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| **STATE OF WISCONSIN CIRCUIT COURT** | **NAME COUNTY** |
| STATE OF WISCONSIN *ex rel.* CLIENTNAME County JailADDRESS,  Petitioner, v. Case No. 23CVXXXXNAME COUNTY SHERIFF Sheriff NAMEADDRESS, WISCONSIN DEPARTMENT OF HEALTH SERVICES Secretary-designee Kirsten Johnson1 W. Wilson St. Madison, WI 53703 ,  Respondents. |
| **PETITION FOR WRIT OF HABEAS CORPUS** |

CLIENT, by her attorney, NAME, petitions the court for a writ of habeas corpus requiring the respondents to produce the petitioner, show the lawfulness of the petitioner’s imprisonment, and show cause why the court should not discharge her from custody. CLIENT brings this petition under chapter 782 of the Wisconsin Statutes.

CLIENT through counsel, states the following in support of this petition:

1. CLIENT is currently imprisoned by the NAME County Sheriff at the NAME County Jail.
2. CLIENT’s imprisonment violates the procedures set forth in Wis. Stat. § 971.14(5)(a)4.
3. CLIENT is not a prisoner in a state prison.
4. CLIENT has been in custody since DATE.
5. Following the disposition hearing on DATE, the court entered a written order of commitment for treatment, ordering CLIENT into the “institutional care” of the Department of Health Services (“DHS”) under §971.14(5)(a)1. The court ordered that the NAME County Sheriff, “shall transport CLIENT to the mental health institute designated by DHS ”(Exhibit 1)
6. Based on that order and statute, DHS must place CLIENT in an appropriate institution under Wis. Stat. §971.14(5)(a)1. DHS “shall determine whether the defendant will receive treatment in an appropriate institution designated by the department, while under the supervision of the department in a community-based treatment program under contract with the department, or in a jail or a locked unit of a facility that has entered into a voluntary agreement with the state to serve as a location for treatment.”
7. The NAME County Jail is not an appropriate treatment facility. Undersigned counsel asked NAME County Jail JAIL ADMINISTRATOR if the jail has entered into the sort of agreement discussed by Wis. Stat. § 971.14(5)(a)1, and they stated the jail does not contract with DHS and indicated that competency restoration services are not provided in the NAME County Jail.
8. The court ordered the NAME County Sheriff to transfer CLIENT into the custody of the Department of Health Services for institutional care # days ago. Yet CLIENT remains imprisoned at the NAME County Jail.
9. CLIENT moved for release from custody. In the motion, CLIENT asked the court to order her release from jail until DHS complied with the procedures set forth in Wis. Stat. § 971.14(5)(a)4. The Court denied this motion, stating it did not have authority over DHS’s administration of CLIENT’s commitment.
10. DHS lacks authority to allow an individual under a competency restoration commitment to remain in a county jail where they are not receiving treatment. The statutes state that if found not competent but likely to regain, the Court “shall suspend the proceedings and commit the defendant to the custody of the [D]epartment [of Health Services].” Wis. Stat. § 971.14(5)(a)1. DHS shall [then] determine whether the defendant will receive treatment in an appropriate institution designated by the department, while under the supervision of the department in a community-based treatment program under contract with the department, or in a jail or a locked unit of a facility that has entered into a voluntary agreement with the state to serve as a location for treatment. *Id.* Thus, CLIENT can only be held in a jail that has entered into a voluntary agreement with DHS to provide treatment.
11. Despite this, DHS has left CLIENT to languish in the custody of the NAME County Sheriff who has imprisoned her from DATE at the NAME County Jail without treatment. Contrary to the rehabilitative purpose of CLIENT’s commitment, placement in jail only serves to restrict CLIENT’s freedom and violate her constitutional rights. CLIENT’s commitment thus amounts to “an impermissible form of incarceration” and violates due process because there is no “reasonable relationship between the nature of the commitment and the purpose for which [she] is committed.” *State v. Randall,* 192 Wis. 2d 800, 834-35, 837-38, 532 N.W.2d 94 (1995); *Foucha v. Louisiana,* 504 U.S. 71, 87-88 (1992) (O’Connor, J., concurring in part and concurring in the judgments).
12. Besides violating Wis. Stat. § 971.14(5)(a)4, CLIENT’s imprisonment violates the statutory procedure for competency commitments prescribed by the legislature to ensure that commitments under §971.14(5)(a)1, which orders CLIENT into the “institutional care” of DHS. The court ordered that the NAME County Sheriff, “shall transport CLIENT to the mental health institute designated by DHS.”
13. For all of these reasons, DHS has no authority to have CLIENT held in jail while she is in their custody pursuant to the commitment. Similarly, the NAME County Sheriff has had no basis to imprison CLIENT. As a result, CLIENT asks this court to grant a writ of habeas corpus without delay, requiring the NAME County Sheriff to produce CLIENT before the court to determine whether she should be granted the following relief:
14. An order directing the NAME County Sheriff and Department of Health Services to immediately transfer CLIENT to an appropriate facility for treatment, rehabilitation, and educational services.
15. In the alternative, an order immediately granting CLIENT’s release from custody until such time that DHS can transport her to an appropriate facility under the procedures set forth in Wis. Stat. § 971.14(5)(a)4.

NAME

Attorney for Petitioner

State Bar No.

Signed and sworn to before me

on

by

Notary Public, State of Wisconsin

My commission