



# Wisconsin State Public Defender

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January 9, 2014

Senator Leah Vukmir  
Chair, Senate Committee on Health & Human Services  
P.O. Box 7882  
Madison, WI 53707

Dear Chair Vukmir and Members,

The State Public Defender prefers the approach to the Family Empowerment Act represented by Assembly Bill (AB) 488. This bill accomplishes the goal of giving families an opportunity for judicial review of an involuntary commitment petition. The bill's authors, Representative John Jagler and Senator Paul Farrow, were open to making changes to the original proposal after hearing concerns expressed at a public hearing before the Assembly Committee on Health.

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 timeline is the usual current practice, so we do not anticipate that this time requirement would place an undue burden on the courts.

We feel that Assembly Bill 488 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's role in the process.

Sincerely,

Adam Plotkin  
Legislative Liaison, Office of the State Public Defender

# WISCONSIN HOSPITAL ASSOCIATION, INC.



January 9, 2014

**To:** Members of the Senate Health and Human Services 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

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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 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 November 3, 2013 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 November 3 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](mailto:kobrien@wha.org)) or Matthew Stanford ([mstanford@wha.org](mailto:mstanford@wha.org)) at 608-274-1820.

WISCONSIN ASSOCIATION OF COUNTY CORPORATION COUNSEL

TO: Honorable Members of the Senate Committee on Health and Human Services

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

DATE: January 9, 2014

SUBJECT: Assembly Bill 488

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The Wisconsin Association of County Corporation Counsel was very concerned regarding the draft Assembly Bill 451. I was grateful for the opportunity to present those concerns before the Assembly Committee, and appreciated that our concerns were considered in the drafting of Assembly Bill 488. The changes reflected in AB 488 to the Chapter 51 process are changes that my colleagues and I can live with. The changes give credit to the critical role that counties play in ensuring that the mentally ill receive the treatment they need, society is protected, and civil liberties are protected.

County corporation counsel take our obligations to represent the interests of the public under Chapter 51 very seriously. We work daily with departments of human services, families, public defenders, the courts and advocacy groups to ensure that individuals receive the treatment and services they need and that proceedings are conducted in a manner which provides full due process for subjects being detained.

AB 488 strikes the appropriate balance between allowing family members to seek treatment via three-party petition, while preserving the critical role for corporation counsel to fulfill their traditional role in representing the interests of the public. Having corporation counsel involved in all levels of the proceeding will ensure that the courts have access to the position of county departments of human services in exercising their important role in protecting society while ensuring the rights of the subject are protected.

Thank you for considering our comments today.



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WISCONSIN STATE REPRESENTATIVE

41<sup>ST</sup> ASSEMBLY DISTRICT

SB 127/AB 360: Emergency detention, involuntary commitment, and privileged communications and information.

SB 126/AB 435: Admission of minors for inpatient treatment.

Testimony of State Representative Joan Ballweg  
Senate Committee on Health and Human Services

January 9, 2014

Thank you, Chair Vukmir and members of the Health and Human Services Committee for hearing Senate Bills 126 and 127. Both of these bills were part of the Legislative Council Special Committee on Chapter 51, which originally began work on this topic during the 2010 interim.

Senate Bill 127/Assembly Bill 360 does the following:

- Expands the criteria for taking an individual into emergency detention to include a determination "...that detention is the least restrictive alternative appropriate to the person's needs."
- Creates a "purpose" statement for the emergency detention statute. The statement says that the purpose of emergency detention is to provide, on an emergency basis, treatment by the least restrictive means possible, to individuals who meet all of the following criteria: (a) are mentally ill, drug dependent, or developmentally disabled; (b) evidence one of the statutory standards of dangerousness; and (c) are reasonably believed to be unable or unwilling to cooperate with voluntary treatment.
- Provides that the county department may approve the detention only if the county department reasonably believes the individual will not voluntarily consent to evaluation, diagnosis, and treatment necessary to stabilize the individual and remove a substantial probability of physical harm, impairment, or injury to himself, herself, or others.
- Modifies the emergency detention statute applicable to Milwaukee County that requires the treatment director of the facility in which the person is detained, or his or her designee, to determine within 24 hours whether the person is to be detained. The bill provides that when calculating the 24 hours, any period delaying that determination that is directly attributable to evaluation or stabilizing treatment of non-psychiatric medical conditions of the individual shall be excluded from the calculation.
- Eliminates that provision in the statutes that commitments that are based on the 4th standard of dangerousness may not continue longer than 45 days in any 365-day period.

