STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2023AP722-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

N.K.B.,

Defendant-Appellant.

ON REVIEW FROM A COURT OF APPEALS DECISION REVERSING AN ORDER FOR INVOLUNTARY MEDICATION ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE DAVID C. SWANSON, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT-PETITIONER

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INTRODUCTION

This is a case about involuntarily medicating a dangerous Wis. Stat. § 971.14 committee placed at a committing institution. The circuit court found Naomi[1] not competent to stand trial and committed her to the Department of Health Services' (DHS) care. The court ordered involuntary medication to restore Naomi's trial competency under *Sell*[2] but stayed its order for appellate purposes. The next day, DHS requested an involuntary medication order to address Naomi's dangerousness at Mendota Mental Health Institute (Mendota).

The evidence showed that in a three-week span, Mendota staff had to segregate Naomi 17 times because of her aggressive behavior. She threatened and assaulted staff. She also refused to treat a serious thyroid condition, which posed a risk of death. Finding that this was "clearly a case" where Naomi posed a danger to herself or others at Mendota, the circuit court vacated its *Sell* order and ordered involuntary medication based on Naomi's dangerousness. The order included a finding that Naomi wasn't competent to refuse medication.

The court of appeals reversed in a published decision, holding that the section 971.14 committing court had no statutory authority to order involuntary medication to address Naomi's dangerousness at Mendota. It believes that a separate, dual commitment under Chapter 51 is necessary to address a committee's dangerousness during a section 971.14 commitment.

The court of appeals is wrong. Wisconsin's Mental Health Act—specifically Wis. Stat. § 51.61(1)(g)3.—

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[1] Pseudonym.

[2] *Sell v. United States*, 539 U.S. 166 (2003) (setting forth a four-factor test for involuntary medication to restore trial competency).

authorizes section 971.14 committing courts to order involuntary medication to address a committee's dangerousness at an institution. Applying this Court's plain-meaning approach toward statutory interpretation establishes as much. Further, this Court's unanimous decision in *State v. Anthony D.B.*, 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435—holding that section 51.61(1)(g)3. authorized a Chapter 980 committing court to order involuntary medication to address a committee's dangerousness at an institution—confirms the State's reading. The court of appeals defied principles of statutory construction in finding section 51.61(1)(g)3. inapplicable to individuals committed under section 971.14. This Court should reverse.

ISSUE PRESENTED

Was the section 971.14 committing court statutorily authorized to order involuntary medication to address Naomi's dangerousness at Mendota?

The court of appeals answered, "no."

This Court should answer, "yes."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests oral argument and publication.

STATEMENT OF THE CASE

A. The State charged Naomi with felony battery by prisoner.

In March 2023, Naomi was an inmate at the Milwaukee County jail. (R. 2:1.) She was there because of pending misdemeanor charges for striking a nurse and kicking a police officer while staying at a psychiatric facility. (R. 37:21.) One night at the jail, a nurse came by to give Naomi her

medication. (R. 2:1.) Naomi walked up and slapped the nurse in the face without saying anything. (R. 2:1.) The State charged Naomi with felony battery by prisoner in a new case (the one at issue here). (R. 2:1.)

B. The circuit court ordered a trial competency examination, revealing a history of dangerous behavior.

The next day, the circuit court ordered a trial competency examination. (R. 4:1.) Naomi was already committed for competency restoration on her open misdemeanor case, so the examination for this felony case occurred at Mendota. (R. 7:1.) The examiner opined that Naomi wasn't competent but was likely to regain competency within the time allotted if provided with psychiatric treatment. (R. 7:4.)

The examiner's report documented Naomi's long history of living with mental health challenges. (R. 7:1.) "[H]er symptoms of psychosis began when she was 23 years old," and she's been diagnosed with schizoaffective disorder, among other conditions. (R. 7:2.) Naomi "has historically reported symptoms including command hallucinations (i.e., hallucinations telling her to harm herself or others) . . . delusional beliefs . . . mania, depression, anxiety, suicidal ideation, and aggression." (R. 7:2.) She's also disclosed "between 3–5 past suicide attempts via intentional overdose." (R. 7:2.) "She has at least 45 episodes of care with the Milwaukee Behavioral Health Division." (R. 7:2.) And though her symptoms notably improve with psychotropic medications, Naomi "has a history of medication noncompliance." (R. 7:2.)

The examiner's report further noted that Naomi had been uncooperative since her recent admission to Mendota. (R. 7:3.) She "was verbally aggressive" with her treatment team and "threatened to harm various staff members." (R.

7:3.) A meeting on psychotropic medication "ended prematurely due to her increasing agitation and aggression." (R. 7:3.) Naomi "attempted to swing at staff" with "a container of cleaning supplies," and she had to be "placed in seclusion for continuing to hit objects in her room and ignoring staff redirects." (R. 7:3.)

At Mendota, Naomi also was refusing to treat a serious thyroid condition. (R. 7:3.) She previously had a thyroidectomy and her doctor "repeatedly attempted to discuss . . . [the] need for treatment" for her condition. (R. 7:3.) Naomi would either "yell[ ] for the doctor to leave while using foul language or ignore[ ] the discussion entirely." (R. 7:3.) Naomi was "placed in a manual hold" for a blood draw given "ongoing concerns regarding her thyroid hormones." (R. 7:3.) "Indeed, her levels were elevated." (R. 7:3.)

