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**TO: Members of the Senate Committee on Mental Health, Substance Abuse Prevention, Children & Families
Members of the Assembly Committee on Mental Health and Substance Abuse Prevention**

**FROM: Matthew Stanford, General Counsel
Kyle O'Brien, Senior Vice President, Government Relations**

DATE: May 27, 2025

RE: Outstanding clarity questions regarding Clinician Initiation of Emergency Detention of Minors - SB 109/AB 114

Wisconsin has a uniquely complex mental health care system, and crisis services and emergency detention public policy is even more complex due to important and overlapping considerations including:

- State/community interests in preserving life (danger to self),
- Community safety interests (danger to others),
- Civil liberties considerations (involuntary/detention),
- Abuses of the past (institutionalization through 1980s), and
- Stigma codified in law (e.g. mental health services excluded from Medicaid; regulatory and payment silos and barriers not applicable to physical health services.)

As a result of these overlapping fundamental considerations, unlike other health services, multiple entities have a role in emergency detention, including:

- Emergency departments,
- Law enforcement,
- County government,
- Inpatient psychiatric units,
- Psychiatrists, emergency department physicians and other clinicians,
- Patient and family groups, and
- DHS

A commonality across all of these stakeholders is a shared desire for positive outcomes. While each stakeholder brings different experiences and expertise that shape their views on the best path to that positive outcome, **all struggle with complexity of the system. That complexity results in variation in interpretation, and in turn variation in services, access barriers and undesired outcomes for patients.**

Guided by WHA's Member Mental Health and Addiction Care Forum of over 100 individuals providing mental health services in hospitals and clinics throughout Wisconsin, WHA provided to the Legislative Council Study Committee on Emergency Detention and Civil Commitment of Minors at its December 18 meeting a list and description of several of questions and areas of potential confusion contained in LRB 062/P5, which is now SB 109/AB 114.

Those questions and areas of confusion remain. Attached to this memo are the questions and issues in WHA's December 17 comments and questions to the Study Committee, updated to reflect the introduced bill numbers.

WHA looks forward to continuing engagement with the Senate and Assembly committees and partner stakeholders to address these outstanding questions and opportunities for better clarity in the bills. Our intent of such work is to help reduce the likelihood of variation in interpretation of emergency detention statutes and procedures across Wisconsin, and in turn reduce variation in services and outcomes for patients experiencing a mental health crisis.



SB 109/AB 114 – Clinician Initiators - Initial Questions

“Initiate” is not defined in SB 109/AB 114 nor current s. 51.15, which could create confusion and further inconsistency in the application of the emergency detention statute across Wisconsin’s 72 counties.

As a practical matter under current law and practice, clinicians **commonly** contact either law enforcement or county crisis to request an emergency detention – sometimes referred to as an EM1 - if the clinician believes the clinician’s patient needs involuntary treatment and meets the criteria for emergency detention under s. 51.15(1)(ar), including the non-clinical standards for emergency detention in s. 51.15 (1)(ar)1.-3. The “detention” – which triggers the changes in rights and granting of authorities - under s. 51.15 only begins after law enforcement arrives to take custody of the patient.

Given the lack of definition of “initiate” in SB 109/AB 114, there are several areas of potential confusion regarding how SB 109/AB 114 should be interpreted and applied in the context of the current emergency detention process which currently relies on “clinicians”. Initial questions include:

