



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF EMERGENCY DETENTION AND ADMISSION OF MINORS UNDER CHAPTER 51

Legislative Council Conference Room
Madison, Wisconsin

November 15, 2010
10:00 a.m. - 4:00 p.m.

[The following is a summary of the November 15, 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 October 4, 2010 Meeting

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

Chair Pasch noted that there was an error in the last paragraph on page 7. She asked that "deferred" be changed to "referred." There was unanimous consent for approval of the minutes, as corrected.

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, Galen Strebe, 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*

Chair Pasch noted that many of the provisions in current ch. 51, Stats., were written 34 years ago.

Concern was expressed about allowing persons who seek voluntary treatment to avoid emergency detention since, when the person's status is possibly later converted to emergency detention, the paperwork from law enforcement that accompanies the person will not be present.

With respect to the third standard of dangerousness under the emergency detention and involuntary commitment statutes, Mr. Strebe cited several examples of persons who are dangerous to others but who do not meet the requirement for violent behavior set forth in the second standard. He suggested that the third standard be amended to include dangerousness to others.

Dr. Berlin suggested that the language regarding least restrictive treatment alternatives in s. 51.001, Stats., be incorporated into s. 51.15, Stats.

With regard to the issue of excluding persons with dementia from the emergency detention statute, Chair Pasch asked that the committee defer action on the issue.

On the issue of who may detain persons, Dr. Berlin stated that many emergency room physicians are not qualified to do this. He likes the idea of having prior approval by the county for emergency detention and detention initiated by specially trained physicians. Representative Hraychuck pointed out that this seems inconsistent with statutes that allow any law enforcement officer to initiate an emergency detention. Mr. Bachhuber pointed out that law enforcement officers will have more success in telling someone not to leave a facility than will health care providers.

Mr. Strebe suggested amending sub. (10) in s. 51.15, Stats., to include persons in an emergency room, not just those who are in a treatment facility. In addition, he wanted to add language regarding least restrictive treatment alternatives to both sub. (2), which deals with facilities for detention, and sub. (10).

Ms. Yerkes expressed the concern that law enforcement personnel are required to remain in an emergency room while a person is detained. She added that no one likes the stigma associated with handcuffs and felt that law enforcement was not needed in 75% of emergency detentions.

Chair Pasch noted that there appeared to be consensus on the two bullet points in the category of "who may detain" on page 3 if there is approval by the appropriate county agency and if the persons who are authorizing the emergency detention have special training. In response to a question from staff as to who would specify the training requirements, Chair Pasch indicated that the committee will have further discussion on this.

Mr. Strebe suggested deleting references to persons authorized to take a child into custody under ch. 48 or 948, Stats. This suggestion was not pursued when it was pointed out that Jefferson County and possibly other counties use this provision.

With regard to the first bullet point on page 4, which deals with continued monitoring by a county department of community programs for persons who are detained, Ms. Koepl indicated that at every planning meeting, a county agency representative is present. Other members of the committee pointed out that this should be a best practice rather than a statutory requirement.

Under the category of uniformity and quality standards, Chair Pasch pointed out that the first bullet point would provide for a statewide ombudsman for emergency detention to supplement what counties are doing, rather than taking the place of counties. Representatives of the Wisconsin Hospital Association pointed out that such a person could be a tie-breaker if there is a disagreement on detaining

an individual. After further discussion, Chair Pasch indicated that there seemed to be consensus on the need for uniformity and that the committee should revisit this issue at the next meeting.

Mr. Kerwin expressed a strong interest in pursuing the fourth bullet point under the uniformity and quality standards portion of the Memo. He expressed a need for good information in order to assist in decision-making. After further discussion, Chair Pasch asked staff to work with the Wisconsin Hospital Association and the Wisconsin Counties Association to develop a proposal for the next meeting of the committee.

On the issue of transporting persons to emergency detention, Ms. Yerkes pointed out that some transportation is done by persons who are not law enforcement. Although the transportation is in a secure vehicle, it is not a law enforcement vehicle. Representative Hraychuck pointed out that similar alternatives do not exist in northern Wisconsin. Mr. Strebe pointed out that s. 51.20 (14), Stats., allows for other methods of transportation. Mr. Bachhuber suggested that that statute should be amended to state that it applies to a person for whom a petition has been filed under either the emergency detention statute or the involuntary commitment statute. There appeared to be consensus on this point and on the suggestion from Dr. Berlin that handcuffs not be used on a routine basis.

On the issue of training, Representative Hraychuck suggested that emergency detention training for law enforcement should be part of the initial training given to law enforcement recruits and also included in recertification training. Mr. Bachhuber suggested that this might be done with the Department of Health Services (DHS) and corporation counsels being given an advisory role.

In discussing the statute on places where emergency detention may occur, s. 51.15 (2), Stats., members of the committee felt that the word "approved," which modifies references to public and private treatment facilities, was unclear since it does not state who gives the approval. In addition, there appeared to be a lack of certainty as to what constitutes a "detention facility" and whether this also needs to be approved. Chair Pasch asked that staff work with Mr. Strebe in clarifying the current statute on places where detention may occur. Mr. Bachhuber added the suggestion that perhaps each county should determine what facilities can be used for emergency detention.

In discussing the detention period, Mr. Bachhuber stated that because there are so many emergency detentions in Milwaukee County, it is necessary to keep some protection against overuse and that is provided by the treatment director's supplemental statement (TDS). Dr. Berlin stated that the TDS does not screen out anyone, but that physicians screen people out of the emergency detention system. Lee Jones of the Milwaukee County Corporation Counsel office added that of the approximately 8,000 emergency detentions each year in Milwaukee County, about 2,500 to 3,000 are dismissed before going to court.

The committee also discussed the *Delores M.* decision by the Wisconsin Court of Appeals. However, the committee did not arrive at any consensus as to how to handle persons who have medical conditions to be dealt with and when the 72-hour period (and the 24-hour period in Milwaukee County) should begin on such a person. Mr. Bachhuber stated that if a person is being held against his or her will, court approval should be required, and a hearing could be held in a hospital. Mr. Strebe mentioned that the injury could involve a self-inflicted wound and the person could be in intensive care for several days before a psychiatric evaluation can be done.

Plans for Future Meetings

Chair Pasch said that the next meeting of the committee would be held in December and that members would be polled to select a date.

Adjournment

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

RNS:wu