Policy – Wauwatosa Police Department

POLICY: **EMERGENCY DETENTION**

CHAPTER & SECTION: **5.1.5**

DISTRIBUTION: All Officers

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I. INTRODUCTION

It is the policy of the Wauwatosa Police Department that all persons exhibiting mental difficulties who is either ***high risk*** for harm to themselves or others, or who are ***potentially dangerous and uncooperative*** shall be placed on emergency detention. This policy rescinds Policy #21-21.

II. PROCEDURE

A) **Legal Standard for Emergency Detention**

The Department will adhere to the legal requirements of Wis. Statute 51.15 when making the determination to affect an emergency detention. This statute does not mandate that police take mentally ill people into custody. Mental illness alone is not legally sufficient to trigger an emergency detention, additional factors must be present.

Only those persons, who are in mental crisis ***and*** present a "substantial probability of physical harm" to themselves or others, as evidenced by a recent overt act, attempt, or threat to act, may be taken into custody on an emergency detention and conveyed to the Mental Health Emergency Center (MHEC).

B) **Determination of Probable Cause for Emergency Detention**

1. The standard for emergency detention is **probable cause**. That determination is to be based on a specific and recent act, attempt, or threat to act. Such as;
   - A recent threat or attempt at suicide or serious bodily harm
   - A recent homicidal or other violent behavior where others are placed in reasonable fear for their safety because of a person's recent overt act.
   - An attempt or threat to do physical harm
   - A failure to satisfy basic human needs.

2. It is not necessary for an officer to personally observe a subject's behavior. Probable Cause is based upon the totality of circumstances in each case, not personal observations alone. An officer's considerations should include, but are not limited to, the following:

   - Observations of the scene (weapons, pills, suicide notes, odor of natural gas, evidence of a struggle, etc.).
   - Observations of the subject (dress, behavior, or physical condition).
   - "**Reliable**" Statements of family members, relatives, neighbors, medical and fire personnel and other witnesses.
   - Prior police contacts with the subject.
   - Past mental health history of the subject.
   - Statements made to the officers or others by the subject.

3. Important: A "true" Emergency Detention under Chapter 51.15 requires three (3) key elements and all three elements must be present:
   - Mental Illness (Officers need to identify that a person is in mental *crisis*)
   - Dangerousness
   - Uncooperative nature

C) **Physicians' Request for Emergency Detention - Medical Vs Legal Judgment**

1. While physicians must make medical judgments about mental illness, officers are required to make a legal judgment about the existence of probable cause before an officer may deprive a person of their liberty. The law does not mandate officers to make emergency detentions, *nor does the law empower physicians to order the police to make an emergency detention.* **Officers are prohibited from doing so *IF*, in their professional judgment, probable cause is lacking.** Officers and physicians can collaborate in attempting to assess the "substantial probability of physical harm". Officers will be receptive to the physician's professional input in reaching a sound, legal determination as to the existence of **probable cause** to detain.

2. Should a physician make the request for Law Enforcement to initiate an Emergency Detention, and the officer feels there is a lack of probable cause to affect the detention, the officer can contact the Mental Health Emergency Center (MHEC), [redacted] during all hours of the day, and request input from the Crisis Service - Physician on Duty. Officers can ask to speak with the attending PCS physician and request their input as to whether or not the requirements, as set forth under Chapter 51.15, pertain to the current situation.

3. Physicians requesting an emergency detention from the police must provide officers with specific facts as well as medical opinions sufficient for the officer to determine if there is probable cause to make the emergency detention. Physicians **must** identify themselves to officers. They will be considered *witnesses* and listed on the form with complete identifying and contact data in case they are needed to testify at a detention hearing. (Additionally, See Section G)

4. Officers cannot make an emergency detention based on information provided by anonymous persons or persons who refuse to provide complete identifying and contact data.