The basis for the examiner's competency opinion was that Naomi was "acutely symptomatic" and couldn't "engage in coherent or reality-based conversation." (R. 7:4.) Opining that Naomi "appear[ed] unable to understand the risks and benefits of medication," the examiner recommended involuntary medication to restore Naomi's competency and noted that Naomi's treating psychiatrist at Mendota (Dr. Murtaugh) had already requested an order. (R. 7:4–5; 8.)

C. The court committed Naomi, ordered involuntary medication under *Sell*, and quickly stayed the order.

Based on the examiner's report and testimony, the circuit court found Naomi incompetent to proceed but likely to regain competency with treatment. (R. 40:15.) It committed her to DHS's care. (R. 40:38.)

After hearing testimony from Dr. Murtaugh on the *Sell* factors and Naomi's incompetency to refuse medication, the circuit court ordered involuntary medication to help restore Naomi's trial competency. (R. 16; 40:17–28, 38.) However, the

court stayed the involuntary medication order the next day because Naomi filed a notice of appeal challenging the order. (R. 23.)

D. DHS immediately sought an involuntary medication order to address Naomi's dangerousness at Mendota.

One day after the circuit court stayed the involuntary medication order under *Sell*, counsel for DHS wrote a letter asking the court to reconsider its stay decision. (R. 19:1.) Counsel explained that "without medication, [Naomi] is a danger to herself and others. [She] has repeated instances of physical aggression toward staff at Mendota Mental Health Institute and continues to refuse potentially life-saving medication to treat a physical condition." (R. 19:1.)

Regarding Naomi's aggression toward staff, DHS counsel elaborated that in a one-week period, Naomi had "hit[ ] the pane of [g]lass on her television," "emerged from her room with fists balled up and swung at staff," "grabbed a staff member's hair and attempted to hit the staff member," and "pushed a staff member's glasses against her face." (R. 19:1.) These actions were "in addition to numerous other threats of violence, profanity, and disruptive behavior toward other patients such as staring into their rooms and causing them agitation." (R. 19:1.)

As for Naomi's posing a danger to herself, DHS counsel stated that Naomi suffers from a serious thyroid condition. (R. 19:2.) Medical staff told Naomi that if she didn't treat her medical condition, she risked damage to her organs, falling into a coma, and even death. (R. 19:2.) However, Naomi still refused to treat the thyroid condition. (R. 19:2.) Counsel said that "Mendota medical personnel believe the untreated hypothyroid state affects [Naomi's] psychiatric symptoms and could potentially make the psychiatric symptoms harder to treat." (R. 19:2.)

Counsel for DHS stressed that in the absence of involuntary medication to address Naomi's risk of harm to herself or others, she would be placed in seclusion—a "bare room with a metal door." (R. 19:1–2.) This is "unpleasant for patients and . . . can be traumatizing." (R. 19:1.) Naomi had already been secluded seven times while at Mendota, and without medication to help stabilize her, seclusion would likely continue. (R. 19:1–2.)

In short, "Mendota medical staff believe[d] [Naomi's] aggressive behaviors [would] continue without administration of medication." (R. 19:2.)

E. Following an evidentiary hearing, the court ordered involuntary medication on dangerousness grounds.

One week after DHS's letter, the circuit court held an evidentiary hearing on the dangerousness issue. (R. 37.) Naomi appeared by Zoom and had counsel present at the hearing. (R. 37:2.)

Dr. Cohen, Naomi's treating psychiatrist at Mendota, testified in support of an involuntary medication order for dangerousness. (R. 37:3–5.) Dr. Cohen told the circuit court that in the span of roughly three weeks, Naomi had been secluded at Mendota 17 times on account of her dangerousness. (R. 37:6.) Dr. Cohen detailed Naomi's "escalating" aggressive behavior, which included punching, kicking, and slapping people:

> She has, in an unprovoked manner, attacked a peer, slapping her in the face. She has punched staff, kicked staff. She has grabbed staff's hair and actually pulled a clump of hair out of the staff's head. She has pushed a staff member, one of our nurse's glasses on her face, and she continues to make threats and to exhibit non[ ] redirectable, threatening behaviors.

(R. 37:6–7.) Dr. Cohen explained that Naomi's aggressive behavior was because of her schizoaffective disorder, which Naomi refused to treat with medication. (R. 37:7–9.)

Naomi wasn't just posing a danger to others at Mendota. (R. 37:8.) Per Dr. Cohen, Naomi threatened harm to herself by refusing to treat her thyroid condition. (R. 37:8.) Specifically, she risked suffering "significant long-term complications such as cardiovascular issues, multiorgan issues, coma," and "death as a result of this type of hypothyroidism when it is untreated." (R. 37:8.) Dr. Cohen believed that treating Naomi's schizoaffective disorder would help address the thyroid issue: "[B]y treating her symptoms of mental illness, her thoughts and behaviors will become clearer and hopefully she would be willing to take the medications which would definitively treat her medical condition and, therefore, she could stabilize and do better medically." (R. 37:12.)

At the hearing, Dr. Cohen confirmed that she considered Naomi's physical health conditions before recommending involuntary medication. (R. 37:10–11.) Based on Naomi's medical history, medical conditions, and mental health, Dr. Cohen opined that involuntary medication was in Naomi's best medical interest. (R. 37:12.) Dr. Cohen had reviewed the medications that Dr. Murtaugh previously recommended and agreed with his treatment plan. (R. 37:10–12.) As Naomi's treating psychiatrist, Dr. Cohen said she'd supervise the treatment. (R. 37:18.) Naomi would be monitored "very closely" for side effects, which could be addressed in "a lot of different ways." (R. 37:18.)

