

# Emergency Detentions and Protective Placements/Services Post *Helen E.F.*

WHCA/WiCAL Spring Conference and  
Exposition

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**DeWitt**

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Firm



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# Goals for Session

- Issues and Challenges
- *Helen E.F.*
- Current law and options available
- Future Developments

# Issues and Challenges

- Challenging behaviors of Alzheimer's and related dementia residents
- Nursing home, assisted living and community issues
- May or may not include mental illness as a contributing factor

# Issues and Challenges

- When challenging behaviors become dangerous
  - Must exhaust options to address internally
  - Providers may think they have good interventions, but more is expected
- Resources

# Issues and Challenges

- After exhaustion of all internal options, and
  - Danger to self
  - Danger to other residents
  - Danger to staff

Continues, options are limited but available.

# Issues and Challenges

Options available?:

- Voluntary transfer to a more appropriate setting
- Involuntary discharge
- Family Care placement, as applicable
- All will take time, may include appeals, alternative placement may not be available

# Issues and Challenges

## Legal Options:

- Emergency Detention
- Protective Placement and Protective Services
- Chapters 51 and 55

Rules have changed following *In re Helen E.F.*



# *Helen E.F.*

- Background of Case
- Procedural History
- Court of Appeals Decision
  - Impact of Court of Appeals Decision

## *Helen E.F.*

- Supreme Court Decision – in a Decision in May, 2012, the Supreme Court held “After reviewing chs. 51 and 55, we hold that Helen is more appropriately treated under the provisions provided in ch. 55 rather than those in ch. 51.”
- Impact

# *Helen E.F.*

- Supreme Court Chapter 51 does not apply to individuals with Alzheimer's or related dementias.
- Basis of Decision
- Impact of Decision
- Explicitly did not rule on the issue of individuals with a dual diagnosis

# Current Law

## Chapter 51—MENTAL COMMITMENT

- Subject can be detained under 51 if the Subject is Mentally Ill, Dangerous, and Treatable
- Dangerousness is generally behavior-driven in the Subjects we are discussing here

# Current Law

## Chapter 51—Commitment Process

- Must have all of the following:
  - Mentally ill, drug dependent, or DD;
  - Proper subject for treatment; and
  - Dangerousness
    - Meets at least 1 of 5 criteria demonstrating substantial probability of harming self or others

