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| **STATE OF WISCONSIN CIRCUIT COURT**  **BRANCH** | **COUNTY** | For Official Use |
| In the Matter of the Mental Condition of:  Case No.     ME  CLIENT  Alleged to be in need of an involuntary  mental commitment. | |
| **MOTION TO DISMISS PETITION** | | |

The respondent, CLIENT, appearing specially by Atty.      , and reserving jurisdictional objections, move to dismiss the petition,

ON THE GROUNDS THAT the probable cause has not been held within 72 hours of detention pursuant to Wis. Stat. § 51.20(7)(a). The Statute requires that “the court shall schedule and hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual is taken into custody under s. 51.15.” *Id*. “An individual is in custody when the individual is under the physical control of the law enforcement officer…” Wis. Stat. § 51.15(3). “Upon arrival at the facility under sub. (2), custody of the individual is transferred to the facility.” *Id.*

Prior to 2013 Act 158, custody was defined as “upon arrival at the facility, the individual is deemed to be in the custody of the facility.” Wis. Stat. § 51.15(3) (2011-12 archive). However, custody now clearly starts when there is physical control by the officer. The arrival at a facility is only a transfer, not an initial custody event.

Conducting the probable cause hearing within 72 hours is a jurisdictional requirement. The County, as the petitioning party, should bear the burden to establish jurisdiction, including that the probable cause hearing occurred within 72 hours of detention. The Respondent argues that the probable cause hearing was not held within 72 hours of detention and the matter should be dismissed for lack of jurisdiction

Dated at      , Wisconsin, this       day of      , 20     .

Respectfully submitted,

Electronically signed by Attorney

Attorney, Bar No.

Attorney for Respondent

State Public Defender's Office

Address

Address

Phone