

### **Proposals for the Alzheimer's Study Committee**

Based on the testimony provided to the Study Committee, it appears that there are two immediate, critical issues that must be addressed to ensure appropriate care for individuals with Alzheimer's disease that are a danger to themselves or others.

**1) First, policy-makers must ensure that Wisconsin law provides for immediate stabilization for individuals with Alzheimer's disease that are a danger to themselves or others.**

Prior to the Helen EF decision, individuals with Alzheimer's Disease in need of immediate stabilization received that stabilization through s. 51.15, and then, within 72 hours, if additional involuntary services were needed, the emergency detention *was converted to a ch. 55 protective placement or protective service*. As the Supreme Court stated in Helen EF, "Ch. 55 was specifically tailored by the legislature to provide for long-term care of individuals;" in short, ch. 55 does not adequately provide for immediate stabilization. If post-Helen EF, s. 51.15 is not an option for individuals with Alzheimer's Disease, such individuals may not have an ability to receive needed immediate stabilization. Thus, the most direct way to address this problem created by Helen EF would be to make it clear in statute that Wisconsin's emergency detention statute does not exclude individuals with Alzheimer's disease. Proposal #1 below proposes a straightforward way of clarifying this issue in statute.

**2) Second, policy-makers must ensure that a diagnosis of Alzheimer's Disease does not automatically disqualify individual from receiving appropriate inpatient psychiatric treatment for treatable behaviors.**

The Study Committee heard testimony from various parties that there is significant confusion in the wake of Helen EF regarding whether an individual with Alzheimer's can ever receive psychiatric stabilization and treatment under ch. 51. In some cases, this confusion has been to the significant detriment to individuals with Alzheimer's and their families.

Proposal #1 below also address this critical post-Helen EF issue by clarifying that individuals with degenerative brain disorder and mental illness may receive services under ch. 51. If an individual has a treatable "disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life," then such individual should not be excluded from receiving psychiatric care because they also have Alzheimer's Disease.

While it is important to address these two critical issues raised by Helen EF, the Study Committee has also identified several concerns with ch. 55 overall. In short, it may be time for a more comprehensive review of ch. 55, and the Study Committee has identified several areas that need further review and modification. However, to undertake such a comprehensive review would likely take multiple meetings in order to make sure that there is general agreement with proposed changes and in order to better ensure that changes *would not create unintended consequences in a complex area of law and policy that must be applied in diverse settings across Wisconsin*. Proposal #2 suggests that the Study Committee make a recommendation to set such a process for a longer term review of ch. 55. The vehicle for such review could be a new Legislative Council Study Committee (and possibly the same membership if desired) or some other process such as a review by DHS.

Finally, given the apparent need for a more comprehensive revision of ch. 55, Proposal # 3 offers the idea of recognizing Proposal #1 as a temporary fix that could have a "sunset" date attached to it, to give time for the work to propose a more comprehensive review and revision of ch. 55.

**Lastly, it is important to note that Helen EF was a case involving statutory interpretation and was not decided on the basis of constitutional rights.** In other words, if the Legislature disagrees with the Court's interpretation of ch. 51 and ch. 55 or wants to rectify the results of the Court's interpretation, the Legislature has full prerogative to amend ch. 51 and/or ch. 55 to "overturn" Helen EF.

### **Proposal #1 – Fix the problems directly caused by Helen EF**

These changes would directly address the two critical problems caused by Helen EF.

#### **Amend s. 51.01(13) as follows:**

**(a)** "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community.

**(b)** "Mental illness", for purposes of involuntary commitment, means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

**(c)** "Mental illness," for purposes of s. 51.15 (emergency detention), includes behaviors that result from a substantial disorder of thought, mood, perception, orientation, or memory, whether caused by mental disease, developmental disability, or degenerative brain disorder, which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

#### **Create s. 51.20(1s):**

An individual with a degenerative brain disorder may be involuntarily committed under this chapter if such individual also has mental illness.

### **Proposal #2 – Create a process for making revisions to ch. 55 to better ensure it serves the needs of individuals**

The Study Committee could set a process in non-statutory language for a longer-term, more thorough review of ch 55 to better ensure that it is appropriately serving the needs of individuals with Alzheimer's disease. Such review should go beyond just addressing the narrow issue presented in Helen EF. The non-statutory language could also specify that such review culminate in formal recommendations to the Legislature or the Joint Legislative Council. The vehicle for such review could be a new Legislative Council Study Committee (and possibly the same membership if desired) or some other process such as a review by DHS.

### **Proposal #3 – Make proposal #1 a temporary fix while work progresses via proposal #2 to revise ch. 55**

If desired, the Study Committee could recommend that Proposal #1 be a temporary fix that exists while the longer-term review and recommendations for ch 55 are developed under Proposal #2. If this proposal is adopted, the Study Committee would need to identify a sunset date for the provisions in Proposal #1 and a realistic due date for recommendations to the Legislature from the review process in Proposal #2.