

# Wisconsin Public Psychiatry Network Teleconference (WPPNT)

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# WPPNT Reminders

## How to join the Zoom webinar

- **Online:** <https://dhs.wi.zoomgov.com/j/1606358142>
- **Phone:** 669-254-5252
- Enter the Webinar ID: 160 635 8142#.
  - Press # again to join. (There is no participant ID)

## Reminders for participants

- Join online or by phone by 11 a.m. Central and wait for the host to start the webinar. Your camera and audio/microphone are disabled.
- [Download or view the presentation materials](#). The evaluation survey opens at 11:59 a.m. the day of the presentation.
- Ask questions to the presenter(s) in the Zoom Q&A window. Each presenter will decide when to address questions. People who join by phone cannot ask questions.
- Use Zoom chat to communicate with the WPPNT coordinator or to share information related to the presentation.
- Participate live or view the recording to earn continuing education hours (CEHs). Complete the evaluation survey within two weeks of the live presentation and confirmation of your CEH will be returned by email.
- A link to the video recording of the presentation is posted within four business days of the presentation.
- Presentation materials, evaluations, and video recordings are on the WPPNT webpage: <https://www.dhs.wisconsin.gov/wppnt/2022.htm>.

# Chapters 51 & 55

## A Legal Perspective

### From Both Sides of the Courtroom

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# If you could pick one thing to remember

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## **Diversion is your best friend**

“...the least restrictive treatment alternative appropriate to their needs...”; and “To protect personal liberties, no person who can be treated adequately outside of a hospital, institution or other inpatient facility may be involuntarily treated in such a facility.” §51.001(1-2)

§ 51.15(1)(ar) also states Emergency Detention should only be done if it is...”the least restrictive alternative appropriate for the person’s needs.”



# Why divert?

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- High costs of inpatient hospitalization
  - Go to the patient/difficulties with insurance
  - Cost to counties
  - Daily rate at WMHI as of the end of 2019 was over \$1,000
- Nature of a growing population of mental health – limited resources.

According to Mental Health America – in 2020

18.57% of Americans are experiencing a mental health illness. (45 million Americans)

# Criteria for detention vs. for a hearing

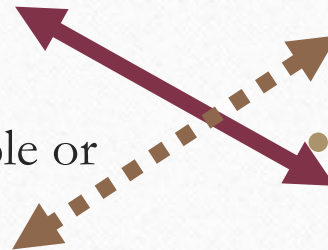
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- §51.15 – **Detention**

- Individual is mentally ill, drug dependent, or developmentally disabled.
- Individual evidences one of the standards of dangerousness.
- Individual is believed to be unable or unwilling to cooperate with voluntary treatment.

- § 51.20 – **Hearing**

- Individual is mentally ill, drug dependent, or developmentally disabled.
- Individual is a proper subject for treatment.
- The individual is dangerous under one of the statutory dangerousness standards.



# Criteria for Protective Placement

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- More unique in nature – often will see overlap in symptoms between those with mental illnesses that are treatable, and those that struggle with long term cognitive impairments.
- Family can be key in determining what is happening
- Difference between medical crisis – and cognitive crisis.
- Emergency Protective Placement

- **Elements for an EPP?**

- The person has a primary need for residential care and custody.
- Alleged incompetent due to a permanent incapacity: Degenerative brain disorder, developmental disability, chronic mental illness, or other like incapacities (i.e. stroke, brain injury).
- The disability is permanent or likely to be permanent.
- As a result of the disability the person is totally incapable of providing for their own care and custody as to create a substantial risk of serious physical harm to self or others without immediate detention.



# Expectations

- Prosecution?

- What observations and factors led you to believe that the patient met one of these standards.
- If you are writing a report, or testifying, don't make assumptions, as a prosecutor I cannot prove those.
- If collateral information is going to be used in court (such as another doctor report) it will need to be provided ahead of time, and the writer of that report may need to be found.

- Defense?

- Looking for doubts in the decision to detain. Dangerousness factors – was there actual fear?
- If someone was more focused on events that occurred in the past than on recent events, is this truly an emergency?
- Differences in opinion between law enforcement and medical personnel.



# Legal definitions – Chapter 51

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A person may be a proper subject for treatment even though a cure is unlikely.  
In the Matter of the Mental Condition of C.J. 120 Wis. 2d 255, 254 N.W.2d 219 (Ct. App. 1982)

Rehabilitation is a necessary element of treatment under Chapter 51. Because there are no techniques that can be employed to bring about rehabilitation from Alzheimer's disease, an individual with the disease cannot be rehabilitated. Accordingly, an Alzheimer's patient is not a proper subject for chapter 51 treatment. Fond du Lac County v. Helen E.F. 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179.


