



January 13, 2025

Attorney General Josh Kaul  
State Capitol, Room 114 East  
P.O. Box 7857  
Madison, WI 53707-7857



Dear Sir:

We write as legal counsel for the County and City of Eau Claire ("Eau Claire"), seeking a legal opinion under Wis. Stat. § 59.42(1)(c). For the purposes of limiting civil and criminal liability for our law enforcement officers and those of our surrounding counties, and to further and protect the civil rights and wellbeing of our residents, we ask for your assistance and advice on the scope of arrest and related custodial transports outside territorial jurisdiction under Wis. Stat. § 175.40 and other applicable law.

Our questions arise from a concerning practice that we know is not unique to Eau Claire. Law enforcement officers are making custodial transports outside of jurisdiction to drop off unhoused individuals in neighboring communities without a receiving facility, without probable cause, and we believe without lawful authority ("transports"). The practice has become far too common and puts at risk the individual and the public. It is a practice driven by a lack of good options. Homelessness has increased significantly across the country over the past several years, with virtually no community left untouched, from large urban centers to regional metro hubs to rural towns and villages. Eau Claire, both City and County, has seen homelessness escalate. That is tragic for all and most certainly for those experiencing homelessness.

It is even more difficult when uprooted from a community and brought to another by out-of-County law enforcement agencies in non-emergency and non-criminal situations, disrupting whatever stability, support, and treatment options they may have had. It is a practice dangerous and detrimental to the public and public trust. Individuals known to need mental health treatment, AODA struggles, or have a history of criminal behavior are dropped off curbside without a receiving treatment or detention facility or even basic notice to such facilities that a person in need of assistance or who may cause harm to others is now at their gas station, their front sidewalk, or their already full emergency shelter.

The legal issues of arrests or transports by law enforcement outside of jurisdiction are not unique to unhoused individuals; the lawful scope of law enforcement authority and individual civil rights apply equally to all. However, those unhoused and often facing other medical, addiction, or mental health challenges raise additional concerns stemming from limited options especially when confronted with a uniformed officer suggesting they take a ride with them to another county, even when they have no connection to that new community. These are individuals not under arrest, for whom there is no probable cause for arrest, not asking to be transported, and who have various needs for services. We seek advice on how to best offer the needed services in a manner that is meeting obligations to serve and protect our residents while avoiding civil and criminal liability for law enforcement officers that may attach for action taken outside his or her territorial jurisdiction.

Officers in Wisconsin have territorial jurisdiction. They can exercise their vested law enforcement duties including the authority to arrest and take individuals into custody typically only in their home jurisdiction. There are limited exceptions to the territorial limitations of officers, and these are found in Wis. Stats § 175.40. Statewide criminal enforcement jurisdiction is limited to a few state law enforcement agencies including the department of justice.<sup>1</sup> The attorney general has a unique role as chief state law enforcement officer to appoint those few officers with statewide criminal investigatory authority. We ask that the attorney general in the dual role as chief legal officer and law enforcement official in Wisconsin opine on the scope and proper use of law enforcement authority for custodial transports outside of territorial jurisdiction to aid law enforcement officers in serving the public within legal bounds and to protect the civil rights and safety of those transported as well as the general public who are unaware of a person in need of care. Our offices have previously sought the assistance of an attorney general legal opinion on the appropriate law enforcement agency to conduct transports of those in lawful custody following a Chapter 51 detention and in need of care and the advisory opinion has been helpful to know best practice and legal limits of what is another difficult but necessary public service undertaken by law enforcement.<sup>2</sup>