D) **Low Risk Individuals where Probable Cause to Detain does not exist.**

Officers who encounter persons who exhibit signs of mental crisis where probable cause to initiate an emergency detention **does not** exist *may*:

1. Refer or convey low-risk, voluntary persons who are in mental *crisis* to their current mental health professional or facility, which may include MHEC or Aurora (formerly Milwaukee Psychiatric Hospital). ***Note:*** *There are five private facilities that are equipped to receive voluntary emergency detention persons. Should MHEC or Aurora advise that there is no room at their facilities, the voluntary emergency detention person may be transferred to one of the following facilities at supervisor discretion: Columbia St. Mary; St. Francis; Rodgers; St. Luke's – South Shore.*

2. Request the County's Mobile Crisis Team to conduct an on-scene evaluation. [redacted]

3. or Milwaukee County Sheriff's Dispatch for a Crisis Assessment Response Team evaluation [redacted]

4. Convey the person to the closest emergency room for a mental evaluation. *Emergency rooms are required by law to accept the person and evaluate them from a mental health stand point.* Officers will provide, if asked, the admitting nurse with a brief recitation of the circumstances and the subject's

name, address, D.O.B. However, officers **will not** stand-by during this process as the patient is not in police custody, but is the responsibility of the medical facility.

E) **Emergency Detention Candidates Requiring Medical Clearance.**

1. In those cases where patients that are in mental crisis need medical clearance prior to conveyance to the MHEC the patient will be conveyed to the nearest emergency room for treatment. *On the front of the ME-901 form, in the conveyed to section,* list the name of the satellite facility (hospital) the patient was taken to. These patients are only "candidates" for emergency detention until they are medically cleared. They are not police prisoners and should not be considered in police custody. (NOTE: in *Milw County v. Delores M.*, the courts determined that the 72-hour detention period begins on arrival at the facility for medical clearance, not upon the later arrival at PCS. This applies for adults as well as juveniles).

   It is important to remember that if, during the course of the investigation it is learned that a person over-dosed, that person must be medically cleared prior to transport to MHEC.

2. Should the patient require medical treatment against his/her will it is the responsibility of the hospital to detain the patient. The Wauwatosa Police Department does not authorize any hospital personnel to detain a patient for treatment on our behalf. The hospital staff should be advised that they should have their legal counsel initiate an emergency guardianship under Wis. Statute 880.15 or if an acute emergency exists, call the duty circuit judge at [redacted]

3. Should a patient be admitted to the hospital, officers will furnish the hospital admitting staff with an orange departmental "Discharge Notice" that should be affixed to the patient's chart. The officer will complete all fields of the notice, unless the information is unavailable, as follows:

DISCHARGE NOTICE

UPON RELEASE FROM MEDICAL CARE AT
THIS FACILITY,
THIS PATIENT: Smith, John J 01/01/1948 60
NAME D O B AGE

IS TO BE FURTHER PROCESSED BY THE
WAUWATOSA POLICE DEPARTMENT.

Case # 08-030001

PLEASE CONTACT: **WAUWATOSA POLICE DEPARTMENT**

PHONE# **(414) 471-8430** PER P.O. Patrol Supervisor
E.D DATE: 12/15/2008 TIME: 15:00 hrs

- List the **contact name** as “Patrol Supervisor” so the eventual call is directed to the correct person.
- List the **CASE #** as the Phoenix “call number”.

4. Forward the completed blue Emergency Detention form and (2) two copies to the patrol supervisor who will place them in the pending file located in the patrol lieutenant's office.

5. **It is important to remember that the blue Emergency Detention forms are considered mental health records (Wis. Stat. 51.30(4)). They are confidential and privileged (Wis. Stat. 51.30(4)(b)) and ***should not*** be released to any entity outside the process set forth by the Milwaukee County Behavioral Health Division or MHEC and outlined in this policy without informed written consent of the patient or a court order. The confidentiality of the document prohibits its release to facilities such as Froedtert, Children’s, and their security staff.**

6. **Supervisors Responsibility with a TDS**

In order to begin a **TDS** (*Treatment Director Supplement*), **BHD** (*Behavioral Health Division*) staff legally requires a *copy* of the ME-901. As such, for all patients that are placed under an ED *and* require medical clearance, fax the ED [redacted] by the end of the call or within 2 hours of the Patient being taken to the medical facility.