Following Dr. Cohen's testimony, the circuit court vacated its previous involuntary medication order based on the *Sell* factors and instead ordered involuntary medication due to Naomi's dangerousness at Mendota. (R. 29; 39:10–11.) The court recognized that under U.S. Supreme Court precedent, involuntary medication due to a defendant-

patient's dangerousness is permissible. (R. 39:2–4.) As a statutory basis for ordering such medication, the court cited to Wis. Stat. § 971.14(2)(f). (R. 38:4–5.) The court found that this was "clearly a case" where Naomi posed a danger to herself and others at Mendota. (R. 39:6–7.) Citing to Dr. Cohen's testimony, the court determined that involuntary medication was in Naomi's best medical interest and that she wasn't competent to refuse medication. (R. 29:1; 39:7–8.)

F. The court of appeals reversed, holding that the circuit court had no authority to issue the order.

Naomi appealed the involuntary medication order, arguing that the circuit court had no authority to issue the order. (Pet-App. 10–11.) She contended that to involuntarily medicate a section 971.14 committee based on that person's dangerousness, a separate, dual commitment under Chapter 51 is necessary. (Pet-App. 7, 12.) The State argued that the court was authorized to issue the order under section 51.61(1)(g)1. and 3., citing to *Anthony D.B.* for support. (Pet-App. 11, 16.)

The court of appeals agreed with Naomi.[3] It held that "Wis. Stat. § 51.61(1)(g)1. and 3. do not apply to incompetent defendants committed under § 971.14," and that "[d]efendants committed under § 971.14 cannot be involuntarily medicated based on dangerousness absent the commencement of proceedings under ch. 51 or some other statute that authorizes involuntary medication based on the defendant's dangerousness." (Pet-App. 12.) Per the court, "Any request for involuntary medication due to

[3] Naomi's appeal became moot because she was restored to competency and discharged from the commitment while her appeal was pending. (Pet-App. 10 n.8.) The court of appeals determined that at least one exception to the mootness doctrine warranted a decision on the merits. (Pet-App. 10 n.8.)

dangerousness would then be made in the parallel proceedings and not under § 971.14." (Pet-App. 12.)

The court of appeals distinguished *Anthony D.B.*, which held that a Chapter 980 committing court was authorized to order involuntary medication to address dangerousness at an institution under section 51.61(1)(g)3. (Pet-App. 16–18.) In the court of appeals' view, *Anthony D.B.* "makes clear that the involuntary medication provisions in Wis. Stat. § 51.61(1)(g)1. and 3. apply to patients only if the legislature has not provided an 'alternative provision[ ].'" (Pet-App. 18.) Whereas Chapter 980 didn't have involuntary medication provisions at the time that *Anthony D.B.* was decided, section 971.14 currently has involuntary medication provisions for *restoring competency* post-commitment. (Pet-App. 18.) Notwithstanding the absence of a conflict between section 971.14's involuntary medication provisions and those of section 51.61(1)(g)3., the court of appeals determined that "*Anthony D.B.* compels the . . . conclusion" that "Wis. Stat. § 51.61(1)(g)1. and 3. do not apply to incompetent defendants committed under § 971.14." (Pet-App. 12, 16.)

This Court granted the State's petition for review.

STANDARD OF REVIEW

Whether the section 971.14 committing court was statutorily authorized to order involuntary medication for dangerousness presents a question of law subject to independent review. *Anthony D.B.*, 237 Wis. 2d 1, ¶ 8.

SUMMARY OF ARGUMENT

When it comes to governmental justification for overriding an individual's liberty interest in refusing medication, courts should consider dangerousness grounds before turning to the trial competence question. Because section 971.14 committing courts are statutorily authorized to order involuntary medication to address a committee's

dangerousness at an institution, the circuit court was right to abandon its *Sell* order in favor of a dangerousness order. This Court's plain-meaning approach toward statutory interpretation reveals that section 51.61(1)(g)3. authorizes such dangerousness orders, and its unanimous decision in *Anthony D.B.* confirms as much. The court of appeals' conclusion that section 51.61(1)(g)3. doesn't apply to individuals committed under section 971.14 defies well-established principles of statutory construction. This Court should reverse.

ARGUMENT

A section 971.14 committing court has statutory authority to order involuntary medication to address a committee's dangerousness in an institution.

A. Courts should consider whether involuntary medication is justified on dangerousness grounds before addressing the *Sell* factors.

In the context of a trial competency restoration commitment under section 971.14, requests for involuntary medication arise in two different situations. First, the government may seek an order to help restore trial competency. *See* Wis. Stat. § 971.14(5)(am). When that happens, among other things, the government must satisfy *Sell*'s four-part standard. *State v. Fitzgerald*, 2019 WI 69, ¶¶ 13, 32, 387 Wis. 2d 384, 929 N.W.2d 165. Second, during a competency commitment, the government may seek to involuntarily medicate a committee who's dangerous at an institution. (R. 19; 37.) This case involves the dangerousness scenario.[4]

[4] This Court will be addressing the *Sell* scenario in *State v. J.D.B.*, No. 2023AP715-CR (petition for review granted on February 12, 2025).