Transports have been documented by Eau Claire for the past several years as homelessness has escalated. We will cite several examples here, though the problem is much more extensive than these few anecdotes demonstrate.<sup>3</sup> While not something we condone, the transports discussed here are much more concerning than a hypothetical one-way bus ticket offered to an individual. The bus ride out of town is provided by a third party, and the ticket, even if offered by law enforcement in a setting that seems to offer little choice to the recipient, still must be volitionally used in a setting that typically would be public and separated temporarily from law enforcement offering the tickets. The person in other words must get on the bus without an officer escorting them on, typically. The situations explained below are much different. Officers on duty, in uniform, under apparent authority to which the person has little ability to elect otherwise, are making custodial transports in law enforcement vehicles out of their home jurisdiction and then telling these individuals to get out of the squad car in Eau Claire, a city/county with which they have no connection or familiarity. These are not transports to the county jail or a receiving medical or mental health facility but often only to the edge of a sidewalk, Kwik Trip or such location without choice, treatment, care, or notice. Those who may soon encounter these individuals in need of care have no background on which to offer assistance or protection. That is often the case unfortunately for law enforcement, although best practice and basic care for one's fellow officer dictates it should be avoided, when possible,<sup>4</sup> but in these cases it also includes unwitting motel or convenience store clerks, wholly unprepared for the needs of this person who a law enforcement officer sworn to serve and protect just dropped off at their doorstep.

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<sup>1</sup> Wis. Stat. § 165.70.

<sup>2</sup> Eau Claire previously sought an opinion on Chapter 51 transports from your office, received on May 13, 2004. While the issue we raise here is different, we highlight this previous opinion as related due to the burden placed on law enforcement.

<sup>3</sup> There are further examples of these transports from Barron County, Chippewa County, and Jackson County to Eau Claire. Eau Claire can provide law enforcement reports and body camera video upon request for the examples in the letter and numerous others.

<sup>4</sup> Eau Claire's law enforcement agencies routinely collaborate and work well with surrounding jurisdictions and participate in regional task forces to better the region as a whole. The fact that these transports occur without notice to the receiving community with which the officers otherwise have contact with is an indicator that the practice is not legal and certainly not recommended.

Example #1: On November 21<sup>st</sup>, 2024, the Eau Claire Police Department responded to a complaint of a female, naked, getting into a vehicle at a local motel. Eau Claire EMS was called and transported the individual to a local hospital. Three days later, the Eau Claire County Sheriff's Office responded to a complaint regarding the same individual, with similar conduct. Two days later, the Eau Claire Police Department again responded to a complaint regarding this individual. Law enforcement then discovered that the female was brought to Eau Claire by the St. Croix County Sheriff's Office. The female is not an Eau Claire City or County resident, nor did she claim to have family here. After contact with the St. Croix County Sheriff's Office, law enforcement learned the female was a frequent source of contact for St. Croix County officers but had not been criminally charged for any illegal conduct. The female was left at a local Kwik Trip and no prior contact was made for this individual to receive any Eau Claire services. The individual did not ask to be transported to Eau Claire.

Example #2: On October 17<sup>th</sup>, 2024, the Eau Claire Police Department learned of a male brought to Eau Claire by the Menomonie Police Department, county seat of Dunn County. Eau Claire police officers believed the male to be under the influence of drugs and suffering from delusions, including during the time the male was transported by the Menomonie Police Department. The male was dropped off that day in front of a local overnight shelter, but it was not open at the time of the drop off. The male had not engaged in criminal conduct, did not ask to be transported to Eau Claire, and no arrangement was made to provide any services for this individual. The individual did not ask to be transported to Eau Claire.

Example #3: On October 28<sup>th</sup>, 2024, the Durand Police Department, based in Pepin County, brought a female to Eau Claire who had not committed any criminal act in Durand. In fact, when Durand police officers initiated contact with her, she simply stated she was waiting for her ride. The female never asked the officer to take her to Eau Claire or even indicated that was where she intended to go. Nonetheless, the officer brought her to Eau Claire. She was dropped off at a shelter around midnight, which was full. The female had subsequent contacts that night with the Eau Claire Police Department for a transport to a local hospital and later with the University of Wisconsin – Eau Claire Police Department for public urination and genital exposure. No prior contact was made to provide any services for the female. The individual did not ask to be transported to Eau Claire.

