

# Position Statement

For 2023 Session

## Definition of the 48 Hour Rule

### Proposal

**Issue:**

In 2013, the Legislature passed a law that required prompt placement of civilly committed jail inmates into DHS facilities. This law has mostly applied to persons deemed incompetent to stand trial and subsequently committed to treatment. The law requires placements to occur within 48 hours.

The 48-hour law and DHS's obligation to place justice-involved individuals in state facilities in a timely manner has been a part of a hot button issue about the shortcoming of Minnesota's mental health system - particularly gaps in Minnesota's mental health continuum of care, difficulties in finding placements for complex and high acuity individuals, a trend of sending individuals – children and adults - out of state for placements due to lack of appropriate beds in Minnesota, and challenges with hospital decompression.

Currently there are competing proposals in the Senate and House that are on a crash course for Human Services Conference committee. These proposals have different definitions for when the 48 hour rule clock begins in state law, as well as changes to how placements are able to be prioritized.

**Current state law:**

**2022 MN STATUTE: 253B.10 PROCEDURES UPON COMMITMENT.**

**Subdivision 1. Administrative requirements.**

(a) When a person is committed, the court shall issue a warrant or an order committing the patient to the custody of the head of the treatment facility, state-operated treatment program, or community-based treatment program. The warrant or order shall state that the patient meets the statutory criteria for civil commitment.

(b) The commissioner shall prioritize patients being admitted from jail or a correctional institution who are:

(1) ordered confined in a state-operated treatment program for an examination under Minnesota Rules of Criminal Procedure, [rules 20.01, subdivision 4](#), paragraph (a), and [20.02, subdivision 2](#);

(2) under civil commitment for competency treatment and continuing supervision under Minnesota Rules of Criminal Procedure, [rule 20.01, subdivision 7](#);

(3) found not guilty by reason of mental illness under Minnesota Rules of Criminal Procedure, [rule 20.02, subdivision 8](#), and under civil commitment or are ordered to be detained in a state-operated treatment program pending completion of the civil commitment proceedings; or

(4) committed under this chapter to the commissioner after dismissal of the patient's criminal charges.

Patients described in this paragraph must be admitted to a state-operated treatment program within 48 hours. The commitment must be ordered by the court as provided in section [253B.09, subdivision 1](#), paragraph (d).

**DHS Proposal, as included in MN House language in [HF 2947](#) page 98:**

Sec. 17. Minnesota Statutes 2022, section 253B.10, subdivision 1, is amended to read:

b) The commissioner shall prioritize civilly committed patients who are determined by the Office of Medical Director or a designee to require emergency admission to a state operated treatment program, as well as patients being admitted from jail or a correctional institution who are

...

Patients described in this paragraph must be admitted to a state-operated treatment program within 48 hours of the Office of Medical Director or a designee determining that a medically appropriate bed is available. The commitment must be ordered by the court as provided in section 253B.09, subdivision 1, paragraph (d).

**Senate Proposal, as included in MN House language in [SF 2818](#) page 98:**

Sec. 9. Minnesota Statutes 2022, section 253B.10, subdivision 1, is amended to read:

Patients described in this paragraph must be admitted to a state-operated treatment program within 48 hours of the filing of the warrant or order for commitment. The commitment must be ordered by the court as provided in section 253B.09, subdivision 1, paragraph (d).

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DHS has expressed the urgency for legislative changes in order to address current lawsuits around their non-compliance with the current 48 hour rule. They have threatened that legal action against DHS may hamstring their ability to maintain DCT services. They have offered short term remedies of reallocating existing staff to expand AMRTC and forensics beds to try to mitigate the current backlog. We have seen blame placed on workforce challenges, lack of community placement, counties not facilitating movement through the system, but no advocacy for expanding the number of permanent beds in their facilities.

DHS confirmed in December that there were 62 people on its “priority admissions” list who are waiting in jails for a state hospital bed.

Several Counties have prioritized addressing this 48 hour backlog issue amongst their 2023 legislative priorities, including Scott County. Representative Tabke has developed draft language, in collaboration with his county, the County Attorneys and Sheriffs, that redefines the 48 hour language as starting after commitment. His draft proposal also seeks to capture County paid DNMC dollars (along with other county payments to DCT) and new payments from DHS for not meeting the 48 hour rule in a new fund, which would be administered by the Competency Restoration to build out mental health facilities to serve justice involved individuals. Conversations about this proposal with DHS and Chair Noor stalled after an initial meeting and the proposal has yet to be introduced as a bill or given any public hearing or discussion.

