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AB 488 Testimony – Representative John Jagler

Thank you Chairman Severson and committee members. AB 488 is a replacement for AB 451, which was a product of the Speaker's Task Force's recommendation to provide families with one last check on the system concerning emergency detention.

While sound in concept, AB 451 was difficult to draft based on the various inputs received from stakeholders (consumer advocates, hospitals, counties, etc.). After hearing the concerns expressed by the people who testified and by members of the committee last week, stakeholders met in the Majority Leader's office to determine if AB 451 could be reworked, amended, replaced with a new bill, or merged into a another bill. Discussions with *the* Public Defender, Senator Farrow's office, Representative Pasch's office, Speaker Vos' office, Majority Leader Kramer's office, Sauk County Corporation Counsel, Wisconsin Hospital Association, Disability Rights of Wisconsin, Grassroots Empowerment Project, and Mental Health Advocates of Wisconsin, Department of Health Services led to the decision to do a wholesale rewrite.

The result of that rewrite, AB 488, is intended to narrow the focus of the previous legislation, address the concerns raised during the public hearing, and build on the previous consensus that there was a need to provide another avenue to the judicial process for concerned families, doctors, and guardians of those affected by acute mental health issues.

This past weekend, the *Milwaukee Journal Sentinel* highlighted our efforts to give families a voice when they feel like there is nowhere else to turn. The paper has been running a series over the last several months called Chronic Crisis, discussing the challenges faced by Wisconsin's mental health delivery system and patients, family members and providers that depend on its success.

One of the main challenges is the ability for families to access emergency psychiatric treatment for loved ones who they believe need prompt care, particularly in a situation where the county denies their request for an emergency detention. Here is an excerpt from the Milwaukee Journal Sentinel this weekend that highlights that obstacle:

Many families, frantic to get care for their loved ones before they come to harm, or harm others, do not know how to make that happen, short of calling the police and having the person taken to the [Milwaukee] Mental Health Complex on an emergency detention. There are two ways to get a court to order care for a person who refuses treatment, besides calling the police: Doctors can file a petition to hold a patient who voluntarily seeks treatment but decides to leave against medical advice. And three people who swear they have knowledge of the person being dangerous can ask the court to commit the

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person. Neither approach is guaranteed to go before a judge. County lawyers can refuse to file the petition, saying they don't think the reasons listed meet the legal standards.

In these rare instances, when a county and family may disagree on what types of treatment the individual should receive, the family member should at least have one more opportunity to have their case heard before a neutral party – regardless of the county's opinion. This legislation removes this barrier by requiring County Corporation Counsel to file the petition, but still maintains the County Corporation Counsel's important role of representing the public's interest in the process.

Under current law, there are three methods for initiating involuntary mental health examination and treatment of an individual believed to be mentally ill and a danger to self or others: 1) a law enforcement emergency detention, 2) A treatment director emergency detention of a patient already on an psychiatric unit, and 3) a "three party" petition for examination.

Under current law, a "three party" petition is a sworn petition that is drafted by the County Corporation Counsel. At least one of the signers must have personal knowledge of the individual's dangerous behavior. The petition must allege that the person is mentally ill, developmentally disabled, or drug dependent, and dangerous to self or others, and a proper subject for treatment.

Under current law, County Corporation Counsel files the three party petition with the court, and after review by the judge, the judge may order detention of the individual by law enforcement to a mental health detention facility or may set the case for a probable cause hearing without ordering detention.

However, under current law, County Corporation Counsel is not required to file the three party petition with the court; if County Corporation Counsel does not file the petition, the three parties have no ability to have their concerns reviewed by a court. This bill remedies this concern while still maintaining the County Corporation Counsel's key role in representing the interests of the public during commitment proceedings.

In situations in which the county corporation counsel does not agree with the three parties' petition, the bill creates a process in which county corporation counsel would draft and file the three party petition, but would draft and file the petition under a "limited appearance." Under the "limited appearance" process, the County Corporation Counsel would notify the parties that he/she will file the petition in a timely manner but will include with the petition a certification by the County Corporation Counsel that corporation counsel is not supporting the petition but is making a "limited appearance." The County Corporation Counsel would not represent the petitioning parties in court, but would still represent the interests of the public in court.