- Repeals the provision that an involuntary commitment of an inmate in a state prison or county jail or house of correction ends on the inmate's date of release on parole or extended supervision.

Senate Bill 126/Assembly Bill 435 changes these provisions:

- Eliminates the need to file a petition for review of an admission of a minor under age 14 for treatment of mental illness, alcoholism or drug abuse, or developmental disability. A petition would still be required if a parent refused to consent to treatment; if a parent with legal custody or guardian cannot be found; or if there is no parent or guardian.
- Eliminates the need to file a petition for a minor age 14 to 17 who is voluntarily participating in inpatient treatment for mental illness. A petition would still have to be filed if the minor refused to join in the application; if the parent with legal custody or the guardian could not be found; or if there were no parent with legal custody or guardian. A petition would also still be required if the minor wanted treatment but the parent refused.
- Eliminates the petition requirement at the time that a short-term admission of 12 days expires, if the admission was voluntary on the part of the minor and the parent.
- Eliminates the provision that allows for no more than one short-term (up to 12 days) voluntary admission of a minor every 120 days.

Creates subsection and paragraph titles within s. 51.13, Stats., to provide guidance to the reader regarding the subject matter of the subsections and paragraphs, and eliminates some redundant language in s. 51.13, Stats.

The Speaker's Task Force on Mental Health then reviewed the Legislative Council special committee and recommended legislation. As a member of the Speaker's task force, I can attest to how thoroughly we vetted the Chapter 51 Legislative Council bills. I ask for your support today to further this important legislation.

Thank you for your time and to the office of Senator Lazich for her work on this issue. I'm happy to answer any questions.



**INTERGOVERNMENTAL RELATIONS**  
Milwaukee County

**Testimony of Eric Peterson, on behalf of Milwaukee County**  
*SB 127 & AB 360 – Emergency Detention & Involuntary Commitment*  
Senate Committee on Health  
Thursday, January 9, 2014

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Honorable Chairwoman Vukmir and members,

Thank you for taking testimony today on Senate Bill 127 and Assembly Bill 360, companion Joint Legislative Council bills on emergency detention, involuntary commitment and privileged communications. Milwaukee County supports this bill with particular emphasis of support for the provisions relating to tolling the 24 hour period in Sections 8 and 9 of the bill. The County Executive and Board extends their thanks to the members of the Joint Legislative Council's Special Committee on Review of Emergency Detention and Admission of Minors under Chapter 51 for their inclusion of this bill in their final report. We appreciate the bipartisan recommendation to approve this measure from the Speaker's Taskforce on Mental Health.

Too often under current law, the 24 hour period for a determination of an emergency detention is simply wasted while the patient receives medical care or other medical evaluation. Hence, the time actually allowed for determination for detention may be too short or in some cases, expire before a determination may begin. Tolling this period to begin following medical stabilization will allow for better evaluations for determinations for detention, release, or a community services placement.

This provision of the bill is of particular importance to the professionals in our county who work every day in this field. This provision will allow a thorough qualified determination for detention of a patient after they are stabilized for non-psychiatric conditions. Without this tolling of the time period, and due to the legal nature of an emergency detention, clinicians and law enforcement may never legally be able to address the mental health needs of the patient.

On behalf of Milwaukee County, I urge your support of this bill and am happy to answer questions as they arise. Thank you.

