975.06 History: 1969 c. 255; Stats. 1969 s. 975.06.

340.485, Stats. 1953, does not authorize a commitment to the custody of the state department of public welfare of a person convicted only of disorderly conduct as defined in 348.35. Wood v. Hansen, 268 W 165, 66 NW (2d) 722.

Under 959.15 (6), Stats. 1965, there are only 2 alternatives available to the trial court when the department of public welfare recommends specialized treatment: The defendant is either placed on probation, with the condition that he or she receive prescribed inpatient or outpatient treatment, or is committed to the department. After care is suggested, the trial court has no authority whatsoever to impose any sentence as such. It is only when the department determines that no treatment is required that the trial court is free to sentence the defendant as provided by law for the offense. State v. Sorenson, 31 W (2d) 368, 142 NW (2d) 785.

When a person is convicted of a sex crime and subject to a presentence social, physical and mental examination and the report of the department of public welfare recommends specialized treatment, before a court can place such person on probation in the department with treatment or commit him to the department for treatment under 959.15 (6), Stats. 1965, he must be afforded a hearing on the issue of the need for specialized treatment for his mental or physical aberrations unless such hearing is expressly waived by him. The defendant must be afforded such hearing with counsel, process to compel attendance of witnesses, production of evidence, an examination by a doctor or psychiatrist of his own choosing, and if he is unable to provide counsel, he must have counsel appointed for him at public expense, all as provided in 959.15 (14), for hearings after commitment to the department. After such hearing the court must make its finding and either sentence the defendant under criminal law as provided in 959.15 (5) or commit him to the department under the alternatives of 959.15 (6). The department's recommendation is not mandatory on the court, which must hold a hearing thereon and make its determination upon the issues. Huebner v. State, 33 W (2d) 505, 147 NW (2d) 646.

The hearing to determine whether a defendant convicted of a sex crime should, as recommended by the department, be committed for treatment under the sex crimes act or sentenced to prison under the criminal law, is no longer part of the guilt-determining process, and its purpose is not to determine the criminal punishment to be imposed but whether treatment and the protection of the public are necessary. The state is not required to prove the need (for specialized treatment) beyond a reasonable doubt, but its burden of proof is to satisfy the court to a reasonable certainty by the greater weight of the credible evidence. Goetsch v. State, 45 W (2d) 285, 172 NW (2d) 688.

975.07 History: 1969 c. 255; Stats. 1969 s. 975.07.

975.08 History: 1969 c. 255; Stats. 1969 s. 975.08.

975.09 History: 1969 c. 255; Stats. 1969 s. 975.09.

975.10 History: 1969 c. 255; Stats. 1969 s. 975.10.

975.11 History: 1969 c. 255; Stats. 1969 s. 975.11.

975.12 History: 1969 c. 255; Stats. 1969 s. 975.12.

975.13 History: 1969 c. 255; Stats. 1969 s. 975.13.

Where the department made an order under 959.15 (13) for continuance of control of a sex offender, but the reviewing court did not timely notify the prisoner of the hearing nor of his right to counsel, the order for continuance was only procedurally erroneous and could be cured by a later proper hearing. State ex rel. Stroetz v. Burke, 28 W (2d) 195, 136 NW (2d) 829.

959.15, Stats. 1967, which provides for court review of a departmental order retaining custody of a convicted sexual offender because of the department's finding that his release would be dangerous to the public, does not involve the charge of any crime, but determination of (1) whether he had recovered from his mental aberrations, and (2) whether his release would constitute a danger to the public. Buchanan v. State, 41 W (2d) 460, 164 NW (2d) 253.

975.14 History: 1969 c. 255; Stats. 1969 s. 975.14.

975.15 History: 1969 c. 255; Stats. 1969 s. 975.15.

975.16 History: 1969 c. 255; Stats. 1969 s. 975.16.

975.17 History: 1969 c. 255; Stats. 1969 s. 975.17.

975.18 History: 1969 c. 255; Stats. 1969 s. 975.18.

CHAPTER 976.

Uniform Acts in Criminal Proceedings.

976.01 History: 1969 c. 255; Stats. 1969 s. 976.01.

Editor's Note: For foreign decisions construing the "Uniform Act for the Extradition of Prisoners as Witnesses" see Uniform Laws, Annotated.