If a patient is TDS’d by BHD staff, law enforcement will no longer be responsible for patient transport unless:

- The patient has a criminal hold in addition to their ED or
- Is too dangerous or disorderly to be transported safely without restraint.

BHD staff should contact the department post-assessment to inform if a patient has been TDS’d (Supervisors make note in the Disposition after Med Clearance section on Notification by: line with **TDS completed**). *BHD can only assume responsibility for a patient that has been TDS’d.* All other ED patients that have not been TDS’d by BHD remain the responsibility of law enforcement for transport.

In the case where a patient receives medical clearance before TDS takes place, have officers transport original ME-901 form and copies with the patient as in the past. Supervisors need to check the folder daily for ME-901 forms that indicate a completed TDS on patients. These forms should be delivered to MHEC within 24 hours in order to legally complete the TDS process. The mobile team will

traditionally be available on weekends (but late shift hours vary) so make sure to check that a TDS was done before sending the paperwork to BHD. If no TDS, then transport the paperwork with the patient.

F) **Removal from Emergency Detention Candidacy after Medical Clearance.**

1. The Federal Emergency Treatment and Active Labor Act (Cobra) as it pertains to emergency medical screening beyond triage includes provisions for the screening and stabilization of the mentally ill in emergency treatment facilities. Cobra also requires that the *receiving facility (MHEC*) be notified by the *treating hospital* for authorization and acceptance ***prior to*** transferring a Detention Candidate to the receiving facility.

   After medical clearance has been obtained (non TDS'd cases), the treating hospital will notify the patrol supervisor using the information from the "Discharge Notice" left on the chart. The patrol supervisor will review the 51.15 paperwork in the pending file and ask the caller if the patient has been evaluated related to detention consideration at the treating hospital.

   If the answer is 'no', the patrol supervisor will remind the caller of the need to do so and ask that the treating hospital call back when the evaluation is complete.

2. If the answer is 'yes', the patrol supervisor will then determine whether or not to remove the candidate from detention consideration. The candidate will be removed **if, and only if,** the treating hospital physician/psychiatrist attests to <u>one</u> of the following:

   - The person is no longer a danger to self or others and can be released directly from the hospital.
   - The person will be admitted to the hospital's own in-patient psychiatric ward.
   - The person will be transferred voluntarily to another mental health treatment facility.

3. In the event the patient **is** removed from detention consideration because one of the above conditions applies, the patrol supervisor will complete the "Disposition after Medical Clearance" field on the backside of the blue 51.15 detention form and forward the competed report to Records. Copies of this form will not be provided to the treating hospital or MHEC.

4. If the treating hospital physician/psychiatrist attests that **none** of the above conditions apply, the patrol supervisor will ask the treating hospital if MHEC was notified of the pending transfer and if MHEC authorization was granted. If the answer is 'yes', the patrol supervisor will complete the "Disposition After Medical Clearance" field as appropriate and then call MHEC [redacted]

[redacted] to confirm that MHEC will accept the patient. Upon confirmation, the patrol supervisor will arrange to have the patient transferred from the treating hospital to the MHEC facility for detention.

If the treating hospital **has not** received authorization for the transfer from MHEC, the patrol supervisor will not send officers back to the treating hospital or take custody of the subject *under any circumstances*. (NOTE: The treating hospital is responsible for arranging transportation for any patient they discharge after treatment.)

5. Officers assigned to make a transport will obtain the 51.15 paperwork from the patrol supervisor, unless it has already been delivered to MHEC. The officers will transport the patient and all needed documentation, including medical records from the treatment facility, to MHEC.

G) **Emergency Detention of Psychiatric Facility/Ward Patients**

State statute 51.15 (10) grants the power of emergency detention to the directors of private psychiatric facilities/wards. The facility director does this by signing and processing a treatment director's statement of emergency detention known as a Treatment Director's Affidavit (TDA).