- Prohibition on non-certified clinicians contacting law enforcement or crisis? Under SB 109/AB 114, is it intended that a clinician would be prohibited from contacting law enforcement or county crisis to request an EM1 unless the clinician is certified by a county under the process specified in SB 109/AB 114?
 - If not, is it clear to all readers - including clinicians, families, patients, law enforcement, county crisis staff, corporation counsel, defense counsel, and courts - that the language does not prohibit such “initiation” of the emergency detention process?
- Transfer of EM1 form obligation to clinicians who contact law enforcement or crisis? Under SB 109/AB 114, if a clinician contacts law enforcement or county crisis to request an EM1, does SB 109/AB 114 transfer the current requirements for law enforcement to complete the EM1 statement of emergency detention form to the clinician who contacts law enforcement or county crisis?
 - If not, is it clear to all readers that if a clinician contacts law enforcement or county crisis to request an EM1, which is currently a common practice, that such request does not transfer the obligation to complete the EM1 statement of emergency detention form from law enforcement to the contacting clinician?
- Transfer of testifying to EM1 form contents at probable cause to clinicians who contact law enforcement or crisis? Under SB 109/AB 114, if a clinician contacts law enforcement or county crisis to request an EM1, and if SB 109/AB 114 transfers the current requirements for law enforcement to complete the EM1 statement of emergency detention form to the clinician who contacts law enforcement or county crisis, does that transfer also result in a new obligation on the contacting clinician to testify at a probable cause hearing?

- What is practically meant by the clinician's "determination" that emergency detention is "appropriate" is "subject to the approval of the county?" Under current s. 51.15, law enforcement does not need approval of the county under s. 51.15(2)(a) to take a person into custody under s. 51.15(1)(ar), but does need approval of the county under s. 51.15(2)(a) to transport the individual in custody "for detention" to a treatment facility under s. 51.15(2)(d). In contrast, SB 109/AB 114 does not require county approval of transport of an individual "for detention" to a treatment facility, but instead states on page 7 lines 5-8, that "the clinician initiator's determination that emergency detention is appropriate...is subject to the approval of the county...."
 - Is it intended that the clinician's "determination" of the need for emergency detention cannot happen until county crisis has evaluated and "approved" the emergency detention?
 - As a practical matter, how do a patient's rights and a clinician's authorities and responsibilities under s. 51.15 as modified by SB 109/AB 114 change from the time prior to the clinician making a "determination" in comparison to the time period between when the clinician has made a "determination," and county crisis has "approved" the "determination?"
 - Based on the answer to the above question, what is the intended purpose of having the clinician making a "determination" rather than simply having county crisis directly evaluate the individual and approving the emergency detention?
- What are the responsibilities of the initiating clinician if county crisis declines approval of the clinician's "determination" under the bill? As a practical matter, an emergency detention process should only be started if the individual is "reasonably believed to be unable or unwilling to cooperate with voluntary treatment," per. s. 51.15(1)(ag). Thus, if no emergency detention is approved, the individual is likely to leave the facility where the emergency detention process began against medical advice.
 - Is the initiating clinician liable in any way to the individual or others if the individual leaves against medical advice after county crisis declines approval of the clinician's "determination?"
- Who has custody responsibility to the patient and community under the clinician-initiated process? Additional practical clarity is needed regarding custody both before and after the county approves the detention under the proposed clinician initiator process. SB 109/AB 114 at page 7, lines 15 – 21 states that the individual is "in custody" *after* the county approves the detention.
 - In whose custody is the individual before the county approves the detention, but after the clinician "initiates" the emergency detention?
 - Prior to county approval, is the individual in the "custody" of the "initiating clinician?" If so, as a practical and legal matter, what does that mean for the clinician and the individual?
 - After county approval SB 109/AB 114 at page 7, lines 18 -24 indicates "the minor is in the custody of the county" until custody is transferred to the person transporting the minor for emergency detention. As a practical and legal matter for the individual, clinicians,

law enforcement and counties, what does that mean to be “in the custody of the county?”