# Current Law

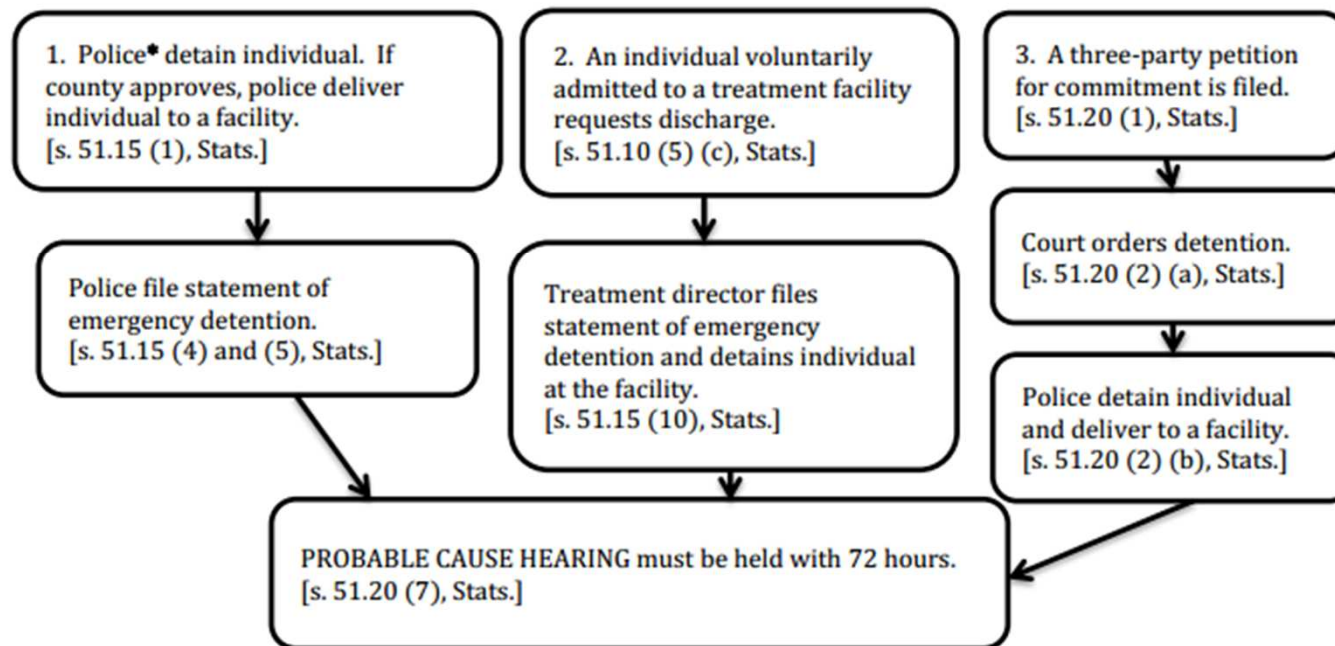
## Chapter 51—Commitment Process

- **Emergency Detention** Initiated by one of three ways
  - By Law Enforcement
  - By Treatment Director of a Treatment Facility
  - By Three-Party Petition for Examination
- Requirements for each of above
- Probable cause hearing w/in 72 hours

# Current Law Ch. 51—Emergency Detention

## EMERGENCY DETENTION UNDER CH. 51, STATS.

### CHART A: BASIC STEPS IN EMERGENCY DETENTION



\* The statutes authorize any law enforcement officer to carry out the duties of "police" shown in the chart.

# Current Law

## Chapter 51—Probable Cause Hearing

- Must be held within 72 hours to determine if there is probable cause to believe the individual meets standard for involuntary commitment.