# Legal definitions of Dangerousness

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- There are 6 total standards
- Only 5 can be used for an initial detention.
  - Realistically – we see 4 utilized as the “emergency” detention standards
  - And most often only 3 of them are used.
- (The 6<sup>th</sup> one is the recommitment standard, which gets a lot of attention from the Wisconsin Supreme Court.)

# Legal definitions of Dangerousness

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- Dangerous to self.
    - The individual evidences a substantial probability of physical harm to him/herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.
  - Dangerous to others.
    - The individual evidences a substantial probability of physical harm to other individuals by:
      - recent homicidal or violent behavior, or
      - others placed in reasonable fear of violent behavior and serious physical harm to them;
        - as evidenced by a recent act, attempt or threat to do serious physical harm.
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# Legal definitions of Dangerousness

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- Impaired Judgement
  - Is the individual dangerous because of impaired judgment?
  - What are behaviors (acts or omissions) that indicate impaired judgment? \*\*\*
  - Based upon the individual's impaired judgment is there a substantial probability of physical impairment or injury to him/herself or others?
  - Are there reasonable provisions for the individual's protection available in the community?
    - (If so) Is there a reasonable probability that the individual will avail him/herself of those services?

\*\*\* For initial detention and hearing one act suffices, but for formal commitment will need more than one.

# Legal definitions of Dangerousness

\*\*\* Does this person qualify for a Guardianship or Protective Placement instead?

- Basic Needs

- Is the individual dangerous because s/he is unable to satisfy basic needs for nourishment, medical care, shelter or safety?
- Is that inability due to his/her mental illness?
- What are the behaviors (recent acts or omissions) that indicate the individual's inability to satisfy basic needs

- Based upon that inability, does there exist a substantial probability that death, serious physical injury, serious physical debilitation or serious physical disease will/would have imminently ensue(d) without treatment?

- Are there reasonable provisions for the individual's protection available in the community? \*\*\*
  - (If so) Is there a reasonable probability that the individual will avail him/herself of those services?



# Legal definitions of Dangerousness

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- The 5<sup>th</sup> standard – basically the failure to take meds resulting in some level of danger to the person.
- Evaluation completed (sometimes by crisis)
  - Discussion of meds
  - Because of their mental illness they are either incapable of expressing or understanding that discussion
  - AND there is a substantial probability based on their history that they need care and treatment to prevent further deterioration – if left untreated will lack services necessary
  - AND will suffer severe mental, emotional, or physical harm that can result in
    - Loss of independent function in the community
    - Or the loss of cognitive or volitional control of their thoughts or actions
  - AND reasonable provisions are unavailable in the community.



# The Legal Process?

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- Probable cause hearing

- Must be held 72 hours from the time of detention
- The patient (or his/her counsel) can request to adjourn PC to a total of 7 days from the date of detention
- 72 hours goes fast, between time of physical custody, crisis approval, medical clearance, and psychiatric evaluation
- Burden = Probable cause
- Testimony typically officer, scene witness, doctor from psych hospital. Sometimes crisis will testify. Patient often testifies if contested.

- Final Hearing

- 14 days from the time of detention
- If PC was adjourned can be 21 days
- Defense counsel can ask for an adjournment of 7 more days
- Right to a Jury trial
- Burden is Clear and Convincing Evidence
- 2 independent examiners are appointed
- Testimony typically officer, scene witness, doctor from psych hospital and one of the expert doctors. Rare – crisis will testify. Patient sometimes testifies

# Results of the process?

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- Settlement Agreements
  - Inpatient or outpatient
  - Up to 90 days. Can “pause” the time for a probable cause hearing or for a final hearing
  - If patient is non-compliant can revoke, but goes back to the point the procedure was “paused.”
- Dismissal
- Commitment
  - Inpatient or outpatient
    - Ability to revoke outpatient status if patient is non-compliant
  - Up to 6 months
  - Medications order?
  - Can be extended

# Other process items to note in Ch. 51

- 3 party petitions
- Not immediately dangerous enough for detention.
- You can guide the family through the steps to contact Corporation Counsel.
- All 3 petitioners must have knowledge of the facts alleged, 1 must have personal knowledge and be able to testify.
- Same elements as emergency detention.