# WISCONSIN HOSPITAL ASSOCIATION, INC.



January 9, 2014

**To: Members of the Senate Committee on Health and Human Services**

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

**Re: WHA Supports Assembly Bill 360, But Recommends that the Legislature Closely Monitor the Effect of the Two Provisions of the Bill Once Enacted**

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The Wisconsin Hospital Association (WHA) was pleased that the Joint Legislative Council in 2010 formed the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51," (the "Study Committee"), and appreciates the work undertaken by the Study Committee on a challenging area of patient care, law, and public policy. Guided by a Mental Health Task Force formed by WHA in late 2008, WHA has been engaged in the work of the Study Committee, the Joint Legislative Council, the Speaker's Task Force on Mental Health and other efforts to identify and enact public policy that will increase the likelihood that individuals with mental health needs throughout Wisconsin consistently receive the right care, at the right time, and in the right setting. Assembly Bill 360 is one output of the Study Committee's work, and WHA offers the following comments on the bill for your consideration.

WHA supports Assembly Bill 360, but has previously expressed concerns that two provisions in the bill – the earlier start to the emergency detention "72 hour clock" and the new language requiring law enforcement to determine that an emergency detention is the "least restrictive" alternative - may unintentionally decrease the likelihood that individuals with urgent mental health needs consistently receive the right care, at the right time, and in the right setting. WHA has previously offered alternatives to those concerning provisions.

**WHA and its member hospitals will monitor the practical results of those two provisions of AB360 once enacted. WHA recommends that the Legislature similarly monitor the implementation of AB 360 and in the future consider additional revisions to those provisions as needed to address unintended consequences of the two provisions that arise following enactment.**

***Area to Monitor #1 – AB 360 sets an earlier start to the emergency detention "72 hour clock," which for some patients will give mental health care providers less time to psychiatrically stabilize an individual in "imminent danger" and avoid a full, long-term commitment.***

When an individual is brought to a hospital psychiatric unit under an emergency detention, the psychiatrist's goal is to work to stabilize the individual's condition so that an imminent danger no longer exists and the person can avoid long term commitment. Because of this care, many individuals on an emergency detention can be released without having to proceed to a probable cause hearing for a full, long-term commitment.

If an individual is under an emergency detention, current law states that the emergency detention be ended or commitment proceedings must begin within 72 hours of the individual's arrival at "the emergency detention facility." Assembly Bill 360 amends Wisconsin law so that the "72 hour clock" starts earlier, at the time the individual is taken into custody by law enforcement. The practical result of this change is that health care providers will have less time to psychiatrically stabilize an individual that is subject to an emergency detention.

This change could be particularly problematic for individuals that may have life threatening physical injuries (such as from a suicide attempt) that require treatment before an individual can be transferred to an emergency detention facility for psychiatric stabilization. Further, this change will particularly impact the time available under an emergency detention to psychiatrically stabilize individuals in rural areas, as the change in the start of the "72 hour clock" does not take into account that significant travel may be required to transport an individual to an emergency detention facility.

***Area to Monitor #2 –AB 360's new requirement that law enforcement determine if an emergency detention is the "least restrictive alternative" will likely result in inconsistent interpretation and practice.***

One policy goal that the Study Committee discussed was to work to clarify in law a principle that individuals that truly agree to stabilizing treatment should not be subject to an emergency detention. WHA is supportive of that goal, but has raised concerns that the language used to achieve that goal unnecessarily uses legal jargon that will result in inconsistent application of the law and ultimately result in some individuals not getting the emergency help that they need.

Specifically the bill will require law enforcement, before they initiate an emergency detention, to determine "that taking the person into custody is the *least restrictive alternative* appropriate to the person's needs." While county crisis workers may be in a position to determine what is a "least restrictive alternative," WHA has concerns that law enforcement is not in the best position to make such determination. To ensure more consistent application of the law, WHA has previously recommended removing the proposed least restrictive jargon and instead amending law to **plainly state** that law enforcement may not take individuals that truly agree to stabilizing treatment into custody under an emergency detention.

