

## Insights

### HOLD ON A MINUTE! INDIANA LEGISLATURE CHANGES THE RULES FOR EMERGENCY DETENTIONS

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The Indiana Legislature recently enacted and the Indiana Governor recently signed **House Bill 1006** (the "Bill"). The changes in the bill are effective as of **July 1, 2023**. The legislation contains significant amendments to the Indiana law governing emergency mental health detentions. Currently, any individual determined to be mentally ill or gravely disabled and who poses a danger to him/herself or others may be detained for up to 72 hours (excluding weekends and legal holidays) in a medical facility. A report following detention must be filed with the local court within the 72 hour period. The Bill requires a probable cause filing attested to by a physician within 48 hours. It makes other significant changes to the law that will affect emergency departments and other health care providers across the state.

The changes to existing law include:

- Healthcare facilities must file an application for emergency detention ("Detention Application") with the local court **within 48 hours (excluding weekends and holidays) "from the time of admission."** Under existing law, filings with the court are required within 72 hours (excluding weekends and holidays). As revised, if a patient is admitted to a facility after midnight and before 8:00 a.m., the 48-hour clock does not begin running until 8:00 a.m. Once an application is filed, the facility may detain the individual for up to 72 hours from the time of admission, unless the court denies the Detention Application. The Bill requires the Office of Judicial Administration to prepare the Detention Application form. The Bill does not define the phrase "from the time of admission." It is also unclear how detention will work for patients who might present to a hospital unconscious, but evolve over more than 48 hours to the point where they meet criteria for and need to be detained for their own good.

- The definition of “mental illness” and “mentally ill” will include **“temporary impairment as a result of alcohol or drug use.”** Currently, the definition of mental illness includes alcoholism and addiction to narcotics or dangerous drugs. The Legislature added acute impairment to the concept of mental illness.
- The definition of **“dangerous”** is modified for purposes of an emergency detention such that the danger does not have to necessarily **result from** the mental illness.
- The Legislature modified the required provider attestation language for the application to the court. The Legislature replaced the phrase “in need of immediate restraint” with **“the individual requires continuing involuntary detention to receive care and treatment.”** It would appear that the Bill creates tension between the modification of the definition of “mental illness” to include “temporary impairment as a result of alcohol or drug use” and the attestation which makes the Detention Application contingent upon an individual's need for detention **to receive care and treatment**. For example, the majority of intoxicated persons presenting to an emergency department likely do not need care or treatment for their acute intoxication. They may need stitches or other emergency care which would not necessarily require admission to the hospital.
- If the court approves a Detention Application, **the court may order the individual to be held for not more than 14 days** (excluding weekends and holidays) from the time of admission, pending a hearing for involuntary commitment. This amendment eliminates the requirement for a “report following emergency detention.” Instead, after approving the Detention Application, the court must then schedule a hearing to occur within 14 days of the admission. The law remains silent on whether a facility may transfer a detained individual, prior to the hearing, to a more appropriate facility without court approval.
- The Bill authorizes advanced practice registered nurses (“APRN”) and physician assistants (“PA”) to conduct the examination that forms the basis for the physician attestation in the Application for Detention filed with the court. However, the application must still be signed by a physician, which may be made in reliance upon the APRN's or PA's examination. This amendment recognizes the involvement of APRNs and PAs in the health care delivery system.

- The Bill amends the law to provide legal immunity to a facility, law enforcement officer, superintendent of a facility, physician, APRN, and PA from liability for any action or omission taken in good faith (excluding acts of gross negligence or willful misconduct).
- The Bill eliminates "immediate detentions" or law enforcement detentions. It replaces such detentions with a new section in the emergency detention law authorizing a law enforcement officer who believes an individual has a mental illness, is either dangerous or gravely disabled, **and is in immediate need of hospitalization and treatment** to apprehend and transport the individual to the nearest facility.
- A new section added to the emergency detention statute deems any services provided to an individual detained under the statute to be medically necessary so long as they are provided in accordance with generally accepted clinical care guidelines. Managed care organizations will be required to consider such services medically necessary.

The Legislature's modifications to the Emergency Detention statute will upend long-standing practices relating to emergency detentions. They will require hospital policy changes and reeducation of patient-facing personnel. Contact **Stacy Walton Long** or **Robert Anderson** with questions about emergency detentions.

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