The bill also specifies that a court shall review a three party petition with 24 hours, excluding weekends and holidays. Under current law, no timeline is provided for review.

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November 4, 2013

Representative Erik Severson
Chair, Assembly Committee on Health
P.O. Box 8953
Madison, WI 53708

Dear Chair Severson and Members,

The State Public Defender prefers the new approach to the Family Empowerment Act represented in Assembly Bill (AB) 488. The bill author was open to listening to the concerns expressed at the public hearing on Assembly Bill 451 and has offered a new proposal that better accomplishes the same goal of giving families an opportunity for judicial review of an involuntary commitment petition.

AB 488 makes several relatively simple changes to the existing three-party petition process in s. 51.20 to allow for judicial review. First, corporation counsel would be required to submit the three-party petition for judicial review. Language allowing for corporation counsel to offer a limited appearance preserves the ability for the county through corporation counsel to indicate to the judge that counsel believes that involuntary commitment is not the appropriate or least restrictive form of treatment. It also preserves the traditional role of corporation counsel in representing the public in Ch. 51 proceedings.

The draft also requires a judge to review the petition within 24 hours of receipt. Anecdotally, we understand that this review is the usual practice, so we do not anticipate that this time requirement would place an undue burden on the courts.

We feel that this approach better balances the ability for families to seek treatment via a three-party petition with the constitutional rights of the individual while maintaining the county and corporation counsel role in the process.

Sincerely,

Adam Plotkin
Legislative Liaison, Office of the State Public Defender

WISCONSIN HOSPITAL ASSOCIATION, INC.

November 5, 2013

To: **Members of the Assembly Health Committee**

From: **Matthew Stanford, WHA VP Policy & Regulatory Affairs, Associate General Counsel**
Kyle O'Brien, WHA VP Government Relations

Re: **WHA supports Assembly Bill 488, a collaborative improvement to Wisconsin's three party petition process**

The Wisconsin Hospital Association (WHA) supports Assembly Bill 488, which modifies Wisconsin's three-party petition process to help families find a way to get court-ordered treatment for their loved ones before they come to harm or harm others. This bill is the result of a collaborative effort of legislators and stakeholders to develop an alternative to Assembly Bill 451 and provides families with a pathway for a neutral party – a judge – to consider an order for involuntary care for a loved one while preserving the county corporation counsel's role of representing the public's interest in commitment proceedings. Assembly Bill 488 addresses the Speaker's Mental Health Task Force recommendation that families have an ability to access a court to review a request for involuntary care.

What is the problem?

Over the past several months, the Milwaukee Journal Sentinel has written multiple stories identifying problems with our mental health system, including difficulties in helping a person receive court-ordered care when that person is in "imminent danger" and refuses treatment. Currently, family members and health care providers may file a "three party petition" in which three people, one of which has personal knowledge of the subject individual's dangerousness, makes a sworn petition to a judge to order involuntary care. However, as the Milwaukee Journal Sentinel article published on Sunday notes, the petition is not "guaranteed to go before a judge. County lawyers can refuse to file the petition, saying they don't think the reasons listed meet the legal standards." (http://www.jsonline.com/news/milwaukee/chronic-crisis-how-can-milwaukee-countys-broken-mental-health-system-be-fixed-229974841.html)

In 2010, WHA's own Mental Health Task Force published a white paper (http://www.wha.org/Data/Sites/1/behaviorhealth/bhtf-whitepaper.pdf) that contained three vignettes identifying the quandary treating physicians are placed in when their assessment of a patient's need for involuntary care conflicts with an assessment by a county crisis agency or county corporation counsel that the patient does not meet the standards for involuntary care. As noted by the Milwaukee Journal Sentinel's Sunday article, under current law, even if the treating physician recommends involuntary care, that patient's family cannot access a court to review the situation if county corporation counsel refuses to file a petition with a court to review the situation.

How does Assembly Bill 488 address the problem?

AB 488 sets forth a collaborative approach between families and county corporation counsel that provides families an opportunity to have a court review a three party petition for involuntary care, while maintaining county corporation counsel's role in drafting and filing the petition and representing the interests of the public in the process. The bill also specifies that a court shall review a three party petition within 24 hours, excluding weekends and holidays. Under current law, no timeline is provided for review.