The U.S. Supreme Court has determined that addressing an individual's dangerousness in an institution may provide a sufficient justification for overriding the individual's liberty interest in refusing medication. *Washington v. Harper*, 494 U.S. 210, 221–27 (1990). *Harper* involved a state prison policy that authorized involuntary medication where a prison inmate was mentally ill and dangerous, and the treatment was in the inmate's best medical interest. *Id.* at 222, 236. Opining that "[t]here can be little doubt as to both the legitimacy and the importance of the governmental interest presented here," the *Harper* Court held that the policy complied with due process. *Id.* at 225–27. A later case, *Riggins*, "extended the application of the holding in *Harper* to pretrial detainees." *State v. Wood*, 2010 WI 17, ¶ 22, 323 Wis. 2d 321, 780 N.W.2d 63 (discussing *Riggins v. Nevada*, 504 U.S. 127 (1992)).

Importantly, the U.S. Supreme Court has instructed lower courts to consider whether involuntary medication can be justified on dangerousness grounds before turning to *Sell*'s competency-restoration inquiry. *Sell v. United States*, 539 U.S. 166, 181–83 (2003). In *Sell* itself, the Court gave two reasons why addressing dangerousness is the preferred route in involuntary medication cases. First, deciding whether "particular drugs are medically appropriate and necessary to control a patient's potentially dangerous behavior (or to avoid serious harm to the patient himself)" is "easier" than trying "to balance [the] harms and benefits related to the more quintessentially legal questions of trial fairness and competence." *Id.* at 182. Second, state courts have experience making dangerousness determinations, typically in civil proceedings. *Id.*

Courts around the country have observed that the "Supreme Court clearly intends courts to explore other procedures, such as *Harper* hearings (which are to be employed in the case of dangerousness) before considering

involuntary medication orders under *Sell*." *United States v. Rivera-Guerrero*, 426 F.3d 1130, 1137 (9th Cir. 2005); *see United States v. Morrison*, 415 F.3d 1180, 1181 (10th Cir. 2005); *United States v. White*, 431 F.3d 431, 435 (5th Cir. 2005); *United States v. Grape*, 549 F.3d 591, 599 (3d Cir. 2008); *United States v. Dillon*, 738 F.3d 284, 290 (D.C. Cir. 2013); *United States v. Hardy*, 724 F.3d 280, 295 (2d Cir. 2013). Thus, assuming that the circuit court here was statutorily authorized to order involuntary medication to address Naomi's dangerousness at Mendota, it was in good company to prioritize the "straightforward" dangerousness inquiry over the *Sell* inquiry.[5] *Morrison*, 415 F.3d at 1186; (R. 39:10–11.)

B. Section 51.61(1)(g)3. authorizes involuntary medication to address a committee's dangerousness during a section 971.14 commitment.

The court of appeals agreed that "[i]f the involuntary medication provisions contained in [section 51.61(1)(g)1. and 3.] apply here, Naomi can be involuntarily medicated based on her dangerousness without consideration of the *Sell* factors." (Pet-App. 15–16.) The court of appeals concluded that those statutory provisions "do not apply to incompetent defendants committed under Wis. Stat. § 971.14." (Pet-App. 15.) A plain-meaning analysis of the relevant statutes shows that the court of appeals is wrong.

[5] The State does not and has not argued on appeal that U.S. Supreme Court precedent provides "an independent judicial basis for ordering involuntary medication based on dangerousness that would not require any grounding in statutory authority." (Pet-App. 11 n.9.)

1. Plain meaning, harmonious reading, and the presumption against ineffectiveness.

When interpreting a statute, courts "assume that the legislature's intent is expressed in the statutory language." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. Statutory interpretation thus "begins with the language of the statute." *Id.* ¶ 45 (citation omitted). "Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage." *Id.* ¶ 46.

Context and structure are also "important to meaning." *Kalal*, 271 Wis. 2d 633, ¶ 46; *see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 167 (2012) (discussing the "Whole-Text Canon"). "Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes . . . ." *Kalal,* 271 Wis. 2d 633, ¶ 46. Statutory history, which "encompasses the previously enacted and repealed provisions of a statute," "is part of the context in which [courts] interpret the words used in a statute." *Richards v. Badger Mut. Ins. Co.*, 2008 WI 52, ¶ 22, 309 Wis. 2d 541, 749 N.W.2d 581.

A couple other principles of statutory interpretation are relevant here. First is the "Related-Statutes Canon," which provides that "laws dealing with the same subject—being *in pari materia* (translated as 'in a like matter')—should if possible be interpreted harmoniously." Scalia & Garner, *supra* at 252. As this Court has repeatedly recognized, "When construing several statutes that deal with the same subject, it is our duty to give each provision full force and effect." *Anthony D.B.*, 237 Wis. 2d 1, ¶ 11; *see State v. Reyes Fuerte*, 2017 WI 104, ¶ 29, 378 Wis. 2d 504, 904 N.W.2d 773 ("Where multiple statutes are at issue, this court seeks to harmonize them through a reasonable construction that gives effect to all

provisions."). Only when there's unavoidable "conflict between statutes" does the more specific provision control. *Reyes Fuerte*, 378 Wis. 2d 504, ¶ 29; *see Anthony D.B.*, 237 Wis. 2d 1, ¶ 11; Scalia & Garner, *supra* at 180, 183.