We believe these transports to be unlawful at worst and unprofessional at best. Pursuant to Wis. Stat. §175.40, an officer has lawful authority when outside jurisdiction only when in "fresh pursuit" of an individual, making an arrest in conjunction with fresh pursuit, or transporting a person lawfully arrested. In none of the examples above – nor in any other examples of which we are aware – was an officer in fresh pursuit or conducting a lawful arrest or transport subsequent to fresh pursuit. We do agree that lawful transports can occur in certain non-emergent situations, such as for extradition or to find an available hospital bed for mental health services, but these are instances where there is an obligated receiving party at the other end of the transport. That is not what has occurred in Eau Claire. Rather, law enforcement from other counties taxed individuals who had not committed any crimes. The officers were not in a caretaker function bringing the individuals home or to family/friends or providing them with any services. These individuals did not ask to come to Eau Claire and while not in need of law enforcement caretaking, some were not even capable of giving consent for a transport, due to their mental state at the time, whether caused by mental illness or the influence of drugs. They were not arrested for any crime, nor was there probable cause for a custodial arrest and transport.

Eau Claire has contacted each of the law enforcement agencies involved in the examples in this letter, with varying responses. Menomonie was apologetic and has made efforts to retrain officers to discourage this practice. St. Croix County sympathized with being a “dumping ground,” but made no promises on future reoccurrences and records indicate a less than forthright response to ECPD regarding the provided example. Durand Police Department was unapologetic and in fact said officers would likely continue this conduct in the future.

We sympathize with these law enforcement agencies and do not necessarily believe any of them to be bad actors.<sup>5</sup> Officers are called often as a last resort after other providers of social services have been exhausted or refused by individuals, but even as a last resort response, officers require legal justification to detain and arrest.<sup>6</sup> People experiencing homelessness who have not committed a crime or ordinance violation may not need law enforcement contact. They need social services and while all such public and private services are stretched, such services are available in each county acting as an extension of the state. In the examples provided here, each transport was from a county seat. Eau Claire is a regional hub, surrounded by an extensive, largely rural area. Eau Claire’s resources are beyond maximum capacity and cannot support individuals who have originated at other points within the state, especially in neighboring county seat communities that have the same responsibilities as Eau Claire County to care for its residents. Transports stretch not only our law enforcement officers beyond capacity and beyond lawful authority, but also the social services provided by the County through its Department of Human Services. Transports or drop-offs that are not to a receiving hospital, treatment, or detention facility should be clarified as an ultra vires act with resources and training extended to all County DHS and law enforcement agencies on how to provide care and services to residents within their county through the support of the State.

Some agencies engaging in these transports argue they do not have services to provide in their home communities, and so they are providing a needed service to the transported individual. This argument fails for multiple reasons, as we note that many of these transporting agencies are from

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<sup>5</sup> We believe our fellow local governments are not acting out of ill will, but out of lack of clear direction on these transports. Eau Claire searched the WILENET database along with other resources and found no information available that was on point or even somewhat related to jurisdictional authority. We seek your opinion to help provide clarity to the agencies in the provided examples as well as agencies across the state so there is no further inadvertent violations of civil rights or dishonesty issues impairing officers’ ability to testify.

<sup>6</sup> There is no lawful legal theory to allows these transports to occur, and in fact legal theories support the illegality of the transports.

First, the individual being transported may have been coerced into accepting a ride from law enforcement. In some cases, the individual was demonstrably under the influence of drugs and therefore unable to fully comprehend or consent to the transport. Analogizing to whether a statement is made of an individual’s free will, voluntary consent can only occur if it is “... the product of a free and unconstrained will, reflecting deliberateness of choice...”. *State v. Hoppe*, 261 Wis. 2d 294, 309 (2003). The evidence regarding these transports does not support that there was the opportunity or ability for a deliberate choice by the transported individual.