We ask to you to vote in support of Assembly Bill 488. If you have any questions, please feel free to contact Kyle O'Brien (kobrien@wha.org) or Matthew Stanford (mstanford@wha.org) at 608-274-1820.

WISCONSIN ASSOCIATION OF COUNTY CORPORATION COUNSEL

TO: Honorable Members of the Public Health Committee

FROM: Attorney Todd J. Liebman, Sauk County Corporation Counsel

DATE: November 1, 2013

SUBJECT: Amendments to Wis. Stat. s. 51.20

It is my understanding that the Committee will be considering amendments to Wis. Stat. s. 51.20 that makes modifications to the current three party petition processes. The change centers on creating a mechanism where, if a county corporation counsel does not believe that a three party petition meets the legal standard and advises against filing, the individual advancing the three party petition has the opportunity to have the corporation counsel file the petition regardless under a limited appearance. Provided that it is clear that the corporation counsel is proceeding on a limited appearance, and that the corporation counsel is still involved in all proceedings as a representative of the public, I have no objection to these changes.

An informal survey of my colleagues via our list serve did not reveal unanimity regarding the changes, but there were no strenuous objections either.

Thank you for considering the comments of corporation counsel during this process.

Mental Health America of Wisconsin

Testimony on AB488: Assembly Health Committee
Shel Gross, Director of Public Policy
Mental Health America of Wisconsin

Mental Health America of Wisconsin (MHA) would like to thank the members of the Health Committee, the authors of AB451 and others for responding to the concerns expressed about that bill at hearing two weeks ago. We also appreciate being invited to discuss the alternative that became AB488. Obviously I would not be doing my job if I failed to note that we might have saved ourselves a bit a time and consternation had we been invited to discuss what became AB451 before it was introduced. 'Nuff said.

AB488 is actually a very elegant solution to the problem its proponents wish to address. It is one that MHA can live with. It provides an appeal process for families or other interested parties, solidly rooted in current law and keeping the county in the loop. We stop short of being able to actually support the bill for a number of reasons:

- It is unclear to what degree we have a problem with current law in the way that proponents of AB488 suggest. In fact, we actually have very little consistent statewide data on number of detentions, how many go to a probable cause hearing and how many lead to commitment. Data I have seen suggests most counties have more diversions and settlement agreements than commitments, which is good. For most the number of commitments is a very small percentage of EDs, which is also good. But the data are limited.
- We don't know whether those situations where someone for whom an ED was sought but it was not granted would have been found a candidate for ED at that time. Even though the person may have gone on to commit an act of violence it is not clear whether they would have met the standard of dangerousness under Chapter 51 at the time of examination. Dangerousness is very hard to predict. It will be important to monitor how this plays out should AB488 become law.
- There is clearly a balancing act between detaining people for whom there is no cause and failing to detain people who may pose a real, immediate danger to themselves or others. Many consumers continue to feel that, in fact, the balance is still skewed towards detaining those who do not pose a real risk. They feel this bill potentially skews the balance more in that direction.

I note that the current bill removes penalties for the county or for petitioners that were part of AB451. We support this change because we think there were many problems with that system. However, neither AB451 nor AB488 address the penalty that consumers are subject to. I'm not talking about the indignities associated with emergency detention. I am talking about the more concrete penalty of being required to pay the costs for their detention. Imagine that you have been detained and subsequently no probable cause has been found. You are free to go, but weeks later you find a bill for $6000 from the county in your mailbox. Clearly this must be a mistake, but it is not. My guess is that counties or hospitals ultimately have to write off much of this as many of the individuals detained have no way to pay such a bill. But in the meantime this causes untold strain on the individual. You might want to consider addressing this gross injustice.

We do think that strengthening the mental health system, as the Governor has done through his budget initiative and as the Speaker's Task Force is doing through many of the other bills introduced based on its report, is ultimately the way to address the concerns about the impact of mental illnesses. After all, even if probable cause is found there need to be services and supports available. And if acceptable services are available some individuals will access them before the need for detention arises. So for those efforts you have our appreciation.