The Wauwatosa Police Department **will not** affect an emergency detention if the patient is classified as any of the following:

- An in-patient at a psyche facility/ward
- A patient recently released from a psyche facility/ward

Attempts to have our department do so will be considered patient dumping by the facility. Advise the facility that we will notify the appropriate agency regarding a possible COBRA violation.

The Wauwatosa Police Department will only provide assistance with *controlling* violent patients, if necessary. Detention, filing of all necessary papers and transportation are the responsibility of the facility.

H) **Emergency Detention of Medical Facility Patients.**

The Wauwatosa Police Department will initiate an Emergency Detention of a patient in a medical or surgical unit, if requested. This process will only begin after the patient is medically cleared for transport and has been accepted by MHEC after being notified by the requesting facility. The Detention will be based upon information and belief from the treating facility staff, which will be required to provide identification and contact information for subpoena service if a hearing is required.

I) **Emergency Detention from Doctor/Therapist Offices**

The Wauwatosa Police Department will initiate an Emergency Detention of a person making an office visit to a doctor's or therapist's office, provided that the requirements for detention are determined to be present by the investigating officer. The Detention will be based upon the officer's observations and/or information received from office staff, which will be required to provide identification and contact information for subpoena service if a hearing is required.

J) **Emergency Detention and Drug-Related Overdoses**

During instances of drug-related overdoses, the officer shall ascertain if the overdose was intentional and if the individual is a threat to themselves or if the overdose was accidental. A drug-related overdose alone and/or an addiction to drugs are not sufficient causes alone to detain an individual under Chapter 51.

In all overdose cases involving the use of illicit or controlled substances, the officer shall conduct a preliminary investigation and take the appropriate enforcement action if there is probable cause to believe a crime/offense was committed.

H) Reporting Requirements

Officers will complete the following reporting requirements when a 51.15 is affected:

1. State ED paperwork
    a. Retain copies for records and for ED folder in Patrol Lt's office
2. Booking entry of the 51.15 subject
3. CFS info, summary info, booking & names info for NIBRS purposes
4. The State ED form is to be attached to the case file
    a. Supervisors: make sure a copy with the completed "Disposition" portion on the top of page 2 is sent to records
5. No supplemental report needs to be written for standard ED's
    a. Supplemental reports shall be written when additional charges need to be referred for municipal or state court.

I) Emergency Detention – Missing Persons

If an at-risk individual qualifies as missing, the officer must enter the person into NCIC. The date and time should be omitted from the Emergency Detention paperwork. When the person has been located, they should be evaluated and the remainder of the Emergency Detention paperwork completed.

J) Individuals Who May Not Be Placed Under Emergency Detentions

1) Voluntary individuals (over age 18)

2) If under guardianship, their guardian must be present and consent.

3) Voluntary individuals (under age 18)

    a. Their parent or guardian must be present and consent. If the voluntary juvenile is involved in Wraparound services, they are required to utilize PCS for treatment.

4) Involuntary juveniles, under age 14, whose parent or guardian force treatment

5) Individuals with dementia

    a. This applies only if the officer believes the dementia to be a large contributing factor to the dangerousness. If someone is lucid, Chapter 51 can apply (e.g. individual was recently diagnosed, and has precise plans for suicide to avoid enduring the illness). With dementia, it can be beneficial to utilize the Wauwatosa Fire Department. People with dementia whose behavior drastically changes for an unknown reason are usually experiencing a medical crisis. Chapter 55 may apply in some cases; hospital social workers can help with Chapter 55.

6) Individuals who refuse medical care

7) If the individual is refusing care as a result of a medical crisis (e.g. hallucinating from alcohol detoxification, diabetic emergency, advanced dementia, etc.) we cannot force them to receive medical treatment under Chapter 51.

8) Individuals actively admitted to a psychiatric floor/hospital

9) If requested, officers shall evaluate individuals at medical hospitals who are not under an Emergency Detention.