Another relevant principle of statutory construction is the presumption against ineffectiveness. Scalia & Garner, *supra* at 63, 168. Under that principle, "A textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored." *Id.* at 63. "This canon follows inevitably from the facts that (1) interpretation always depends on context, (2) context always includes evident purpose, and (3) evident purpose always includes effectiveness." *Id.* "An interpretation that contravenes the manifest purpose of [a] statute is unreasonable," and of course statutes should be construed "reasonably, 'to avoid absurd or unreasonable results.'" *State v. Dinkins*, 2012 WI 24, ¶ 29, 339 Wis. 2d 78, 810 N.W.2d 787 (citation omitted).

If the above "process of analysis yields a plain, clear statutory meaning . . . the statute is applied according to this ascertainment of its meaning." *Kalal*, 271 Wis. 2d 633, ¶ 46 (citation omitted). A court "is not at liberty to disregard the plain, clear words of the statute." *Id.*

2. The relevant statutes and *Anthony D.B.*

"Chapter 51 is the Mental Health Act and Wis. Stat. § 51.61 is Wisconsin's Patients' Rights Statute." *Anthony D.B.*, 237 Wis. 2d 1, ¶ 13. The statute kicks off by defining who is a "patient" for purposes of its provisions. Relevant here, a patient includes "any individual who is . . . committed or placed under [ch. 51] or ch. 48, 55, 971, 975, or 980." Wis. Stat. § 51.61(1).

Section 51.61(1) continues to enumerate rights afforded to patients, including rights regarding medication or treatment. For example, patients have "the right to be

informed of [their] treatment and care and to participate in the planning of [their] treatment and care." Wis. Stat. § 51.61(1)(fm). Patients also have the right "to refuse medication and treatment" except under certain scenarios, which leads to the critical involuntary medication provisions in section 51.61(1)(g)3.:

> Following a final commitment order . . . [patients] have the right to exercise informed consent with regard to all medication and treatment unless the committing court . . . within 10 days after the filing of the motion of any interested person . . . makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and . . . is not competent to refuse medication or treatment, based on an examination . . . by a licensed physician.[6]

In *Anthony D.B.*, this Court unanimously held that section 51.61(1)(g)3. authorized a Chapter 980 committing court to order involuntary medication to address a committee's dangerousness at an institution. There, Anthony D.B. was committed pursuant to Chapter 980 and the State sought an involuntary medication order to address his dangerousness in an institution. *Anthony D.B.*, 237 Wis. 2d 1,

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[6] The other scenarios where patients lose the right to refuse medication or treatment appear to involve pre-commitment time periods. Wisconsin Stat. § 51.61(1)(g)2. authorizes a court to order involuntary medication "[a]t or after the hearing to determine probable cause for commitment but prior to the final commitment order." And section 51.61(1)(g)1., which the State previously relied on in addition to section 51.61(1)(g)3., seems on closer examination to involve the pre-commitment stage as well. The State therefore focuses on section 51.61(1)(g)3., which plainly governs post-commitment situations.

¶¶ 2–4. At a hearing on the State's motion, a doctor testified that "involuntary medication was necessary to protect Anthony D.B. from himself, and to protect others from him." *Id.* ¶ 4. Specifically, Anthony D.B. "suffered from a mental disease" and when left unmedicated, he "became psychotic, aggressive, sexually focused" and "refuse[d] to eat or drink." *Id.* After finding Anthony D.B. not competent to refuse medication, the circuit court ordered involuntary medication. *Id.* ¶ 1. It concluded that it was authorized to issue the order under section 51.61(1)(g). *Id.* ¶ 6.

On appeal, Anthony D.B. argued that the committing court had no authority to order involuntary medication. *Anthony D.B.*, 237 Wis. 2d 1, ¶¶ 1, 5. He contended "that neither Wis. Stat. ch. 980 nor Wis. Stat. § 51.61(1)(g)" authorized the order and that "the State was required to initiate commitment proceedings under Wis. Stat. ch. 51 before seeking an order for involuntary medication." *Id.* ¶¶ 5, 10. This Court disagreed, finding that section 51.61(1)(g)3. "provide[s] a statutory mechanism for the treatment of sexually violent persons." *Id.* ¶¶ 14–15. This Court reasoned that because Anthony D.B. was a "patient" for purposes of section 51.61(1)(g)3., the "specific procedures for involuntary medication" set forth in the statute applied to him. *Id.* ¶¶ 13–15. Those procedures allowed the Chapter 980 committing court to order involuntary medication upon a finding that Anthony D.B. needed treatment and wasn't competent to refuse medication. *Id.* ¶ 15.

At the time that *Anthony D.B.* was decided, Chapter 980 didn't have "specific procedures for involuntary medication." *Anthony D.B.*, 237 Wis. 2d 1, ¶ 14. By contrast, here, section 971.14 does have involuntary medication provisions covering committees. Thus, statutory language in section 971.14 is also relevant to this appeal.

