Mental Health Commitments and Three-Party Petitions

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Handling mental health crises through the legal framework established under Wisconsin Statute § 51.20 is both essential and challenging for counties. One area that presents particular difficulties is the processing of three-party petitions for involuntary mental health commitments. While this mechanism allows individuals to petition for the commitment of a person suffering from mental illness, drug dependency, or developmental disabilities, it places a significant burden on counties to manage a complex and often emotionally charged process, because only a county corporation counsel is empowered to file three-party petitions.[1]

Unlike county-initiated commitments, where law enforcement or mental health professionals play a leading role, three-party petitions typically involve laypeople — family members, friends, or acquaintances — who lack the experience or training to navigate this highly complex area of the law. This article will discuss the challenges counties face in managing these petitions and highlight how to effectively navigate the legal and logistical difficulties.

High evidentiary standards and the concept of "dangerousness"

The most fundamental challenge counties encounter in dealing with three-party petitions is the high evidentiary burden imposed by Wisconsin Stat. § 51.20, which requires petitioners to demonstrate that the subject of the petition (referred to as the "respondent") poses a danger to themselves or others due to their mental illness. This "dangerousness" must be proven through clear and recent acts or omissions that meet the statutory standards.[2]

For counties, the issue often lies in the type and quality of evidence presented in three-party petitions. These petitions are frequently filed by well-meaning individuals who may have genuine concerns but lack the formal evidentiary awareness typically available in county-initiated petitions. Petitioners may describe the respondent's behavior in emotional or generalized terms, but they often fail to provide the specific, objective evidence required to meet the legal standard of dangerousness.[3] This can leave counties in a difficult position, as they must review petitions that may lack sufficient detail while balancing the petitioners' sense of urgency and frustration.

Even when petitioners provide detailed descriptions of concerning behavior, counties must ensure the behavior is recent and meets one of the statute's five standards of dangerousness. This task is made more difficult by the fact that mental illness can be episodic, with respondents often appearing stable or improving by the time the petition reaches the county. This can make it harder to demonstrate an ongoing risk that justifies involuntary commitment, even when past behavior raises serious concerns.

Managing petitioner expectations

Another challenging aspect of dealing with three-party petitions is managing the expectations of the individuals who file them. Petitioners often come to counties in moments of extreme stress, believing that involuntary commitment is the only way to get their loved one the help they need. However, petitioners are often unaware of the high legal bar required for such commitments. The statutory requirements often result in delays or even rejections of petitions.[4]

Corporation counsels are placed in the delicate position of explaining these legal realities to petitioners, many of whom are understandably emotional and frustrated.[5] Petitioners may not fully appreciate the need for clear, recent evidence of dangerous behavior and may view the county as a barrier to getting their loved one necessary treatment.

This tension is compounded by the fact that counties cannot act as the petitioners' legal advocates.[6] County officials and corporation counsels must objectively evaluate the petition, assess whether it meets statutory criteria, and, if necessary, explain why the petition is likely to get rejected by a reviewing court.

This frustration on the part of the petitioners is further exacerbated by the limits on a county's ability to share information. Despite being labeled a "petitioner," the individuals are not considered a party to the court case and have no legal right to know what mental health facility the respondent might be placed in or the recommendations of mental health professionals who evaluate the respondent.

The procedural and resource burden on counties

Three-party petitions also place a significant procedural and resource burden on counties. Once a petition is filed, the county is responsible for initiating a series of time-sensitive legal steps. Wisconsin law mandates that a probable cause hearing be held within 72 hours of the respondent being detained, requiring counties to act quickly to review the petition, gather any necessary additional evidence, and prepare for court.[7]

Unlike county-initiated petitions, which often come with pre-existing evidence from law enforcement reports or mental health professionals, three-party petitions frequently lack this kind of documentation. Counties must therefore invest additional time and resources into verifying the information provided by petitioners, interviewing witnesses, and arranging for independent evaluations by mental health professionals.[8] Given the tight timeframes involved, this can place considerable strain on county resources, particularly in smaller counties with limited staff and funding.

The role of mental health professionals

Counties often rely heavily on the expertise of mental health professionals to support three-party petitions. While petitioners may provide personal accounts of the respondent's behavior, these accounts are often insufficient to meet the legal standard for commitment. Independent evaluations by psychiatrists and/or psychologists can be critical in providing the court with the expert testimony needed to establish dangerousness. These evaluators must be appointed by the court handling the case, but the onus is often on the corporation counsel's office, the register in probate, or social workers employed by the county to find doctors willing to conduct the examinations and testify in court.