10) Individuals under an active Emergency Detention (no exceptions)

K) Community Resources

Many of the non-dangerous/non-emergency calls the police receive involving people with mental illness are best handled by referring them to local community programs and agencies that serve this population. Law enforcement officers

should learn what community services are available, their times of operation, how to contact the community response team, and the procedures they follow. Refer to the list of community resources at the end of this policy.

N) **Crisis Assessment Response Team**

The Milwaukee County Behavioral Health Department collaborated resources to form Crisis Assessment Response Teams (CART). CART teams are made up of a sworn law enforcement officer partnered with a Master's level licensed mental health clinician. CART is primarily responsible for the following:

- Providing mental health assistance to individuals in need with the goal of reducing the number of Emergency Detentions.
- Providing an on-site clinical evaluation, stabilization and reis assessment when it is impossible or impractical for the individual to travel to MCMH.
- Initiate involuntary treatment (emergency detentions) when appropriate.
- Collect and maintain information regarding recipients served and issues presented.
- Conduct proactive home visits with those citizens having frequent mental health related police contacts in the attempt to decrease the number of crisis related calls for service at these residences.
- Advocate for our citizens and line them to mental health services to help reduce homelessness, reduce victimization, reduce substance abuse and minimize contact with law enforcement and utilization of emergency services.

Several neighboring Law Enforcement Agencies have CART Officers and may be requested to respond to a CFS in Wauwatosa with Supervisory Approval (MCSO, WAPD).

O) Chapter 51.15 Consultation

In the event an officer has a question regarding any aspect of Wisconsin State Statute Chapter 51.15, these questions should be directed to a supervisor. Any inquiries by supervisors regarding guidance/advice may contact any of the following:

1) Crisis Mobile Team: [redacted] (Anyone over age 18)

   a) Available to respond 0800 – 2000 and 0000 – 0700, Saturdays/Sundays
   b) Available by phone 24/7.
   c) Can provide information on a person's care team, case management, group home information.

2) Children's Mobile Team: [redacted] (Anyone under age 18)

a) Available every day from 0700 – 2200.
b) Available by phone 24/7.

3) Community Consultation Team: [redacted] (Any age)

a) Specialized to help developmentally/intellectually disabled individuals (e.g. autism).
b) Available by phone to respond 0800 – 1700, Monday – Friday.
c) If unavailable, contact the Crisis Mobile Team.

4) Milwaukee County Corporation Counsel: [redacted]

P) Chapter 55, Emergency Protective Placement

In Milwaukee County, the only individuals who can initiate the process for Emergency Protective Placement (EPP) are staff from Adult Protective Services (APS) and the Department of Aging (DOA). If anyone else petitions an EPP in Milwaukee County, it will be automatically dismissed by the Corporation Counsel and APS/DOA will be unable to file another petition for a period of 60 days.

Area hospitals have social workers who are trained to contact APS/DOA if they/we believe an EPP is necessary. Hospitals will hold individuals until staff from APS/DOA arrive. APS/DOA are not emergency services, however, can respond the following day. Questions regarding Chapter 55 may be directed to:

EA Prevention Program Coordinator Chapter 55
Milwaukee County Department on Aging
Marcia Coggs Center
1220 W Vliet St, Suite 330
Milwaukee, WI 53205
(414) 289-6533 / (414) 289-5730 (fax)

Q) Community Resources

1. Aurora Family Service
   3200 W. Highland Blvd.
   Milwaukee, WI 53208
   (414) 342-4560

2. Catholic Charities
   2021 N. 60 St.
   Wauwatosa, WI 53213
   (414) 771-2881

3. Children's Service Society of Wisconsin
   8915 W. Connell Ct.
   Milwaukee, WI 53226
   (414) 266-2000

4. Council for the Spanish Speaking, Inc.
   614 W. National Ave.
   Milwaukee, WI 53204
   (414) 384-3700

5. Gerald L. Ignace Indian Health Center
   1711 S. 11th St.
   Milwaukee, WI 53204
   (414) 383-9526; FAX: (414) 649-2711