"Wisconsin Stat. § 971.14 requires a circuit court to enter an order for involuntary medication to *restore a criminal*

defendant's competency to proceed provided the statutory parameters are met."[7] *Fitzgerald*, 387 Wis. 2d 384, ¶ 19 (emphasis added). Under the statute, a committee may find himself subject to an involuntary medication order for competency restoration via one of two routes. First, the circuit court may issue the order at the same time as the commitment decision. *See* Wis. Stat. § 971.14(4)(b). Second, the court may issue the order during the commitment. *See* Wis. Stat. § 971.14(5)(am). Either way, the statutory standard for obtaining the order is the same: the defendant must need medication and be incompetent to refuse it. *See* Wis. Stat. § 971.14(3)(dm), (4)(b), (5)(am).

Specifically, where the circuit court orders involuntary medication at the same time as its commitment decision, it considers the competency examiner's "opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication." Wis. Stat. § 971.14(3)(dm); *see* Wis. Stat. § 971.14(4)(b). And where the court orders involuntary medication during the commitment, it considers a "licensed physician['s]" opinion "that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment." Wis. Stat. § 971.14(5)(am). The standard for determining incompetency to refuse medication is listed in section 971.14(3)(dm).

Neither section 971.14(3)(dm), nor section 971.14(4)(b), nor section 971.14(5)(am), explicitly addresses involuntary medication for dangerousness in an institution.

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[7] As established in *Fitzgerald*, the statutory provisions for involuntary medication to restore trial competency are "unconstitutional to the extent" that they "require[ ] circuit courts to order involuntary medication" without applying the *Sell* factors. *State v. Fitzgerald*, 2019 WI 69, ¶ 2, 387 Wis. 2d 384, 929 N.W.2d 165. So, the State must satisfy the *Sell* standard and the statutory parameters in section 971.14. (Pet-App. 20 n.13.)

3. As in *Anthony D.B.*, section 51.61(1)(g)3. authorized the involuntary medication order here.

The State has a strong interest in "maintaining safety, security, and functionality within" its mental health institutions. *Wood*, 323 Wis. 2d 321, ¶ 32; *see also Vitek v. Jones*, 445 U.S. 480, 495 (1980) ("Concededly the interest of the State in segregating and treating mentally ill patients is strong."). "Indeed, that interest is well-established." *Wood*, 323 Wis. 2d 321, ¶ 32.

To serve the State's strong interest, a statutory mechanism exists for involuntarily medicating section 971.14 committees who are dangerous, and it doesn't involve a separate, dual commitment under Chapter 51. Specifically, section 51.61(1)(g)3. authorizes section 971.14 committing courts to issue such orders.

Employing this Court's approach toward statutory interpretation reveals as much. Starting with the statutory language, section 51.61(1) plainly establishes that section 971.14 committees are "patients" for purposes of Wisconsin's Mental Health Act. *See* Wis. Stat. § 51.61(1) (defining "patient" to include those committed under Chapter 971). As patients, they have rights regarding medication or treatment, including the right to refuse medication or treatment except under certain circumstances. Wis. Stat. § 51.61(1)(g). One such circumstance is where the committee needs medication for dangerousness. *See* Wis. Stat. § 51.61(1)(g)3. In that situation, the most explicit grant of authority for the involuntary medication order comes from that portion of section 51.61(1)(g)3. that allows the committing court, following a hearing, to determine that the committee "needs"

medication (because she's dangerous) and isn't competent to refuse it.[8] *See Anthony D.B.*, 237 Wis. 2d 1, ¶¶ 2–4, 13–15.

Contextual considerations don't change the analysis; they support it. Section 971.14 is relevant because it's closely related to section 51.61. *See Reyes Fuerte*, 378 Wis. 2d 504, ¶ 27 (indicating that statutes are closely related when one references another); *see also Anthony D.B.*, 237 Wis. 2d 1, ¶ 11 (treating Chapters 980 and 51 as closely related because they "both govern individuals committed as sexually violent persons"). While section 971.14 has involuntary medication provisions to help restore a committee's trial competency, it has no provisions explicitly addressing involuntary medication for dangerousness in an institution. *See* Wis. Stat. § 971.14(3)(dm), (4)(b), (5)(am); (Pet-App. 18.) Thus, section 971.14 doesn't conflict with section 51.61(1)(g)3., meaning that section 51.61(1)(g)3.'s plain language should be given "full force and effect." *Anthony D.B.*, 237 Wis. 2d 1, ¶ 11.

An additional contextual consideration is the evident purpose of section 51.61(1)(g)3. *See* Scalia & Garner, *supra* at 63. Because section 51.61(1)(g)3.'s provisions explicitly apply to individuals committed under Chapter 971, *see* Wis. Stat. § 51.61(1), it's clear that the Legislature wanted section 971.14 committing courts to have the ability to order involuntary medication to address a committee's

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[8] The State acknowledges that the "necessary to prevent serious physical harm" language in section 51.61(1)(g)3. appears to permit involuntary medication to address a committee's dangerousness *without* court intervention in certain scenarios. (Pet. Resp. 14–17.) But that doesn't mean that a committing court isn't authorized to order involuntary medication for dangerousness where the government requests it, as *Anthony D.B.* makes clear. Indeed, the "necessary to prevent serious physical harm" language shows that dangerousness is a proper basis on which to seek court authorization under section 51.61(1)(g)3., if time permits that approach. Because the government requested a court order here, this is an *Anthony D.B.* situation, making the explicit court-authorization language in section 51.61(1)(g)3. the better focus.

dangerousness in the committing institution. A logical corollary to this evident purpose is that the Legislature didn't think that a separate, dual commitment under Chapter 51 was necessary to address such situations. Adopting the textually permissible interpretation that the State advances—one that allows a section 971.14 committing court to address a committee's dangerousness at an institution without the need for a *second* commitment under Chapter 51—furthers the evident purpose of section 51.61(1)(g)3. It should be favored over an interpretation that renders the statute ineffective. *See* Scalia & Garner, *supra* at 63.

