



1995 ASSEMBLY BILL 1092

March 28, 1996 - Introduced by Representatives MURAT, SCHNEIDER and
HASENOHRL. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT** *to renumber and amend* 51.37 (9) and 51.37 (10) (am); *to amend* 51.37
2 (10) (b), 895.54, 971.17 (3) (a), 971.17 (4) (a), 971.17 (5) and 971.17 (7) (a); and
3 **to create** 51.37 (9) (b), 51.37 (10) (am) 2., 971.17 (3) (am), 971.17 (4) (am) and
4 971.17 (7m) of the statutes; **relating to:** the commitment of persons found not
5 guilty of first-degree intentional homicide by reason of mental disease or
6 defect.

Analysis by the Legislative Reference Bureau

Under current law, a person who is found not guilty of a crime by reason of mental disease or defect is committed to the custody of the department of health and social services (DHSS). When committing a person found not guilty by reason of mental disease or defect, a court must specify the length of the person's commitment, which cannot be more than two-thirds of the maximum sentence of imprisonment for the crime. The court must also specify whether the person is to be placed in institutional care or on conditional release. A person placed on conditional release is subject to the custody and control of DHSS and must abide by conditions set by the court and by the rules of DHSS. A person placed in institutional care may petition for conditional release if at least 6 months have passed since the initial commitment order was entered, since the most recent conditional release petition was denied or since the most recent order for conditional release was revoked. In addition, the director of the facility at which the person is placed may, at any time, file a petition for the conditional release of the person. The director of the treatment facility at which the person is placed also may, in certain circumstances, allow a person placed in institutional care to be discharged under supervision, to be conditionally transferred to the custody of a legal guardian or other person, or to take a temporary home visit or temporary leave from the institution. Finally, a person who has been

placed on conditional release may petition the court for termination of his or her commitment if he or she has been on conditional release for at least 6 months or if at least 6 months have elapsed since the most recent petition for termination was denied.

This bill requires a person who is found not guilty of first-degree intentional homicide by reason of mental disease or defect to spend a minimum of 5 years in institutional care before being eligible for conditional release, discharge under supervision, conditional transfer or a temporary home visit or temporary leave. In addition, the bill provides that a person who is found not guilty of first-degree intentional homicide by reason of mental disease or defect and who has spent the minimum 5 years in institutional care may petition for conditional release only once every 36 months, instead of once every 6 months as under current law. However, the director of the treatment facility at which the person is placed may, at any time, file a petition for the conditional release of the person once the person has spent the minimum 5-year period in institutional care. The bill also provides that a person who has been found not guilty of first-degree intentional homicide by reason of mental disease or defect and who has been placed on conditional release may petition for termination of his or her commitment only once every 36 months, instead of once every 6 months as under current law.

Finally, current law requires DHSS to notify victims or, in certain circumstances, family members of victims that a person found not guilty by reason of mental disease or defect has been placed on conditional release or has had his or her commitment terminated. This bill requires clerks of court to maintain a registry of family members of victims of first-degree intentional homicide in cases in which the defendant is found not guilty by reason of mental disease or defect and requires the clerk of courts to notify family members who are on the registry that the defendant has filed a petition for conditional release or for termination of his or her commitment. The notice that the clerk of court must send under the bill must include a copy of the petition and the time and place of any hearing that the court has set on the petition.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 51.37 (9) of the statutes is renumbered 51.37 (9) (a) and amended
2 to read:

3 **51.37 (9) (a)** If Subject to par. (b), if, in the judgment of the director of Mendota
4 mental health institute, Winnebago mental health institute or the Milwaukee
5 county mental health complex, any person who is committed under s. 971.14 or

1 971.17 is not in such condition as warrants his or her return to the court but is in a
2 condition to receive a conditional transfer or discharge under supervision, the
3 director shall report to the department of health and family services, the committing
4 court and the district attorney of the county in which the court is located his or her
5 reasons for the judgment. If the court does not file objection to the conditional
6 transfer or discharge within 60 days of the date of the report, the director may, with
7 the approval of the department of health and family services, conditionally transfer
8 any person to a legal guardian or other person, subject to the rules of the department
9 of health and family services. Before a person is conditionally transferred or
10 discharged under supervision under this subsection, the department of health and
11 family services shall so notify the municipal police department and county sheriff for
12 the area where the person will be residing. The notification requirement does not
13 apply if a municipal department or county sheriff submits to the department of
14 health and family services a written statement waiving the right to be notified. The
15 department of health and family services may contract with the department of
16 corrections for the supervision of persons who are transferred or discharged under
17 this subsection.