6. Outreach Community Health Centers
   711 W. Capitol Dr,
   Milwaukee, WI 53206
   (414) 374-6575; FAX: (414) 374-7917

7. Hmong/American Friendship Association
   3824 W. Vliet St.
   Milwaukee, WI 53208
   (414) 344-6575; FAX: (414) 344-6581

8. Isaac Coggs Health Center
   8200 W. Silver Spring Dr.
   Milwaukee, WI 53218
   (414) 760-3900; FAX: (414) 464-6494

9. Jewish Family Services
   1300 N. Jackson St.
   Milwaukee, WI 53202
   (414) 390-5800; FAX: (414) 390-5808

10. Latina Women's Resource Center, UMOS
    802 W. Mitchell St.
    Milwaukee, WI 53204
    (414) 389-6500; FAX: (414) 389-4517

11. Life Navigators (Disability Partner)
    7203 W. Center St
    Wauwatosa, WI 53213
    (414) 774-6255; FAX: (414) 988-7724

12. Lutheran Social Services
    6737 W. Washington St., Suite 2275
    West Allis, WI 53214
    (414) 246-2300; web: www.lsswis.org

13. Marquette University Center for Psychological Services
    604 N. 16th St.
    Milwaukee, WI 53233
    (414) 288-3487

14. Milwaukee County Behavioral Health Division
    9455 Watertown Plank Rd.
    Wauwatosa, WI 53226
    (414) 257-6995; TTY: (414) 257-6300; FAX: (414) 257-8018

15. Milwaukee Women's Center (A Division of Community Advocates)
    728 N. James Lovell St.
    Milwaukee, WI 53233
    (414) 449-4777

16. New Concept Self-Development Center
    1531 W. Vliet St.
    Milwaukee, WI 53205
    (414) 344-5788

17. Pathfinders
    1614 W. Kane Pl.
    Milwaukee, WI 53202
    (414) 271-1560; FAX: (414) 271-1831; email: info@pathfindersmke.org

18. Sixteenth Street Community Health Center
    1032 S. Cesar E. Chavez Dr.
    Milwaukee, WI 53204
    (414) 672-1353; FAX: (414) 383-5597

19. United Community Center
    1028 S. 9th St.
    Milwaukee, WI 53204
    (414) 384-3100

20. Wisconsin Community Services
    3732 W. Wisconsin Ave.
    Milwaukee, WI 53233
    (414) 290-0400

R. **Hospitals Offering Psychiatric & Medical Services**

1. Ascension St. Francis Hospital
   3237 S. 16 St.
   Milwaukee, WI 53215
   (414) 647-5000

2. Aurora St. Luke's South Shore
   5900 S. Lake Dr.
   Cudahy, WI 53110
   (414) 649-6000

3. Ascension Columbia St. Mary's Hospital Milwaukee
   2301 N. Lake Dr.
   Milwaukee, WI 53211
   (414) 581-1000

4. Milwaukee VA Medical Center (Zablocki)
   5000 W. National Ave.
   Milwaukee, WI 53295
   Veterans Status Verification: (414) 384-2000, ext. 43376

   a. If used for an Emergency Detention, the officer needs to remain with the person until the Crisis Mobile Team responds on scene to assess. This does not apply to persons who seek voluntary treatment.

5. Froedtert Menomonee Falls Hospital
   W180N8085 Town Hall Rd.
   Menomonee Falls, WI 53051
   (262) 257-3100

6. ProHealth Waukesha Memorial Hospital
   725 American Ave.
   Waukesha, WI 53188

S. Psychiatric Hospitals

1. Rogers Memorial Hospital
   11101 W. Lincoln Ave.
   West Allis, WI 53227
   (414) 327-3000

2. Aurora Psychiatric Hospital
   1220 Dewey Ave.

Wauwatosa, WI 53213

3. Granite Hills Hospital
   1706 S. 68 St.
   West Allis, WI 53214
   Intake: 414-667-4800
   Fax: 414-455-4089

James H. MacGillis
Chief of Police

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