

1985 Wisconsin Act 321

AN ACT to repeal 48.35 (1) (e); to renumber 48.295 (2); to renumber and amend 48.30 (5) (intro.), (a) and (b) and 48.30 (5) (c); to amend 48.13 (11) to (13) and 51.20 (1) (a) 2. b and (b); and to create 48.13 (14), 48.295 (2) (b), 48.30 (5) (b) and 48.30 (5) (c) 1 and 2 of the statutes, relating to children who are not responsible for their illegal acts because of mental disease or defect.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.13 (11) to (13) of the statutes are amended to read:

48.13 (11) Who is suffering emotional damage for which the parent or guardian is unwilling to provide treatment, which is evidenced by one or more of the following characteristics, exhibited to a severe degree: anxiety, depression, withdrawal or outward aggressive behavior; ~~or~~

(12) Who, being under 12 years of age, has committed a delinquent act as defined in s. 48.12;:

(13) Who has not been immunized as required by s. 140.05 (16) and not exempted under s. 140.05 (16) (c); or

SECTION 2. 48.13 (14) of the statutes is created to read:

48.13 (14) Who has been determined, under s. 48.30 (5) (c), to be not responsible for a delinquent act by reason of mental disease or defect.

SECTION 3. 48.295 (2) of the statutes is renumbered 48.295 (2) (a).

SECTION 4. 48.295 (2) (b) of the statutes is created to read:

48.295 (2) (b) If the examination is ordered under s. 48.30 (5) (a), the examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel and to the child's counsel. The report shall describe the nature of the examination and identify the persons interviewed, the particular records reviewed and any tests administered to the child. The report shall also contain an opinion regarding whether the child suffered from mental disease or defect at the time of the commission of the act alleged in the petition and, if so, whether this caused the child to lack substantial capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law. The report shall also state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

SECTION 5. 48.30 (5) (intro.), (a) and (b) of the statutes are renumbered 48.30 (5) (a) (intro.), 1 and 2 and amended to read:

48.30 (5) (a) (intro.) If the child enters a plea of not responsible by reason of mental disease or ~~mental~~ defect the court shall order an examination under s. 48.295 and shall specify the date by which the report must be filed in order to give the district attorney or corporation counsel and the child's counsel a reasonable opportunity to review the report. The court shall set a date for hearing as follows:

1. If the child admits or pleads no contest to the allegations in the petition, the hearing to determine whether the child was not responsible by reason of mental disease or mental defect shall be held no more than 10 days from the plea hearing for a child held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.

2. If the child denies the allegations in the petition or citation, the court shall hold a fact-finding hearing on the allegations in the petition or citation as provided under s. 48.31. If, at the end of the fact-finding hearing, the court finds that the allegations in the petition have been proven, the court shall immediately hold a hearing to determine whether the child was not responsible by reason of mental disease or ~~mental~~ defect.

SECTION 6. 48.30 (5) (b) of the statutes is created to read:

48.30 (5) (b) If the court, after a hearing under par. (a), finds that the child was responsible, the court shall proceed to a dispositional hearing.

SECTION 7. 48.30 (5) (c) of the statutes is renumbered 48.30 (5) (c) (intro.) and amended to read:

48.30 (5) (c) (intro.) If the court finds that the child was not responsible by reason of mental disease or ~~mental~~ defect, as described under s. 971.15 (1) and (2), the court shall dismiss the petition with prejudice and the court may order the filing of a petition under ch. 51. If the court does not so find, the court shall proceed to a dispositional hearing. shall also do one of the following:

SECTION 8. 48.30 (5) (c) 1 and 2 of the statutes are created to read:

48.30 (5) (c) 1. If the court finds that there is probable cause to believe that the child meets the conditions specified under s. 51.20 (1) (a) 1 and 2, order the county department under s. 46.22, 46.23 or 49.51 in

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the county of the child's residence or the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition alleging that the child is in need of protection or services under s. 48.13 (14).

SECTION 9. 48.35 (1) (e) of the statutes is repealed.

SECTION 10. 51.20 (1) (a) 2. b and (b) of the statutes are amended to read:

51.20 (1) (a) 2. b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical

harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. In this subparagraph, if the petition is filed under a court order under s. 48.30 (5) (c) 1, a finding by the court exercising jurisdiction under ch. 48 that the child committed the act or acts alleged in the petition under s. 48.12 or 48.13 (12) may be used to prove that the child exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm;

(b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual, except that this requirement does not apply if the petition is filed pursuant to a court order under s. 48.30 (5) (c) 1.