976.02 History: 1969 c. 255; Stats. 1969 s. 976.02.

Editor's Note: For foreign decisions construing the "Uniform Act for the Extradition of Witnesses in Criminal Cases" see Uniform Laws, Annotated.

976.03 History: 1969 c. 255; Stats. 1969 s. 976.03.

Editor's Note: For foreign decisions construing the "Uniform Criminal Extradition Act" see Uniform Laws, Annotated.

Recital in a warrant by the governor of this state that it has been represented to him by the governor of another state that a person named stands charged with the crime of obtaining illicit intercourse with a female of good repute, etc., is prima facie evidence that he was charged with a crime under the laws of the state from which he had fled. In re Hooper, 52 W 699, 58 NW 741.

"Treason, felony or other crime," as used in sec. 2, art. IV, of the U.S. Constitution, embrace every act forbidden and made punishable by state laws. State ex rel. Brown v. Stewart, 60 W 587, 19 NW 429.

In the absence of any compact or other arrangement between the states, a person extradited from one state to another for a certain offense, after being tried, acquitted and discharged may be arrested and tried for another offense before he is permitted to return to the state from which he was brought. State ex rel. Brown v. Stewart, 60 W 587, 19 NW 429.

A court is not without jurisdiction because the accused was brought into the county from another state forcibly and without extradition papers. Baker v. State, 88 W 140, 59 NW 570.

Extradition laws, being founded upon the U.S. constitution and laws, must be interpreted in harmony with the decisions of the U.S. supreme court. A fugitive from justice will be returned to the state in which he committed or is charged with commission of crime, irrespective of motive or manner for or by which he left such state, or of his intention to return, or of fact that he left with knowledge and consent of prosecuting witness and might have been arrested in the demanding state. In re Henke, 172 W 36, 177 NW 880.

"An inquiry on *habeas corpus* into detention of a person under a fugitive warrant cannot extend to his guilt or innocence of the crime with which he may be charged. The detention has nothing to do with the determination of guilt or innocence. It is but a step in a process by means of which guilt or innocence may eventually be determined by appropriate procedure looking to that end." State ex rel. Wells v. Hanley, 250 W 374, 376, 27 NW (2d) 373, 374.

Habeas corpus is not the proper proceeding to try the guilt or innocence of the accused. The burden rests on the accused to show by competent evidence that he was not a fugitive from the justice of the demanding state, thereby overcoming the presumption to the contrary arising from the face of an extradition warrant. State ex rel. Kohl v. Kubiak, 255 W 186, 38 NW (2d) 499.

In determining whether a requisition for extradition shows a charge of commission of a "crime," the certificate of the governor of the demanding state, although worthy of consideration, is not decisive. Reference to a statute of North Carolina in an affidavit made before a magistrate there, and accompanying a requisition for extradition puts the Wisconsin court on inquiry, especially since 328.01 directs Wisconsin courts to take judicial notice of the statutes of sister states. An affidavit made before a magistrate in North Carolina, accompanying a requisition for extradition and charging the person demanded with knowingly and feloniously having presented a false or fraudulent claim for the payment of a fire loss under an insurance contract and having subscribed to a false or fraudulent proof of loss, in violation of a cited North Carolina statute defining the offense and making it punishable by imprisonment for not more than 5 years or by a fine of not more than $500 or by both, substantially charged the commission of a "crime" under the laws of the demanding state, and the Wisconsin trial court, in habeas corpus proceedings, erroneously construed the North Carolina statute as a penalty statute and not as one defining and creating a crime. An affidavit made before a magistrate in the demanding state need not provide proof sufficient to convict the person informed against, and it need not satisfy the requirements of a pleading, and inquiry into the knowledge of the affiant and the procedure had before the magistrate is beyond the jurisdiction of the courts of the asylum state. State ex rel. Kojis v. Barczak, 264 W 136, 58 NW (2d) 420.

In a habeas corpus proceeding seeking the release of a person charged with the commission of a crime in another state, and held in custody here as a fugitive from justice for extradition to such other or demanding state, the Wisconsin court may not inquire into the guilt or innocence of the accused, except as it may be involved in identifying him as the person charged with the crime. State ex rel. Krueger v. Michalski, 1 W (2d) 644, 85 NW (2d) 339.