## Implementation Strategy:

MACSSA and AMC have positions regarding the shortcomings of Minnesota's Mental Health Continuum of Care and the State Responsibility as a Safety Net Provider

**AMC: Mental Health:** AMC supports developing Minnesota's mental health and developmental disabilities continuum of care so that it appropriately serves high needs and hard to serve individuals in communities throughout the state by investing in prevention, community-based services, placements for individuals with complex needs, and services for justice involved adults and children.

**MACSSA: Serving People with High Acuity needs and State Responsibility as Safety Net Provider**

MACSSA is looking to clarify and confirm support for one of these two conflicting positions, as the issue will be discussed in conference committee.

The Minnesota Sheriffs Association, the Minnesota County Attorneys Association, and the Urban County Attorneys Association have been active on this issue. It is important MACSSA consider both county alignment and the unique perspective of human services as we evaluate how to proceed.

It is likely the best short term resolution for Counties and MACSSA will be for the state statute language to remain the same and for the Legislature to mandate a workgroup/taskforce to further discuss this issue. AMC and MACSSA need to be a part of that discussion and any negotiations on this issue. It is important we clarify our unified county human services position for when we are asked by legislators where we stand.

## Systemic Priority Alignment

(highlight all that apply and explain why)

- **Equity:** Promote racial equity and eliminate racial disparities in the human services system for all people across the state.
- **Workforce:** Advocate for strategies to sustain and equip the workforce, and simplify work given the forecasted labor shortages.
- **Technology:** Collaboratively seek state investment in systems transformation and modernization which must include appropriate county collaboration, oversight, and guidance.
- **Governance:** Co-create state/county governance that results in clear accountability, appropriate allocation of resources, stabilized service delivery, and improved outcomes for people served.

This issue most clearly ties to the MACSSA Systemic Priority around governance and a challenge of defining responsibilities and capacities of our state system. DHS has struggled to meet what the legislature has defined as their obligation and thus is seeking to change their responsibility. This, in turn, shifts additional responsibility and cost to counties. There are also equity considerations, particularly based on which populations are justice involved, in need of mental health services, are able to access services, and disparities in outcomes.

## Operational Priority (Committee) Alignment

(highlight all that apply and explain why)

**Adult Services**  
**Behavioral Health**  
**Children's Services**

**Healthcare**  
**Modernization**  
**Policy**

**Equity**  
**Self-Sufficiency**

**Why:** This issue applies most clearly to Behavioral Health, although Policy and other committees also align.

### **Rationale/Background:**

It is clear there is no single solution to improving community services for persons with mental illness who come into contact with law enforcement. However, the role and responsibility of DHS state operated services continues to be in flux.

In 2013, the Legislature passed a law that required prompt placement of civilly committed jail inmates into DHS facilities. This law has mostly applied to persons deemed incompetent to stand trial and subsequently committed to treatment. The law requires placements to occur within 48 hours, but there was some professed lack of clarity whether this is computed from the commitment order or DHS's notification of the order.

A 2016 The OLA report recommended statutory changes to clarify how the 48-hour law should be administered, and to clarify whether there are circumstances in which DHS is not required to comply with the law.

The OLA Report also noted that the *"2013 law (the "48-hour law") that gives jail inmates priority for placement into Department of Human Services (DHS) facilities has not always worked as intended, and it has limited the access of other patients to the Anoka-Metro Regional Treatment Center."*

The Anoka-Metro Regional Treatment Center needs to be available for patients who need inpatient mental health care in a secure setting. In 2015, it typically took more than 50 days for community hospitals to place someone in the Anoka-Metro Regional Treatment Center. It has not admitted individuals from community for a number of years, solely admitting individuals who are referred from the courts. A contributing factor is that jail inmates receive priority for placement at Anoka under a 2013 law (the "48-hour law"), limiting Anoka's ability to serve others. Community hospital psychiatric beds are often full, partly because challenges discharging patients to state-run psychiatric facilities.

