



May 11, 2012

To: Members of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51

From: Matthew Stanford, WHA VP Policy & Regulatory Affairs, Associate General Counsel

Cc: Lara Rose, Deputy Director, Legislative Council

Re: WHA Comments on WLC 0073/2, WLC 0112/2, and WLC 0114/1

WHA appreciates the work of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51 (the "Committee"). This has been challenging work for all involved and WHA appreciates the progress that has been made by the Committee. WHA offers the following comments on WLC 0073/2, WLC 0112/2, and WLC 0114/1 for the Committee's consideration.

Minutes of the December 19 meeting

Page 2 of the December 19 minutes of the Ch. 51 Study Committee regarding the vote on WLC 0112/1 incorrectly states that the motion was approved "on a vote of Ayes, 11; Noes, 5; Absent, 0." Based on the audio at around minute 44:00, there were 0 Noes and 5 Absent.

WLC 0073/2

The following comments reference the 10 enumerated changes in the Joint Legislative Council Prefatory Note on pages 1 through 3 of WLC 0073/2

Change #1 – Additional Criteria for Emergency Detention. The change described in point 1 of the Prefatory Note **adds a new requirement to the emergency detention process that WHA is very concerned would be unworkable in practice, would result in inconsistent practice across Wisconsin, and ultimately would result in some individuals not getting the emergency help that they need.** Under the proposed requirement, law enforcement and the county department of community programs must determine "that detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis..." before an emergency detention may be initiated or continued. Specific concerns are outlined below as well as alternative proposed language.

Unworkable in practice – The proposed language would require a law enforcement officer to make a determination before the officer may take custody of an individual under Wisconsin's emergency detention statute that "detention is the least restrictive alternative because the individual is resistant

to professional help or too high risk to be safely assisted on a voluntary basis.” It is unreasonable to expect that law enforcement should have the facts and expertise necessary to make such a determination in an informed way, especially at the point in time where the law enforcement officer must determine whether to take custody of an individual that is a danger to themselves or others under the emergency detention statute.

Will result in inconsistent practices – The proposed language is not a bright line test but instead creates a three part test, each of which are very subjective. One problem that Wisconsin already faces with regard to emergency detention is inconsistent interpretations and practices across and within its 72 counties. Adding this test will exacerbate inconsistent practices, creating disruptions for individuals and the other stakeholders that play a role in the emergency detention process.

Will result in some individuals not getting the emergency help that they need – While WHA agrees that individuals that are truly voluntary should not be subjects for emergency detention, this proposed language goes beyond that principle. Given the new three part subjective test, some individuals that need help will not get it because the new test is incorrectly or inappropriately applied.

Alternative proposal – WHA recommends that if the committee wishes to clarify that individuals that truly agree to stabilizing treatment should not be subject to an emergency detention, statutory language should be created that plainly states that. For example:

- “A law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may NOT take an individual into custody if the officer or person reasonably believes that the individual will consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and imminently remove a substantial probability of physical harm to himself, herself, or others, or a substantial probability of physical impairment or injury to himself, herself, or others.”
- “The department of community programs may NOT approve the need for detention if the department of community programs reasonably believes that the individual will consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and imminently remove a substantial probability of physical harm to himself, herself, or others, a substantial probability of physical impairment or injury to himself, herself, or others.”

Changes #2 through #9

WHA supports these reasonable proposals designed to help better ensure individuals in crisis receive the care that they need.

Change #10

This change is a technical change that addresses evidentiary privileges in commitment hearings. Because not all commitments are hospitalizations, the changes in section 19 intended to use more correct language. However, the change on line 12, page 15, may, unintentionally, make some communications privileged that currently are not privileged. To illustrate, if a nurse communicates with an individual about hospitalization, but not necessarily commitment, such information would no longer be subject to the privilege exception in 905.04(4)(a). **If the committee wishes continue to allow such information to be subject to the privilege exception, then “hospitalization” on line 12, page 15 should be re-included in the statute.** In addition, the

committee may want to consider whether any additional language is necessary to clarify the provision's applicability to extensions of commitments.

WLC 0112/2

All recognize that collaboration between county agencies, law enforcement, hospitals, and consumers is necessary for the best outcomes for individuals. Thus, **WHA strongly supports WLC 0112/2 which will help facilitate better collaboration and coordination at the county level by ensuring that county s. 51.42 County Community Programs Boards have some representation from consumers, law enforcement, and hospitals.** Including such representation will help such Boards to better fulfill its duties described in s. 51.42(5) (which is attached).

Additionally, there is a technical issue in the draft that the Committee may want to consider and address. Lines 6-10 on page 2 and lines 6-9 on page 3 state "shall have representation from each of the interest groups of persons with mental illness, developmental disability, alcoholism, and drug dependence...." As drafted, would this mean that all interest groups for the mentally ill, developmentally disabled or alcoholic or drug dependent persons must have representation on the 51.42 Board? Presumably that is not the intent of the study committee.

WLC 0114/1

WHA supports these reasonable proposals designed to help better ensure minors in crisis receive the care that they need.

51.42 (5) POWERS AND DUTIES OF COUNTY COMMUNITY PROGRAMS BOARD IN CERTAIN COUNTIES.

(a) A county community programs board appointed under sub. [\(4\) \(a\) 1.](#) shall do all of the following:

1. Establish long-range goals and intermediate-range plans, detail priorities and estimate costs.
2. Develop coordination of local services and continuity of care where indicated.
3. Utilize available community resources and develop new resources necessary to carry out the purposes of this section.
4. Appoint a county community programs director, subject to the approval of each county board of supervisors which participated in the appointment of the county community programs board, on the basis of recognized and demonstrated interest in and knowledge of the problems of mental health, developmental disability, alcoholism and drug addiction, with due regard to training, experience, executive and administrative ability, and general qualification and fitness for the performance of the duties of the county community programs director under sub. [\(6\)](#). The county board of supervisors in a county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs may delegate this appointing authority to the county community programs board.
5. Fix the salaries of the employees of the county department of community programs, subject to the approval of each county board of supervisors which participated in the appointment of the county community programs board unless such county board of supervisors elects not to review the salaries.
6. Prepare a proposed budget for submission to the county board and a final budget for submission to the department of health services in accordance with s. [46.031 \(1\)](#).
7. Appoint committees consisting of residents of the county to advise the county community programs board as it deems necessary.
8. Develop county community programs board operating procedures.
9. Comply with state requirements.
10. Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.
11. Evaluate service delivery.
12. Determine, subject to the approval of the county board of supervisors in a county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs and with the advice of the county community programs director appointed under subd. [4.](#), whether services are to be provided directly by the county department of community programs or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs may elect to require the approval of any such contract by the county board of supervisors in a county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs.
13. Administer funds provided under s. [46.266](#) in accordance with s. [46.266 \(5\)](#).

(b) Subject to the approval of the county board of supervisors in a county with a single-county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs and with the advice of the county community programs director appointed under par. [\(a\) 4.](#), a county community programs board appointed under sub. [\(4\) \(a\) 1.](#) may, together with a private or public organization or affiliation, do all of the following:

1. Organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any mental health-related service.
2. Participate in the financing of the entity under subd. [1](#).
3. Provide administrative and financial services or resources for operation of the entity under subd. [1](#), on terms prescribed by the county board of supervisors.

51.42 (5a) POWERS AND DUTIES OF COUNTY COMMUNITY PROGRAMS BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR.

(a) A county community programs board appointed under sub. [\(4\) \(a\) 2](#), shall do all of the following:

1. Appoint committees consisting of residents of the county to advise the county community programs board as it deems necessary.
2. Recommend program priorities, identify unmet service needs and prepare short-term and long-term plans and budgets for meeting such priorities and needs.
3. Prepare, with the assistance of the county community programs director appointed under sub. [\(6m\)](#), a proposed budget for submission to the county executive or county administrator and a final budget for submission to the department of health services in accordance with s. [46.031 \(1\)](#) for authorized services.
4. Advise the county community programs director appointed under sub. [\(6m\)](#) regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.
5. Develop county community programs board operating procedures.
6. Comply with state requirements.
7. Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.
8. Advise the county community programs director regarding coordination of local services and continuity of care.

(b) The county community programs director, subject only to the supervision of the county executive or county administrator, may do all of the following:

1. Organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any mental health-related service.
2. Participate in the financing of the entity under subd. [1](#).
3. Provide administrative and financial services or resources for operation of the entity under subd. [1](#), on terms prescribed by the county executive or county administrator.