18 **SECTION 2.** 51.37 (9) (b) of the statutes is created to read:

19 51.37 (9) (b) A person committed for institutional care under s. 971.17 (3) (am)
20 may not be conditionally transferred or discharged under supervision under par. (a)
21 unless the minimum period of institutional care specified in the person's
22 commitment order has elapsed.

23 **SECTION 3.** 51.37 (10) (am) of the statutes is renumbered 51.37 (10) (am) 1. and
24 amended to read:

1 51.37 (10) (am) 1. The Subject to subd. 2., the director of a state treatment
2 facility may grant to any patient admitted to the facility as a result of a commitment
3 under ch. 971 or 975, a home visit for up to 15 days, or a leave for employment or
4 education purposes in which the patient is not absent from the facility for more than
5 15 days.

6 **SECTION 4.** 51.37 (10) (am) 2. of the statutes is created to read:

7 51.37 (10) (am) 2. The director of a state treatment facility may not grant a
8 home visit or leave under subd. 1. to a person committed for institutional care under
9 s. 971.17 (3) (am) unless the minimum period of institutional care specified in the
10 person's commitment order has elapsed.

11 **SECTION 5.** 51.37 (10) (b) of the statutes is amended to read:

12 51.37 (10) (b) ~~Such a~~ A home visit or leave under this subsection may be granted
13 by the department at its discretion when it is believed to be in the best therapeutic
14 interests of the patient and it is reasonably believed not to present a substantial risk
15 of harm to the community.

16 **SECTION 6.** 895.54 of the statutes is amended to read:

17 **895.54 Liability exemption; notification of release.** A person is immune
18 from any liability regarding any act or omission regarding the notification of any
19 applicable office or person under s. 51.37 (10), 304.06 (1), 971.17 (4m) ~~or~~ (6m) or (7m)
20 or 980.11. This section does not apply to wilful or wanton acts or omissions.

21 **SECTION 7.** 971.17 (3) (a) of the statutes is amended to read:

22 971.17 (3) (a) ~~An~~ Except as provided in par. (am), an order for commitment
23 under this section shall specify either institutional care or conditional release. The
24 court shall order institutional care if it finds by clear and convincing evidence that
25 conditional release of the person would pose a significant risk of bodily harm to

1 himself or herself or to others or of serious property damage. If the court does not
2 make this finding, it shall order conditional release. In determining whether
3 commitment shall be for institutional care or conditional release, the court may
4 consider, without limitation because of enumeration, the nature and circumstances
5 of the crime, the person's mental history and present mental condition, where the
6 person will live, how the person will support himself or herself, what arrangements
7 are available to ensure that the person has access to and will take necessary
8 medication, and what arrangements are possible for treatment beyond medication.

9 **SECTION 8.** 971.17 (3) (am) of the statutes is created to read:

10 971.17 (3) (am) If the defendant under sub. (1) is found not guilty by reason of
11 mental disease or mental defect for a violation of s. 940.01, the commitment order
12 shall specify a minimum period of institutional care of 5 years. The minimum period
13 of institutional care under this paragraph is subject to the credit provisions of s.
14 973.155.

15 **SECTION 9.** 971.17 (4) (a) of the statutes is amended to read:

16 971.17 (4) (a) ~~Any~~ Except as provided in par. (am), any person who is committed
17 for institutional care may petition the committing court to modify its order by
18 authorizing conditional release if at least 6 months have elapsed since the initial
19 commitment order was entered, the most recent release petition was denied or the
20 most recent order for conditional release was revoked. ~~The~~ Except as provided in par.
21 (am), the director of the facility at which the person is placed may file a petition under
22 this paragraph on the person's behalf at any time.

23 **SECTION 10.** 971.17 (4) (am) of the statutes is created to read:

24 971.17 (4) (am) A person who is committed for institutional care under sub. (3)
25 (am) may not be placed on conditional release until the minimum period of

1 institutional care specified under sub. (3) (am) has elapsed. In anticipation of the end
2 of the minimum time period of institutional care specified under sub. (3) (am), the
3 person may petition the committing court to modify its order by authorizing
4 conditional release. After the minimum time period of institutional care specified
5 under sub. (3) (am) has elapsed, the person may petition the committing court to
6 modify its order by authorizing conditional release if at least 36 months have elapsed
7 since the most recent release petition was denied or the most recent order for
8 conditional release was revoked. The director of the facility at which the person is
9 placed may file a petition under this paragraph on the person's behalf at any time
10 after the minimum period of institutional care specified under sub. (3) (am) has
11 elapsed.