If you have any questions, please feel free to contact Kyle O'Brien ([kobrien@wha.org](mailto:kobrien@wha.org)) or Matthew Stanford ([mstanford@wha.org](mailto:mstanford@wha.org)) at 608-274-1820.



**Testimony to the Senate Committee on Health and Human Services**  
**Shel Gross, Director of Public Policy**

Thank you for your consideration of a number of bills addressing mental health services and related issues. Together these bills build upon unprecedented support for expanding access to mental health treatment and intervention that began during the 2013-2015 biennial budget process. Importantly, these bills build on the budget initiatives to create a stronger system of care for children and adults experiencing mental health disorders; one which supports earlier intervention and recovery.

Mental Health America of Wisconsin (MHA) did not take a position on the following bills:

- **SB360, Protected Health Information:** MHA recognizes the value of sharing information to improve integrated health care but has been concerned about the lack of input that consumers and family members have indicated they have had into the development of this bill. There is a strong sentiment within the mental health community that sharing of personal mental health information should remain voluntary and if there are information system limitations in exercising this right then the onus is on those information systems. Unfortunately there have been many instances where medical providers, learning about a person's mental illness, discount what are legitimate physical health complaints; often with serious medical consequences to the individual. MHA recommends that if you support this bill that you also consider support for legislation that we anticipate to fund efforts to reduce stigma and discrimination against individuals due to their mental health conditions.
- **AB488, Involuntary Commitments:** This bill replaced AB451 which MHA strongly opposed. While MHA is not clear that this legislation is needed we can live with the impact this bill will have.
- **SB369, County Performance on Providing Core Mental Health Services.**

MHA supports the following bills:

- **SB362, Grants for Crisis Intervention Team Training:** Crisis Intervention Training has enhanced law enforcement's ability to respond more appropriately to individuals with mental illnesses enhancing the likelihood for a positive outcome. Law enforcement officers who have taken the training report that it has greatly benefited them in dealing with often challenging situations.

- SB359, Child Psychiatry Consultation Program: This bill is based on a program from Massachusetts which was shown to greatly increase the ability of pediatricians and primary care providers to work with youth with emotional disturbances. Given the serious shortage of child psychiatrists in most of Wisconsin this bill makes efficient use of existing resources to better meet the mental health needs of these young people. We support the bill as amended by the Assembly.
- SB366, Primary Care and Psychiatry Shortage Grant Program: This bill will address the extreme shortage of psychiatry services in many areas of Wisconsin by creating residency opportunities. We support the bill as amended by the Assembly.
- SB368: Grants to Establish Peer-Run Respite Centers: This bill will support the expansion of peer-run respite, a cost-effective alternative that can mitigate the need for emergency services. We support the bill as amended by the Assembly.
- SB409, Individual Placement and Support Program: This bill will support expansion of an evidence-based program for employment of people with serious mental illnesses, which in turn will support the recovery of these individuals. People with mental illnesses want to work but often need specialized supports in order to begin this process. We support the bill as amended by the Assembly.
- SB410, Mental Health benefits and Reimbursement for services under Medicaid: this bill addresses current prior authorization practices that are inconsistent with best practices.
- SB362, Grants for Mental Health Mobile Crisis Teams: This bill will support the development of mobile crisis in rural areas allowing a more effective intervention for someone in a mental health crisis, and often allowing for a response that does not involve incarceration.

SB127/AB360, Emergency Detention, Involuntary Commitment and SB126/AB435, Admission of Minors for Inpatient Treatment: These bills address a variety of changes to current statute developed by the Legislative Council Study Committee on Chapter 51. MHA appreciates the considerable efforts of this study committee to work through the challenging issues of balancing individual rights with timely access to treatment.