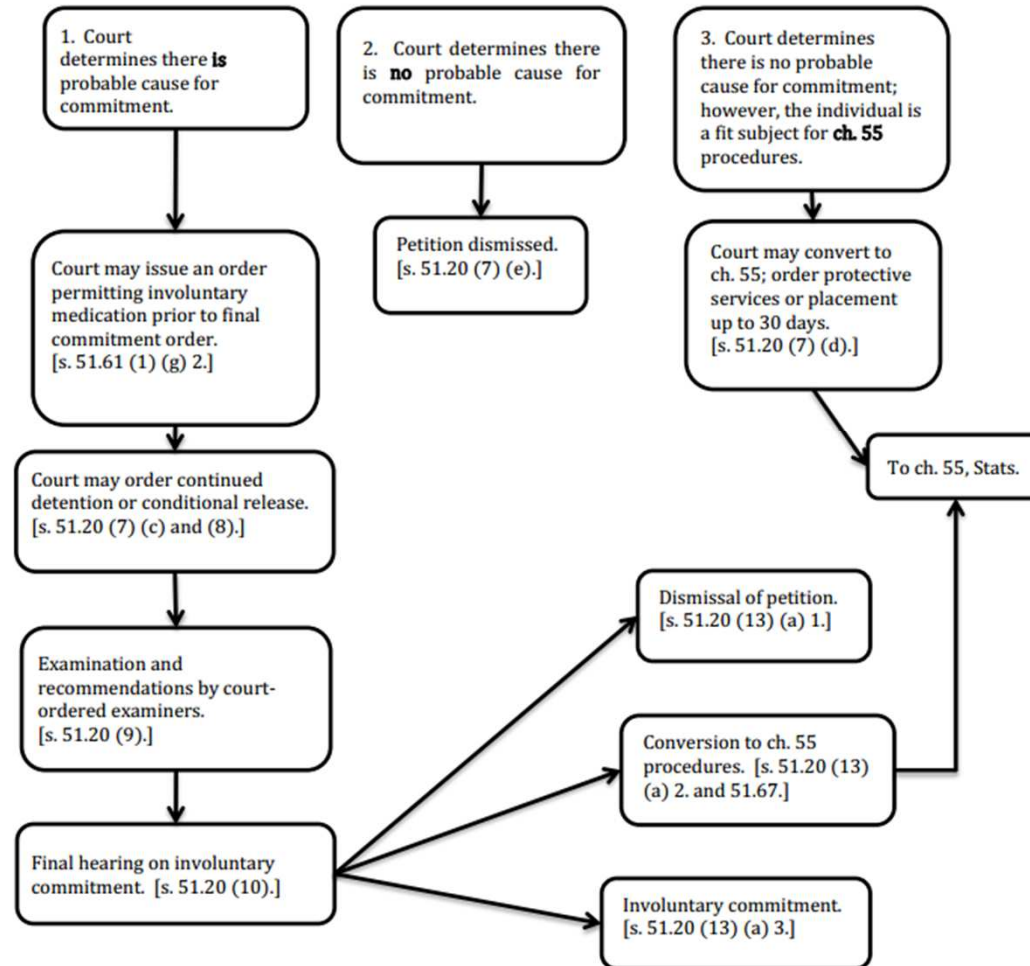
# Current Law

## Chapter 51—Probable Cause Hearing

- Outcome options:
  - Court determines probable cause for commitment
  - No probable cause for commitment
  - No probable cause for commitment; however, individual is fit for ch. 55 procedures.

# Current Law: Ch. 51 Probable Cause Hearing

**CHART B: INVOLUNTARY COMMITMENT FOLLOWING EMERGENCY DETENTION UNDER CH. 51, STATS.**



# Current Law

## Chapter 51—Final Hearing for Involuntary Commitment; Order for Commitment

- If probable cause, court must hold final hearing within 14 days of detention (30 days if not detained) Jury trial upon request
- Options:
  - Dismiss
  - Take steps for protective placement
  - Commitment

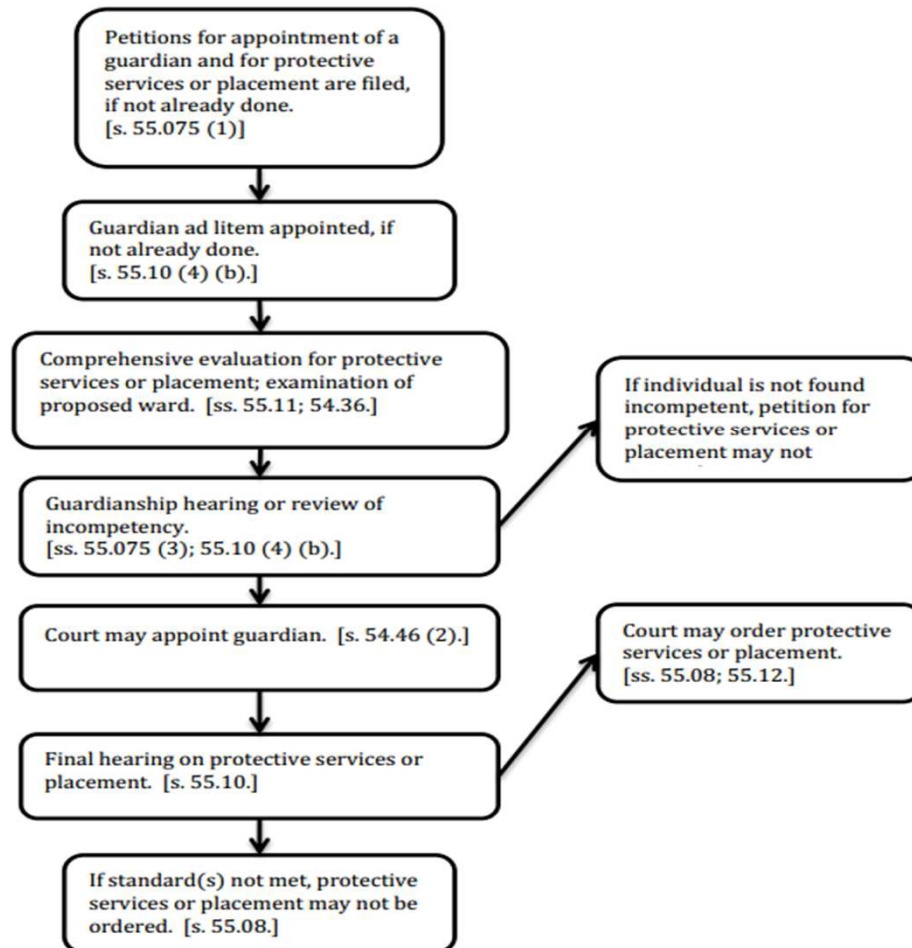
# Current Law

## Chapter 55—PROTECTIVE PLACEMENT

- Subject must be pending or under a Guardianship order in order to seek Protective Placement
- So—Subject must be Incompetent
- Subject must also:
  - Require residential care/custody
  - Have an Impairment
  - Due to Impairment, be totally incapable of caring for self
  - Inability to care for self creates substantial risk of serious harm to self or others
- Condition must be permanent or LIKELY TO BE permanent

# Current Law-Ch. 55 Protective Services and Placement

CHART D: PROTECTIVE SERVICES AND PLACEMENT UNDER CH. 55, STATS.