- What is the practical rationale for county approval of the clinician initiator’s determination that emergency detention is appropriate? SB 109/AB 114 at page 7, lines 5-8 specify that even though a clinician initiator as trained and authorized by a county may “initiate” an emergency detention under the bill, that clinician initiator’s determination that emergency detention is appropriate is subject to approval of the county department of community programs for the county in which the minor resides.
 - Particularly when the county approval under s. 51.15(2)(c) is made by a mental health professional with lesser licensure qualifications than the clinician initiator, what is the practical rationale for having county approval of the clinician initiator’s determination that emergency detention is appropriate?
 - Are there concerns that if no county approval were required, non-county clinicians would be significantly more likely to determine involuntary hospitalization is the safest option, resulting in significantly more need for inpatient hospital options in Wisconsin than currently exist?
- What information does SB 109/AB 114 expect clinician initiators to provide to corporation counsel? SB 109/AB 114 at page 8, line 1-9 describes a process in which a clinician initiator shall provide “all information relating to the emergency detention” to county corporation counsel no later than the next business day after initiation.
 - How does this obligation on clinician initiators compare to current requirements for law enforcement and county crisis staff?
 - Does this obligation fully preempt state and federal confidentiality laws applicable to health care providers but not law enforcement?
 - Will this specification in the statute increase or reduce the likelihood of legal challenges to individual emergency detentions at probable cause and subsequent court hearings?
- Change in EM1/ME-901 Statement of Emergency Detention Form? ME-901 – Statement of Emergency Detention Officer – as posted by the Wisconsin Court System (<https://www.wicourts.gov/forms/ME-901.DOC>, attached) asks the filing officer to provide evidence of “dangerous behavior” including a request to “Describe Behavior” and to provide name and contact information of “witnesses to the dangerous behavior.” The form does not ask the officer to describe or specify clinical information regarding the individual’s mental illness, drug dependency or developmental disability, nor does it require the officer to describe how taking the subject into custody is the “least restrictive alternative appropriate to the subject’s needs.” Rather it requires the filing officer to state the time and location of the “Dangerous Behavior,” to “Describe Behavior” and provide names and contact information for “Witnesses to the dangerous behavior (including officers who observed behavior).”
 - The “statement of emergency detention” in SB 109/AB 114 page 6, line 16 through page 7, line 4 uses language different than what is specified in ME-901 and the language regarding the statement of emergency detention in s. 51.15(5). Is it intended that SB 109/AB 114 is creating a different standard for what must be in a “clinician initiators”

statement of emergency detention, compared to what must be provided in form ME-901?

- Why is a clinician in a better position than law enforcement to gather and provide evidence of dangerousness as required by s.51.15(1)(ar)1-2, especially evidence of “threats of” suicide or serious bodily harm or evidence “that others are placed in reasonable fear of violent behavior and serious physical harm to them?”

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE CONDITION OF

**Statement of
Emergency Detention by
Law Enforcement Officer**

Name of Subject _____

Date of Birth _____

Court Case No. _____

Law Enforcement

Agency No. _____

- *File this statement with the court immediately and with the detention facility upon admission. A probable cause hearing must be held within 72 hours after the subject is taken into custody. (In Milwaukee County, file this statement with detention facility only.)*
- *Please print or type all information below. All blanks must be filled in.*

I am a law enforcement officer and have cause to believe that:

- The subject is mentally ill, drug dependent, or developmentally disabled.
- The subject evidences behavior which constitutes a substantial probability of physical harm to self or to others, or as otherwise set forth in §51.15(1), Wisconsin Statutes.
- Taking the subject into custody is the least restrictive alternative appropriate to the subject's needs.

My belief is based on specific and recent dangerous acts, attempts, threats, omissions, and/or statements made by the subject as observed by me or reliably reported to me as stated below:

Dangerous Behavior

When: _____

Where: _____

Describe Behavior:

☐ See attached page

Witnesses to the dangerous behavior: (Including officers who observed behavior)

Name of Witness	Telephone	Mailing Address	Relationship

[Name] _____ of the _____ County department of community programs (§51.42(3), Wis. Stats.) board approves the need for this detention.

The subject was taken into custody for the purposes of this emergency detention on [Date] _____ at [Time] _____ ☐ am. ☐ pm.

The potential detention facility is _____

Subject's Street Address	City	County	State	Zip Code	Phone Number

DISTRIBUTION:

1. Court
2. §51.15(2) Detention Facility
3. Subject with Notice of Rights

Signature of Officer

Department

Name Printed or Typed

Telephone