- Alcohol and Drug Dependent?
- Found in §51.45
  - Shorter terms of commitment
  - Actual commitment is started with a 3 party petition.
- Detentions are really just 72 hours.
  - Time to sober up and then family can decide to file a petition, or the cycle may continue.



# Firearms

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- Law enforcement is reminded at every CIT training to ask about the guns.
- Chapter 51 law changed 7/1/10, and now EVERY Chapter 51 Commitment requires an Order that the Subject not possess a firearm.
- When the commitment terminates, the right to possess a firearm is not automatically reinstated. It must be petitioned for.
- Some settlement agreements will contain a provision that requires the removal of firearms
  - These are to be returned when the settlement agreement expires.
- Guardianships and Protective Placements contain a permanent ban on firearms unless the guardianship terminates and those rights are restored.

# The EPP and alternate decision makers

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- Power of Attorney
  - Advanced Planning Document
    - Completed by decisional adult
    - Identifies an Agent to act and defines authorities
  - Types:
    - **Durable Power of Attorney** (financial) – can be effective upon date of signatures
    - **Health Care** - Agent receives authority when 2 Mds certify incapacity (*activation*)
- Guardianship
  - Court Order
    - Requires Incompetence finding
  - Types:
    - Temporary/Permanent
    - Guardian of Person
    - Guardian of Estate



# Utilizing the POA

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- There are 3 scenarios in which a POA can consent to admission of their “principal” or “patient”...
  - To a **nursing home**, for **recuperative care** for a period not to exceed 3 months, if admitted directly from a hospital inpatient unit, *unless* the hospital admission was for psychiatric care.
  - If the principal lives with his or her health care agent, to a **nursing home** or **CBRF**, as a temporary placement not to exceed 30 days, in order to provide the health care agent with respite.
  - To a **nursing home** or **CBRF**, for purposes other than the above two if the HCPOA instrument specifically so authorizes and if the principal is **not** diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.
- Realistically – facilities are looking for patient to be voluntary – otherwise they will want more than POA authority.



# Understanding Guardianship Law

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- Temporary Guardianship
  - Temporary Guardianships can provide a stop gap when an immediate decision maker is needed
  - Issued for 60 days – can be extended ONLY once for another 60 days.
  - Another temporary guardianship cannot be filed for 90 days after the termination of a previous temporary guardianship.
  - Temporary Guardian of the person and estate
- Keep this in the back of your mind when thinking of least restrictive interventions
  - Individuals who need medical treatment, but are mentally compromised.

# Elements of a Guardianship (Due to Incompetency)

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- Person is at least 17 years and 9 months
- Person is suffering from an impairment: developmental disabilities, degenerative brain disorder (dementia), serious and persistent mental illness or other like incapacities (i.e. stroke)
- The condition is permanent
- The individual is unable to effectively receive and evaluate information, or to make or communicate decisions
  - (GN of the Person): unable to meet the essential requirements for their health and safety.
  - (GN of the Estate): management of the individual's property or financial affairs, to the extent that either:
    - Their property will be dissipated in whole or in part
    - They are unable to provide for their support
    - Or they are unable to prevent financial exploitation



# Standard for the EPP

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- The person has a primary need for residential care and custody.
- Alleged incompetent due to a permanent incapacity: Degenerative brain disorder, developmental disability, chronic mental illness, or other like incapacities (i.e. stroke, brain injury).
- The disability is permanent or likely to be permanent.
- As a result of the disability the person is totally incapable of providing for their own care and custody as to create a substantial risk of serious physical harm to self or others without immediate detention. ←

Consider what recommendations are given to law enforcement.

Remember the basic needs standard under CH. 51 requires they not be eligible for 54/55 services.



# The Legal Process?

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- Protective placement timelines
  - IF begins as an EPP – there are only 30 days to hold the final hearing
  - If filed as a standard petition then you have 60 days
- Guardianship timelines
  - MUST be heard within 90 days – no exceptions
    - 60 days if admitted to a nursing home, unless actively protesting, then ASAP
- Right to a jury trial – again, different than criminal cases where it has to be waived – it needs to be demanded by the ward.

# Reminders

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- Objective facts and early voluntary services are key
- If you are the witness, the crisis worker, the social worker, or other professional that had the key information = be prepared to testify.
- Diversion!
  - And if diversion is not appropriate – spell it out for everyone.
- Working with all partners and stakeholders
- Providing information to the community

# Questions?

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A great place to start = the statutes:

Wis. Stat. Chapter 51 – Mental Health

Wis. Stat. Chapter 54 – Guardianships

Wis. Stat. Chapter 55 – Protective Placements

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