Recently, there has been legal action that has motivated DHS to promote a change in statute. One example is Anthony Blake Swope. In June 2022, following an arrest related to a psychotic episode, doctors found him incompetent to stand trial and a judge committed him to treatment in a locked state mental hospital. Swope waited in jail for nearly two months before he finally received the help he needed, despite the judge's order and a state law meant to ensure expedited treatment.

27-year-old Anthony Swope filed a lawsuit against DHS Commissioner Jodi Harpstead for failing to transfer him to a hospital long after a court found him incompetent to stand trial in his criminal case.

DHS officials were ordered to appear in court in Scott County over concerns the agency is violating what is known as the 48-hour law.

The violations recently led to sharp rebukes from sitting judges who ordered DHS officials to appear in court to explain why the state's largest agency cannot follow the law.

DHS had several responses in court and to the media. Dr. KyleeAnn Stevens, an executive medical director at DHS, called the situation "frustrating." "We have explained to the court that we have limited treatment capacity," Stevens said. "When our hospitals are full, we cannot safely admit new patients... we're doing everything we can to admit patients as

quickly as possible.” Wade Brost, an executive director at DHS, appeared in court as a representative for the agency. “We work really hard,” Brost told 5 INVESTIGATES after the hearing. “We’re concerned as everyone is about getting people into treatment as quickly as possible.”

In a statement to 5 INVESTIGATES, DHS blamed its inability to comply with the 48-hour law on “a nationwide staffing crisis in health care, a dramatic rise in the number of civil commitments in Minnesota, and the lingering effects of the pandemic.” “DHS facilities are full and do not have the capacity to admit everyone who needs treatment immediately,” a spokesperson wrote. “DHS will continue to work with counties, community providers and others on strategies to build capacity in the mental health system.”

Judge Wilton, who blasted DHS for repeatedly violating the law, is now requiring the agency to provide monthly reports on every person sitting in jail instead of a hospital, including “evidence demonstrating the resources utilized with regard to these cases.” DHS appealed the order and said Wilton does not have the authority to require Commissioner Jodi Harpstead to submit monthly reports about her efforts to comply with the 48 Hour Law.

In addition, sheriffs from several counties in Minnesota are calling on the Department of Human Services to bear more of the cost of a growing mental health crisis in jails across the state. Invoices were sent to DHS billing for more than \$60,000 related to the housing of inmates who waited weeks and months to be transported to a state hospital for mental health treatment.

Mental Health Advocates have had a nuanced view on the issue. Abderholden says prioritizing mental health beds for jail inmates has come at the expense of others waiting for treatment who are not subject to the 48-hour law. “I’m not going to fault DHS on this one, to be honest. They are struggling to be able to meet the needs of people in Minnesota who need that kind of care,” Abderholden said. “You can’t just wave your magic wand and have another bed ... that’s just not how it works.”

This issue is only growing as DHS referrals from jails rose from 111 in 2014 to 340+ in 2023, according to an affidavit filed with the court.

This is only the latest in a number of conflicts regarding DCT provided services. Since 2006, the DHS had offered the Competency Restoration Program, a special service for defendants who were committed to state hospitals. The program made sure the person received mental health care and was also being prepared to go to trial. But, with a deep shortage of hospital bed space, the state stopped providing those services to free up beds. DHS emphasized that it is possible for a person to be too sick to stand trial, but well enough to be discharged from inpatient care. Conflict around the gap this created in the need for competency restoration services led to a legislatively appointed competency restoration task force and legislation that passed in 2022, seeking to address this issue.

#### Recent 48 Hour Rule Coverage – KSTP

- [Sheriffs to DHS: ‘Pay up’ for inmates waiting on mental health beds](#) – Dec 30
- [Judge orders DHS to explain, track failures to follow ‘48 hour law’](#) – Dec 29
- [Commitment Crisis: DHS violating Minnesota’s ‘48-hour law’ for mental health treatment](#) – Nov 16
- [Jail inmate moving to mental hospital after suing state over ‘48-hour law’ violation](#) – Nov 9
- [KARE 11 Investigates: Why the state hospital for mentally ill children cares for so few of them](#) – Nov 4
- [‘Languishing in jails’ – State called out for failure to treat inmates covered by ‘48-hour law’](#) – Nov 3



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Approved on: