

1975 Assembly Bill 259

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## CHAPTER 155, Laws of 1975

AN ACT to renumber and amend 975.06 (1); to amend 975.06 (2) and (4) and 975.14; and to create 975.06 (1) (b) of the statutes, relating to the right to jury determination of the need for specialized treatment in sex crimes cases.

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

SECTION 1. 975.06 (1) of the statutes is renumbered 975.06 (1) (a) and amended to read:

975.06 (1) (a) If the department recommends specialized treatment for his mental or physical aberrations, the court shall order a hearing on the issue of the need for specialized treatment unless such hearing is expressly waived by him. The hearing shall be conducted by the court ~~without a jury~~ or as provided in par. (b). The court may consider any department rule established in accordance with ch. 227 establishing criteria for recommending specialized treatment. The defendant shall be afforded the opportunity to appear with counsel; process to compel the attendance of witnesses and the production of evidence; and a physician, or clinical psychologist of his own choosing to examine him and testify in his behalf. If he is unable to provide his own counsel or expert witness, the court shall appoint such to represent or examine him.

SECTION 2. 975.06 (1) (b) of the statutes is created to read:

975.06 (1) (b) The hearing shall be to a 12-person jury, unless the defendant requests a 6-person jury or waives a jury. The procedure shall be substantially like a jury trial in a civil action. The judge may instruct the jurors in the law. No verdict shall be valid or received unless agreed to and signed by five-sixths of the jurors. At the time of ordering a jury to be summoned, the court shall fix the date of hearing, which

date shall be not less than 30 days nor more than 40 days after the demand for the jury was made. The court shall submit to the jury the following form of verdict:

STATE OF WISCONSIN

... County

Members of the Jury:

(1) Do you find from the evidence that the defendant .... (Insert his name) .... is in need of specialized treatment? Answer "Yes" or "No".

SECTION 3. 975.06 (2) and (4) of the statutes are amended to read:

975.06 (2) If, upon completion of the hearing as required in sub. (1), ~~the court finds it is found~~ that the defendant is in need of specialized treatment the court shall commit him to the department. The court may stay execution of the commitment and place him on probation under ch. 973 with a condition of probation that he receive treatment in a manner to be prescribed by the court. If he is not placed on probation, the court shall order him conveyed by the proper county authorities, at county expense, to the sex crimes law facility designated by the department.

(4) If, upon the completion of the hearing required in sub. (1), ~~the court finds that he it is found that the defendant~~ is not in need of such specialized treatment the court shall sentence him as provided in ch. 973.

SECTION 4. 975.14 of the statutes is amended to read:

**975.14 Action of committing court upon application for review; reasons for continuance of control by the department.** (1) If the department applies to the committing court for the review of an order as provided in s. 975.13 the court shall notify the person whose liberty is involved, and, if he ~~be~~ is not sui juris, his parent or guardian as practicable, of the application, and shall afford him opportunity to appear in court with counsel and of process to compel the attendance of witnesses and the production of evidence. He may have a physician or clinical psychologist of his own choosing examine him and his medical records in the institution to which he is confined or at some suitable place designated by the department. If he is unable to provide his own counsel, the court shall appoint counsel to represent him. ~~He shall not be entitled to a trial by jury. The provisions of s. 975.06 (1) shall govern the procedure of the hearing.~~

(2) If, after a hearing, ~~the court finds it is found~~ that discharge from the control of the department of the person to whom the order applies would be dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality the court shall confirm the order. If ~~the court finds it is found~~ that discharge from the control of the department would not be dangerous to the public for the causes stated, the court shall order that he be discharged from the control of the department at the time stated in the original commitment.

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