12 **SECTION 11.** 971.17 (5) of the statutes is amended to read:

13 971.17 (5) PETITION FOR TERMINATION. A person on conditional release, or the
14 department of health and family services on his or her behalf, may petition the
15 committing court to terminate the order of commitment. If the person files a timely
16 petition without counsel, the court shall serve a copy of the petition on the district
17 attorney and, subject to sub. (7) (b), refer the matter to the state public defender for
18 determination of indigency and appointment of counsel under s. 977.05 (4) (j). If the
19 person petitions through counsel, his or her attorney shall serve the district attorney.
20 The petition shall be determined as promptly as practicable by the court without a
21 jury. The court shall terminate the order of commitment unless it finds by clear and
22 convincing evidence that further supervision is necessary to prevent a significant
23 risk of bodily harm to the person or to others or of serious property damage. In
24 making this determination, the court may consider, without limitation because of
25 enumeration, the nature and circumstances of the crime, the person's mental history

1 and current mental condition, the person's behavior while on conditional release, and
2 plans for the person's living arrangements, support, treatment and other required
3 services after termination of the commitment order. A petition under this subsection
4 may not be filed unless at least 6 months have elapsed since the person was last
5 placed on conditional release or since the most recent petition under this subsection
6 was denied, except that if the person has been found not guilty by reason of mental
7 disease or defect for a violation of s. 940.01 a petition under this subsection may not
8 be filed unless at least 36 months have elapsed since the person was last placed on
9 conditional release or since the most recent petition under this subsection was
10 denied.

11 **SECTION 12.** 971.17 (7) (a) of the statutes is amended to read:

12 971.17 (7) (a) The committing court shall conduct all hearings under this
13 section. All hearings under this section shall be held in open court. The person shall
14 be given reasonable notice of the time and place of each such hearing and family
15 members of victims shall be given notice under sub. (7m) of hearings on petitions
16 filed under sub. (4) or (5). The court may designate additional persons to receive
17 these notices of hearings under this section.

18 **SECTION 13.** 971.17 (7m) of the statutes is created to read:

19 971.17 (7m) NOTICE TO VICTIMS' FAMILIES ABOUT PETITIONS AND HEARINGS. (a) In
20 this subsection:

21 1. "Crime" has the meaning designated in s. 949.01 (1).

22 2. "Member of the family" means spouse, child, sibling, parent or legal
23 guardian.

24 3. "Victim" means a person against whom a crime has been committed.

1 (b) If a person who has been found not guilty by reason of mental disease or
2 defect for a violation of s. 940.01 files a petition for conditional release under sub. (4)
3 or files a petition for termination under sub. (5), or if the department of health and
4 family services files a petition for termination under sub. (5) on behalf of a person
5 who has been found not guilty by reason of mental disease or defect for a violation
6 of s. 940.01, the clerk of the circuit court in which the petition is filed shall notify an
7 adult member of the victim's family or, if the victim is younger than 18 years old, the
8 victim's parent or legal guardian, after the submission of a card under par. (d)
9 requesting notification.

10 (c) The notice under par. (b) shall inform the person under par. (b) of all of the
11 following:

12 1. The defendant's name.

13 2. The fact that the person has filed a petition under sub. (4) or (5) or has had
14 a petition under sub. (5) filed on his or her behalf.

15 3. A copy of the petition specified in subd. 2.

16 4. The time and place of any hearing set by the court on the petition.

17 (d) The clerk shall send the notice under par. (b), postmarked at least 7 days
18 before the hearing date specified in par. (c) 4., to the last-known address of the person
19 under par. (b).

20 (e) In addition to the initial notice under par. (b), if the court sets a hearing on
21 the petition that is in addition to any hearing for which notice was provided under
22 par. (c) 4., the clerk shall send a notice of the additional hearing, postmarked at least
23 7 days before the hearing date, to the last-known address of the person specified
24 under par. (b).

1 (f) The director of state courts shall design and prepare cards for clerks of court
2 to provide to persons specified in par. (b) who want to receive notice under this
3 subsection. The cards shall have space for these persons to provide their names and
4 addresses, the name of the applicable defendant and any other information the
5 director of state courts determines is necessary. A clerk of courts shall provide the
6 cards, without charge, to district attorneys and to the persons specified in par. (b).
7 District attorneys shall provide the cards, without charge, to persons specified in par.
8 (b). These persons may submit completed cards to the clerk of the committing court.
9 A person who has submitted a card may update the information by providing a new
10 card showing the updated information. All records or portions of records that relate
11 to mailing addresses of persons who submit cards under this paragraph are not
12 subject to inspection or copying under s. 19.35 (1).

13 **SECTION 14. Effective date.**

14 (1) This act takes effect on July 1, 1996, or on the day after publication,
15 whichever is later.

16 **(END)**