The phrase "fugitive from justice," in the context of extradition of the type here involved, means simply a person who, having been in a state when a crime is alleged to have occurred within its borders, and being charged with the offense, is found outside the state. Questions of proper venue or of variance are matters of defense to be determined by the courts of the demanding state. State ex rel. Krueger v. Michalski, 1 W (2d) 644, 85 NW (2d) 339.

On habeas corpus the court may examine into constitutional questions affecting the legality of the arrest for extradition. If the warrant was not issued by a magistrate and the record does not show probable cause the defendant should be discharged. State ex rel. Foster v. Uttech, 31 W (2d) 664, 143 NW (2d) 500.

Under the uniform criminal extradition act, when an accused has been extradited, the final responsibility for the legality of the demand procedure lies with the demanding state, which must review the legality of an accused's detention on his timely objection. State ex rel. Lutchin v. Outagamie County, 42 W (2d) 78, 165 NW (2d) 593.

When a sheriff acts as the agent of the state in serving a warrant on a fugitive from justice he may collect the fee provided therefor, even though he is on a salary. 10 Atty. Gen. 592.

Where a divorce decree awards the custody of minor children to the wife with provision for their support by the husband, the latter is guilty of abandonment or failure to support if he fails to make the payments required by the decree. Extradition will lie for him, although he was in another state at the time of such alleged abandonment. 12 Atty. Gen. 239.

See also: 19 Atty. Gen. 447, 21 Atty. Gen. 991, and 23 Atty. Gen. 755.

A district attorney may exercise discretion in approving an application for requisition papers. 22 Atty. Gen. 754.

Only an agent appointed by the governor to return a fugitive from justice under extradition papers can collect fees and per diem. 23 Atty. Gen. 402.

Extraditable offense under the Uniform Criminal Extradition Act. 35 MLR 201.

976.04 History: 1969 c. 255; Stats. 1969 s. 976.04.

The uniform close pursuit act is limited to felonies and does not apply to game law violations. 37 Atty. Gen. 570.

976.05 History: 1969 c. 255; Stats. 1969 s. 976.05.

Comment of Judicial Council, 1969: The agreement on detainers, s. 976.05, is new. It is a model act of the Council of State Governments and has been adopted by 19 other states including Iowa, Minnesota and Michigan. This section provides a method of disposing of cases pending in Wisconsin against a defendant who is serving a term of imprisonment in another jurisdiction or who is imprisoned in Wisconson and has a charge pending elsewhere. It should cut down delay in disposing of criminal charges. Its adoption was recommended by the American Bar Association Project on Minimum Standards for Criminal Justice in their report on "Speedy Trial". [Bill 603-A]

CHAPTER 979.

Inquests of the Dead.

979.01 History: R. S. 1849 c. 152 s. 1; R. S. 1858 c. 184 s. 1; R. S. 1878 s. 4865; 1883 c. 12; Ann. Stats. 1889 s. 4865, 4865a; Stats. 1898 s. 4865; 1905 c. 314 s. 1; Supl. 1906 s. 4865; 1925 c. 4; Stats. 1925 s. 366.01; 1929 c. 450; 1931 c. 134; 1945 c. 198; 1955 c. 660 s. 13; 1955 c. 696 s. 335; Stats. 1955 s. 966.01; 1957 c. 128; 1967 c. 276 s. 39; 1969 c. 87; 1969 c. 255 s. 62; Stats. 1969 s. 979.01.

The prerequisite to triggering the district attorney's duty to order an inquest pursuant to the legislative mandate (966.01, Stats. 1967) is his reason to believe that death was caused by criminal conduct amounting to homicide in some degree or by unexplained or suspicious circumstances, and once the facts are shown the district attorney has no discretion to refuse to do so. State ex rel. Kurkierewicz v. Cannon, 42 W (2d) 368, 166 NW (2d) 655.

A district attorney has power to order a corpse exhumed for a post-mortem examination to ascertain the cause of death. 8 Atty. Gen. 837; 10 Atty. Gen. 1195.

Duties of a coroner pertaining to deceased persons are confined to cases where there are good reasons to believe that murder or manslaughter has been committed. 16 Atty. Gen. 194.