Second, these agencies are not acting in a community caretaker capacity, because the individual transported has been pre-ascertained to not be in need of law enforcement intervention; therefore the *Anderson / test* as examined in *State v. Kramer*, 315 Wis. 2d 414 (2009) to apply police community caretaker functions is not appropriate. Particularly with respect to the St. Croix County transport used as an example in this letter, there was no record of law enforcement believing the individual was in need of law enforcement caretaking intervention, but rather the transport served as a convenient means to reduce law enforcement responses with an individual who required significant services.

other county seats and therefore have the same resources available. In addition, as you can see from the examples above, none of the individuals were connected with services or received shelter upon their arrival in Eau Claire.<sup>7</sup> This is particularly difficult to understand in the instances of out-of-County DHS services sending or bringing individuals to Eau Claire without a connection point, who then require services in Eau Claire.<sup>8</sup>

These transports to Eau Claire often require that County DHS provide assistance and/or services, at the very minimum on a temporary basis and more often for the long term. For law enforcement officers to provide these transports based on their assertions there are no services in their county is disingenuous. Every County DHS has a variety of services they can utilize to provide assistance to individuals present in their County. The transports provided as examples here were each from a County seat where these services are most often headquartered. Law enforcement agencies regularly work in conjunction with human services departments to connect individuals with necessary services. Through these transports, transporting law enforcement agencies create significant financial and staffing burdens on Eau Claire County by requiring Eau Claire County to provide assistance to individuals who are not residents of Eau Claire County and who would not otherwise be present in Eau Claire County but for law enforcement's actions. Given the additional issues regarding the true residency of the individual being transported from one jurisdiction to another, this unduly shifts the financial burden of assistance and services to providing services and assistance to a non-resident of the County.

These transports are an ongoing concern for the City and County of Eau Claire, and we believe of relevance to the entire State, so we ask the following questions for clarity and consistency in providing lawful services, care and protection to all our residents, especially those unhoused individuals most vulnerable and in need of prompt professional assistance in their community:

1. Do Wisconsin law enforcement officers have legal authority to make unrequested, non-consensual, custodial transports of unhoused or other individuals who have committed no crime to other jurisdictions?
2. Do Wisconsin law enforcement officers have legal authority to transport outside of their jurisdiction an individual who did not request to be transported to another community outside of that officer's jurisdiction, and, especially when there is no receiving person, treatment facility, or human services agency that has been asked and accepted to receive or admit the individual in the new community?
3. In the case of an unlawful transport such as those described above, which county is financially responsible for costs incurred when services must be provided to an individual and there is an identifiable originating county?
4. Assuming transports such as we have described in this letter are at best undesired for the officers, public and most importantly the individual in need of assistance while not having

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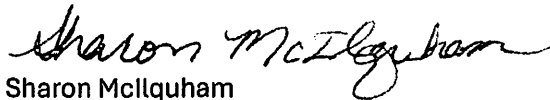
<sup>7</sup> Some of the further examples involve the individual being left at a gas station or fast-food restaurant on the edges of the City.

<sup>8</sup> Eau Claire has verified Milwaukee County DHS and Winnebago County DHS as sending individuals here without any prior contact, connection to services, or family/friend connection to the community. While we understand these are not transports as we have defined here, we raise the issue to highlight the problematic, related practice and related to our question of which county is responsible for costs incurred related to services for these individuals. We also include in this category a recent transport by a Chapter 51-contracted mental health facility located in Wood County, that sent an individual to Eau Claire who had never previously lived here without even a coat for the weather and no receiving location or services.


given legal cause for arrest or detention, what guidance, training, and assistance can you, as chief law enforcement officer for the state of Wisconsin, provide to local law enforcement agencies to encourage best law enforcement practices?

Transports of individuals experiencing homelessness to other counties where there has been no crime, no request for transport, and no familial or friend relationship to the community are negatively impactful for the receiving community, but also for the individual who is displaced to somewhere they know nothing and no one. We seek your opinion as to the legality of such transports.

Sincerely,



Sharon McIlquham  
Corporation Counsel



Stephen C. Nick  
City Attorney

cc: Eau Claire County Administrator  
City of Eau Claire City Manager  
Eau Claire Chief of Police  
Eau Claire County Sheriff's Office  
Durand Police Department  
Menomonie Police Department  
St. Croix County Sheriff's Office