In short, concluding that section 971.14 committing courts are statutorily authorized to order involuntary medication to address a committee's dangerousness at an institution adheres to the plain language of section 51.61(1)(g)3., harmonizes the statute with section 971.14, and furthers manifest purpose. Thus, well-established principles of statutory construction support the State's position in this case.

Anthony D.B. confirms the State's plain-meaning analysis. This case is like *Anthony D.B.* in critical ways. Here, as in *Anthony D.B.*, the government sought from the committing court an involuntary medication order to address Naomi's dangerousness at an institution. (R. 19; 37); *Anthony D.B.*, 237 Wis. 2d 1, ¶¶ 2–4. Like *Anthony D.B.*, a doctor testified at an evidentiary hearing that Naomi needed medication because she was dangerous to herself and others. (R. 37:3–12); *Anthony D.B.*, 237 Wis. 2d 1, ¶ 4. Finding Naomi dangerous and incompetent to refuse medication, the circuit court ordered involuntary medication, just as the committing court did in *Anthony D.B.* (R. 29:1; 39:6–8); *Anthony D.B.*, 237 Wis. 2d 1, ¶¶ 1–6. Section 51.61(1)(g)3. authorized the order in *Anthony D.B.*, and under substantially similar circumstances, it should here, too. *Anthony D.B.*, 237 Wis. 2d 1, ¶¶ 13–15.

4. The court of appeals defied principles of statutory construction in concluding otherwise.

In concluding that section 51.61(1)(g)3. doesn't apply to individuals committed under section 971.14, the court of appeals either overlooked or misapplied well-established principles of statutory construction.

As a preliminary matter, the court of appeals didn't dispute that section 971.14 committees are "patients" within the meaning of Wisconsin's Mental Health Act, such that section 51.61(1)(g)3. would apply absent contextual considerations. (Pet-App. 16–22.)

Turning to those contextual considerations, the court of appeals examined the text and statutory history (incorrectly referred to as "legislative history") of section 971.14.[9] (Pet-App. 16–22.) It correctly noted that section 971.14 has involuntary medication provisions to help restore a committee's trial competency but not to address a committee's dangerousness at an institution. (Pet-App. 18–22.) But then the central error appears. Rather than giving section 51.61(1)(g)3. "full force and effect" because it doesn't conflict with the closely-related section 971.14, *Anthony D.B.*, 237 Wis. 2d 1, ¶ 11, the court of appeals did the opposite—it gave section 51.61(1)(g)3. no effect in light of section 971.14. (Pet-App. 16–22.) The thinking was that in adding involuntary medication provisions to help restore trial competency in section 971.14, the Legislature also could have added

[9] This Court "ha[s] long recognized a distinction between statutory and legislative history." *Brey v. State Farm Mut. Auto. Ins. Co.*, 2022 WI 7, ¶ 21, 400 Wis. 2d 417, 970 N.W.2d 1. "[E]ach source serves a distinct role in statutory interpretation." *Id.* The court of appeals nowhere considered "extrinsic evidence of a law's meaning," so it didn't consider legislative history. *Id.*; (Pet-App. 16–22.)

provisions to address a committee's dangerousness at an institution but didn't, so it must not have intended for section 971.14 committing courts to have such authority. (Pet-App. 19–22.)

The flaw in this logic is that when the Legislature added involuntary medication provisions for restoring trial competency in section 971.14, it did nothing to change section 51.61(1)(g)3.'s applicability to section 971.14 committees. Then, as now, section 51.61(1)(g)3. authorized a section 971.14 committing court to order involuntary medication to address dangerousness by virtue of the committee's status as a "patient" for purposes of Wisconsin's Mental Health Act. *See* Wis. Stat. § 51.61(1), (1)(g)3. (1989–90), (1995–96); (Pet-App. 19–21.) The court of appeals recognized that the Legislature was presumed to know the law when it added involuntary medication provisions to section 971.14. (Pet-App. 21.) But it failed to appreciate that that principle undermines rather than supports its construction of the statutes. Knowing that Wisconsin's Mental Health Act provided a statutory mechanism for section 971.14 committing courts to order involuntary medication to address dangerousness at an institution, the Legislature left the language untouched and incorporated no conflicting language in section 971.14.[10] Far from being indicative of an intent to prohibit section 971.14 committing courts from acting as the circuit court did here (Pet-App. 19–21), the history of these statutes shows an endorsement of that approach.

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[10] The Legislature knew how to make certain provisions in section 51.61(1) inapplicable to section 971.14 committees. At the time that it added involuntary medication provisions to section 971.14, section 51.61(1)(e) provided that patients "[h]ave the right to the least restrictive conditions necessary to achieve the purposes of . . . commitment . . . except in the case of a patient who is admitted . . . under ch. 971." Wis. Stat. § 51.61(1)(e) (1989–90); *see* Wis. Stat. § 51.61(1)(e) (1995–96). That language remains today. *See* Wis. Stat. § 51.61(1)(e).