# Current Law-Chapter 55

- Emergency Protective Services
  - Emergency protective services may be provided for up to 72 hours, if not provided, individual or others will incur substantial risk of serious harm.
    - Involuntary psychotropic meds may be protective service
  - County has reason to believe individual meets criteria, petition is filed and prelim hearing helds w/in 72 hours.
    - If no guardianship, petition shall accompany

# Current Law-Chapter 55

- Emergency Protective Services
  - If probable cause determined, court may order protective services to continue for 60 days pending hearing.

# Current Law-Chapter 55

## Emergency Protective Placement:

Sheriff, police, fire, guardian, or county rep may take individual into custody and transport to an appropriate medical or protective placement facility if:

- Individual is totally incapable of providing own care or custody and substantial risk of serious harm to self or others;
- Individual inability is due to DD, degenerative brain disorder, serious and persistent mental illness; and
- Person making placement observed or received reliable report of behavior.



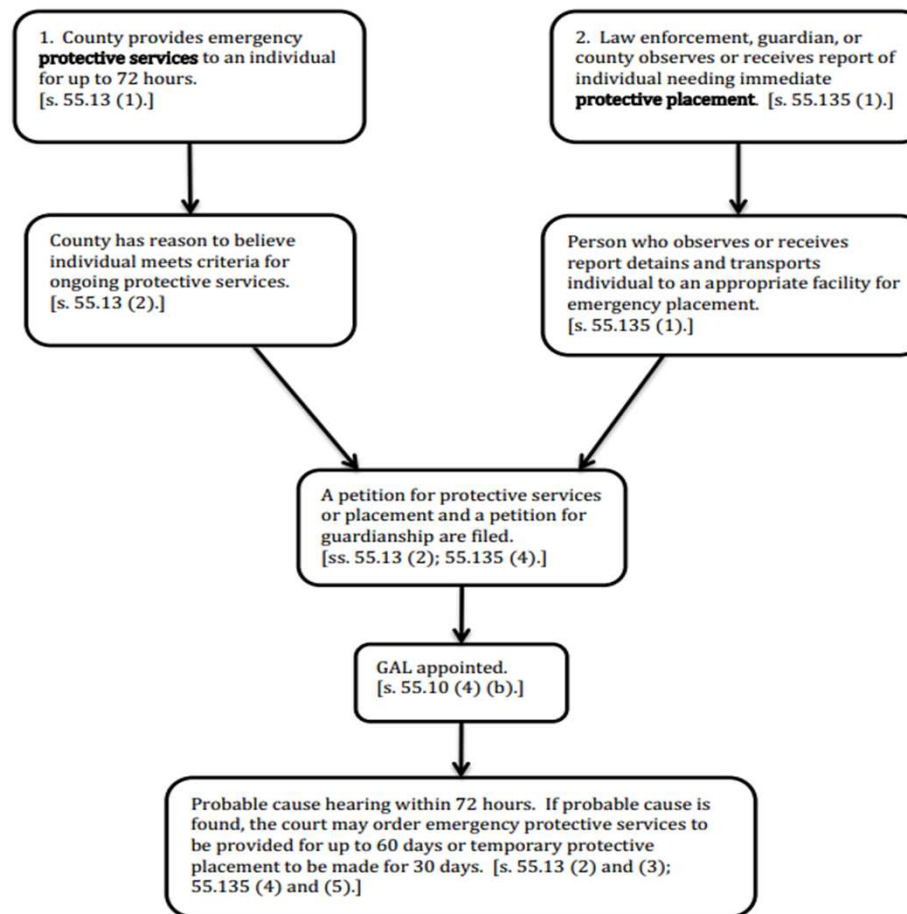
# Current Law-Chapter 55

## Emergency Protective Placement:

- The person making the emergency protective placement must prepare a statement at the time of detention providing specific factual information concerning the person's observations or reports made to the person and the basis for emergency placement.

# Current Law-Ch. 55 Emergency Protective Services and Placement

CHART C: EMERGENCY PROTECTIVE SERVICES EMERGENCY AND TEMPORARY PROTECTIVE PLACEMENT UNDER CH. 55, STATS.