Under 366.01, Stats. 1927, the district attorney of the county where a person dies has power to direct the coroner to make an inquest; the coroner has no right to take charge of the body, or hold an inquest or incur expense. 17 Atty. Gen. 122.

The object of a coroner's inquest is to obtain evidence for discovery of a guilty person. 366.01, Stats. 1927, is mandatory, but inquest need not be held if the guilty party has already confessed, is found guilty, and is sentenced. Discretion in the district attorney as to whether to hold an inquest is not as broad as discretion that a coroner had at common law. 18 Atty. Gen. 349.

See note to 59.34, citing 20 Atty. Gen. 323.

A district attorney should not withhold his certificate of approval for witnesses' and jurors' fees in a coroner's inquest even though he believes there were no grounds for holding the inquest. 21 Atty. Gen. 361.

See note to 48.03, citing 26 Atty. Gen. 335.

See note to 59.77, citing 26 Atty. Gen. 431.

Duties of a district attorney and a coroner under 366.01, with respect to an inquest in case of homicide on an Indian reservation, are no different from cases occurring elsewhere unless it is known that the guilty party is a tribal Indian. 34 Atty. Gen. 416.

Although, under 366.01, Stats. 1945, a district attorney is not required to appear in an inquest unless it has been ordered by him, it is deemed better practice for him to appear whether or not the inquest was ordered by him. 36 Atty. Gen. 273.

979.02 History: R. S. 1849 c. 152 s. 2; R. S. 1858 c. 184 s. 2; R. S. 1878 s. 4866; 1887 c. 137; Ann. Stats. 1889 s. 4866; Stats. 1898 s. 4866; 1905 c. 314 s. 2; Supl. 1906 s. 4866; 1925 c. 4; Stats. 1925 s. 366.02; 1929 c. 450; 1945 c. 198; 1955 c. 660 s. 13; Stats. 1955 s. 966.02; 1967 c. 276 s. 39; 1969 c. 87; 1969 c. 255 s. 62; Stats. 1969 s. 979.02.

979.03 History: R. S. 1849 c. 152 s. 3; R. S. 1858 c. 184 s. 3; R. S. 1878 s. 4867; 1887 c. 137; Ann. Stats. 1889 s. 4867; Stats. 1898 s. 4867; 1925 c. 4; Stats. 1925 s. 366.03; 1955 c. 660 s. 13; Stats. 1955 s. 966.03; 1969 c. 87; 1969 c. 255 s. 62; Stats. 1969 s. 979.03.

979.04 History: R. S. 1849 c. 152 s. 4; R. S. 1858 c. 184 s. 4; R. S. 1878 s. 4868; 1887 c. 137; Ann. Stats. 1889 s. 4868; Stats. 1898 s. 4868; 1925 c. 4; Stats. 1925 s. 366.04; 1955 c. 660 s. 13; Stats. 1955 s. 966.04; 1969 c. 255 s. 62; Stats. 1969 s. 979.04.

979.05 History: R. S. 1849 c. 152 s. 5; R .S. 1858 c. 184 s. 5; R. S. 1878 s. 4869; 1887 c. 137; Ann. Stats. 1889 s. 4869; Stats. 1898 s. 4869; 1925 c. 4; Stats. 1925 s. 366.05; 1929 c. 450; 1945 c. 198; 1955 c. 660 s. 13; Stats. 1955 s. 966.05; 1969 c. 255 s. 62; Stats. 1969 s. 979.05.

979.06 History: R. S. 1849 c. 152 s. 6; R. S. 1858 c. 184 s. 6; R. S. 1878 s. 4870; 1885 c. 339; Ann. Stats. 1889 s. 4870; Stats. 1898 s. 4870; 1925 c. 4; Stats. 1925 s. 366.06; 1927 c. 523 s. 37; 1929 c. 450; 1945 c. 198; 1955 c. 660 s. 13; Stats. 1955 s. 966.06; 1969 c. 255 s. 62; Stats. 1969 s. 979.06.

A coroner who is a physician may not appoint himself to examine a corpse. 1910 Atty. Gen. 578.

979.065 History: 1965 c. 504; Stats. 1965 s. 966.065; 1969 c. 255 s. 62; Stats. 1969 s. 979.065.

979.07 History: R. S. 1849 c. 152 s. 7; R. S.