The court of appeals shouldn't have rendered section 51.61(1)(g)3. ineffective absent an irreconcilable conflict with section 971.14. *See Reyes Fuerte*, 378 Wis. 2d 504, ¶ 29. There isn't one, so the statutes live in harmony. *Id.* While this Court has gone so far as to overturn its own precedent where there was "no attempt to harmonize" closely-related statutes, *id.* ¶ 30, the court of appeals read this Court's decision in *Anthony D.B.* as embracing its unorthodox approach toward statutory interpretation. (Pet-App. 16–18.) This too was error.

Anthony D.B. was "guided by well-established rules of statutory interpretation." *Anthony D.B.*, 237 Wis. 2d 1, ¶ 11. As "Wisconsin Stat. chs. 980 and 51 both govern individuals committed as sexually violent persons," this Court recognized its "duty to give each provision full force and effect" absent a conflict between the statutes. *Id.* Because Chapter 980 didn't have specific involuntary medication procedures, there was no potential conflict to resolve with section 51.61(1)(g)3. *See id.* ¶¶ 10–15. Therefore, this Court gave section 51.61(1)(g)3. "full force and effect." *Id.* ¶¶ 11, 15.

In rejecting Anthony D.B.'s reliance on statutory history to argue that section 51.61(1)(g)3. doesn't apply to Chapter 980 committees, this Court commented, "[W]e conclude that the [statutory] history supports the conclusion that the procedures in Wis. Stat. § 51.61 apply *unless and until the legislature provides alternative provisions*." *Anthony D.B.*, 237 Wis. 2d 1, ¶ 20 (emphasis added). To read this language as the court of appeals does—as depriving section 51.61(1)(g)3. of its "full force and effect" even if it doesn't conflict with a closely-related statute—is wrong as a matter of statutory interpretation. *Id.* ¶ 11. *Anthony D.B.* cannot reasonably be interpreted as abandoning the very principles of statutory construction that it relies on. *Id.* This statement should be viewed as an imprecise articulation of the well-established rule that where closely-related statutes conflict, the more specific controls. *Id.*

Indeed, a close reading of *Anthony D.B.* reveals a rejection of the court of appeals' unorthodox approach toward statutory interpretation. To support his argument that section 51.61(1)(g) doesn't apply to Chapter 980 committees, Anthony D.B. noted that Chapter 980 was amended to provide for a specific type of "pharmacological treatment" for "serious child sex offenders." *Anthony D.B.*, 237 Wis. 2d 1, ¶ 25. Such an amendment would have been unnecessary, he argued, if the Legislature had intended for section 51.61(1)(g) to authorize involuntary medication orders under Chapter 980. *Id.* In rejecting Anthony D.B.'s invitation to disregard section 51.61(1)(g), this Court observed that the amendment did "not address the situation presented by individuals such as Anthony D.B., who are diagnosed as schizophrenic, need medication, and are not competent to refuse medication." *Id.* "Providing a specific plan for child sex offenders does not erode the conclusion that the court has the authority under Wis. Stat. § 51.61(1)(g) to address the need of an individual such as Anthony D.B." *Id.* This rationale is fully aligned with the notion that statutes should be harmonized whenever possible.

Beyond misapplying the related-statutes canon, the court of appeals overlooked principles of statutory construction of which it ran afoul. At the most basic level, its conclusion that section 51.61(1)(g)3. doesn't apply to individuals committed under section 971.14 disregards the plain language of section 51.61(1), which says it does. Given that contextual considerations don't alter section 51.61(1)(g)3.'s applicability to section 971.14 committees, the court of appeals wasn't at liberty to disregard section 51.61(1)(g)3.'s plain reach. *Kalal*, 271 Wis. 2d 633, ¶ 46.

Further, by depriving section 971.14 committing courts of the authority to order involuntary medication to address a committee's dangerousness at an institution and instead requiring a separate, dual commitment under Chapter 51, the

court of appeals violated the presumption against ineffectiveness. *See* Scalia & Garner, *supra* at 63. As discussed, it's evident that the Legislature wanted a committing court to have the ability to address dangerousness at the committing institution without the need for a second commitment. Given that there's a textually permissible interpretation that furthers section 51.61(1)(g)3.'s evident purpose, the court of appeals shouldn't have endorsed a construction that renders the statute ineffective. *Id.*

Finally, statutes should be read "reasonably, to avoid absurd or unreasonable results." *Kalal*, 271 Wis. 2d 633, ¶ 46. It's absurd or unreasonable to require a separate, dual commitment under Chapter 51 solely to address a committee's dangerousness during a section 971.14 commitment. Why make everyone go through additional commitment proceedings under Chapter 51 just to address an individual's dangerousness during a valid section 971.14 commitment? And more broadly, why should parallel proceedings be required to address a section 971.14 committee's dangerousness but not a Chapter 980 committee's dangerousness? It seems counter-intuitive that the Legislature would have intended to authorize some committing courts to address dangerousness at an institution but not others. The court of appeals offered no explanation for why the Legislature may have wanted such differential treatment. (Pet-App. 18–25.)

In sum, the court of appeals defied well-established principles of statutory construction in concluding that section 51.61(1)(g)3. doesn't apply to individuals committed under section 971.14. The statute plainly applies and authorized the order here.

CONCLUSION

This Court should reverse the court of appeals.

Dated this 25th day of March 2025.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 6,943 words.

Dated this 25th day of March 2025.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

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