# Current Law-Chapter 55

## Emergency Protective Services and Placement

- Limitations:
  - Timing
  - Services available to be ordered

# Important Protective Placement Limitation

- No placement on inpatient psychiatric unit
- Chapter 55 specifically forbids this

# Mental Illness and Treatability

- Impact of Helen E.F.—Court found that Dementia not a “Mental Illness” under Chapter 51
- Court also found that Dementia is not “treatable” under Chapter 51
- Court DID leave the door open for argument on whether a Patient with Dementia and a co-occurring Mental Illness can be detained under 51

# Practical Reality Varies WIDELY

- Every County views Helen E.F. differently:
  - Some Counties will (now) not file a 51 on an elderly Subjects, ever, at all, no matter what
  - Some Counties are basically ignoring Helen E.F. and still filing 51s on Elderly Subjects as they always have
  - In Waukesha County, we are somewhere in the middle!
  - We continue to file 51s on elderly Subjects when we can argue a co-occurring Mental Illness, and when the Subject requires inpatient psychiatric treatment

# Current Law

## A Guardian's Authority

- Medications for Medical purposes
- Medications for psychiatric purposes
- Approve placement in an “permissible” facility
  - Facility must have less than 16 beds

# Current Law

## Healthcare Agent's Authorities

- Largely governed by provisions of the POAHC, with some limitations
  - Nursing home admission OK if authorized by POAHC
  - Remove feeding tube or life saving measures if authorized by POAHC
  - Principal cannot be diagnosed as Mentally Ill or Developmentally Disabled upon admission

**\*AGENT CANNOT ADMIT TO INPATIENT PSYCH.!**



# Current Law

- Role of Provider
- Role of County
- Role of Decision Maker

# Current Law

## Case Example:

Nursing home resident with Alzheimer's admitted to facility based on certain information provided from hospital. It is quickly identified that the information provided is not consistent with the resident's behaviors. Resident is explosively violent, unpredictable, and injures two staff members. Has attempted to strike other residents. All interventions have failed. Facility places resident on 1:1 24/7. Guardian refuses to consider voluntary transfer to alternative location.

# Current Law

## Case Example

### Options Available:

- 1) Chapter 51 Emergency Detention if Subject fits dual diagnosis criteria **and** if your County will do it!
- 2) Detention under 51, conversion via 51.67
- 3) Detention under Chapter 55

# Current Law

## Case Example No. 2:

Same facts as above, but in this case there is a guardian who refuses to consider alternative placement.

- Options to Proceed:
  - 51, 51.67, or 55 as above
  - Seek removal of the Guardian!

# Current Law

## Site Specific Issues:

- Nursing home discharge rules
  - Appeal Rights
- CBRF
- RCAC
- AFH

# Current Law

## Decision Maker Issues:

- POAHC
  - Consent to psychotropics
    - “voluntary” vs. “involuntary/forcible”
- Authority to make certain admissions
- Statements made by principal after activation

# Current Law

## Decision Maker Issues – Guardian

- Powers granted/not granted
- Authority and process for psychotropic medications
- Protective Placement Conditions

# Future

- Legislative Council Special Committee *Legal Issues of Alzheimer's and Related Dementias*
- 2012 Activity
- Outcome of Committee efforts
- Draft legislation pending



# Future

## Framework of Draft Legislation:

- Clarifies that Chapter 51 does not apply to Alzheimer's residents
- Creates new subchapter in Chapter 55 – “psychiatric and behavioral care and treatment for individuals with dementia”

# Future

## Proposed Subchapter 55:

- Establishes procedures within protective placement system for provisions of behavioral and psychiatric evaluation
- Including involuntary administration of psychotropic medications
- Require each county to identify at least one location as Dementia Crisis Unit

# Future

## Proposed Subchapter 55:

- Create procedures under which individuals with dementia may be protectively placed or transferred to Dementia Crisis Units in a planned or emergency situation, for purposes of behavioral or psychiatric evaluation, diagnosis, services or treatment

# Future

## Proposed Subchapter 55:

- Create a procedure under which involuntary administration of psychotropic medications could be provided as an emergency protective service to an individual with dementia

# Future

## Likelihood of Passage?

- Action required by providers

# Options Discussion

While we await possible changes, what steps can providers take:

1. Enhance efforts to determine underlying medical reason.
  2. Improve staff training on challenging behaviors
  3. Dialogs with county officials before crisis
- Open Discussion