Arranging for these evaluations on short notice can be difficult, particularly in rural or under-resourced counties where mental health professionals may be in short supply. Counties must work to coordinate these evaluations while adhering to the statutory time limits, a task that can be logistically challenging under the best of circumstances. Moreover, mental health professionals may have varying opinions on whether a respondent's behavior rises to the level of dangerousness required for commitment, further complicating the county's efforts to build a solid case.

Legal and ethical considerations

Counties must also navigate a range of legal and ethical considerations. Wisconsin law is designed to protect individual rights, particularly the right to personal liberty and autonomy. Involuntary commitment is a significant infringement on these rights, and counties have a duty to ensure the process is not abused or misused. This requires a careful, measured approach to every petition, regardless of the emotional urgency behind it.

At the same time, counties must recognize the practical realities of mental illness and the difficulty petitioners face in trying to get help for their loved ones. While the law sets a high bar for involuntary commitment, mental illness does not always manifest in ways that meet the legal standard for dangerousness, even when there is a clear need for intervention. Counties must be mindful of this tension as they work to balance legal standards with the needs of the community.

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Corporation counsel's obligation to file a petition

An additional layer of complexity in the three-party petition process arises from Wis. Stat. § 51.20(4), which places an obligation on corporation counsel to file a petition when petitioners demand it, even if corporation counsel believes the petition does not meet the statutory elements — most critically, the element of dangerousness.[9] This provision creates a unique challenge for counties, requiring a delicate balance between respecting the rights of petitioners and upholding the legal standards intended to safeguard the respondent's liberty.

Balancing legal responsibilities with petitioner demands

While state law obligates corporation counsel to file the petition, this does not mean it automatically results in a commitment order. The statute ensures that the matter is brought before a judge, where corporation counsel can present the facts as they understand them and highlight any insufficiencies in the petition, particularly if they believe the evidence of dangerousness is weak or lacking.

For counties, this creates a potential ethical conflict. Corporation counsel's duty is to uphold the law and protect the respondent's rights, but they are also required to act upon the petitioners' demands. Filing a petition the corporation counsel believes is legally insufficient can create an impression among petitioners that the county is moving forward with a strong case for commitment, when, in fact, the case may fall apart during judicial review due to insufficient evidence.

When corporation counsel is compelled to file a petition they believe does not meet the elements of dangerousness, they must prepare to present the petition in a neutral, factual manner before the court. The goal in this situation is not to advocate for or against the commitment, but to ensure that the facts are clearly laid out and the legal standards are applied properly.

In many cases, the court may determine that the petition does not meet the statutory criteria for commitment, and the case will not proceed. While this may be disappointing for petitioners, it reflects the law's commitment to protecting individual rights and preventing unnecessary involuntary commitments.

Conclusion

Dealing with three-party petitions for involuntary mental health commitment under Wis. Stat. § 51.20 presents significant challenges for counties. From the high evidentiary standards to the procedural demands and the emotional dynamics involved, counties must navigate a complex legal landscape while ensuring that both petitioner concerns and respondent rights are addressed. By working closely with mental health professionals, managing petitioners' expectations, and following the law's strict requirements, counties can effectively handle these difficult cases while protecting the integrity of the legal process. ■

Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for nearly 20 years. Malia Malone is the most recent addition to Attolles Law, s.c., joining the firm after serving 18 years in the Polk County Corporation Counsel's office.

1. See Wis. Stat. § 51.20(4).
2. See Wis. Stat. § 51.20(1)(a)2 a-e to review the various dangerousness standards.
3. Id.
4. There are also situations where the petitioner is attempting to utilize the three-party petition process for less than altruistic motives, thus making a county's job even more difficult.
5. Under Wis. Stat. § 51.20(4), only an attorney employed or contracted by a county to provide corporation counsel services is authorized to draft and file three-party petitions.
6. Corporation counsels represent the "public interest" rather than the petitioners themselves pursuant to Wis. Stat. § 51.20(4).
7. See Wis. Stat. § 51.20(7). If a court authorizes a detention of the respondent, the judge issues an order for the sheriff to detain the respondent. Once a deputy has custody of the respondent, the 72-hour clock to hold the probable cause hearing begins. This can put extreme stress on limited county resources, especially for remote and rural counties. Deputies often must transport the respondent to facilities several hours away from the county where the detention is initiated.
8. Under Wis. Stat. § 51.20(9), if probable cause is found to exist by a court after the initial hearing, the court appoints two experts with specialized training.
9. Wis. Stat. § 51.20(4)(b) states in part, "[i]f corporation counsel does not believe that involuntary commitment under this section is appropriate for the subject individual, corporation counsel shall inform the person seeking the petition under sub. (1) that the person may discontinue pursing the involuntary commitment or may request that the corporation counsel file the petition under sub. (1) under a limited appearance."