a bill draft to provide power of attorney for mental health treatment.

### **Plans for Future Meetings**

The committee set its next meeting date for Monday, January 24, 2011. [Subsequent to the meeting, the January 24 meeting was cancelled and will be rescheduled at the call of the chair.]

### **Adjournment**

The meeting was adjourned at 4:00 p.m.

LR:wu:jal:wu:jal