CHAPTER 51.

CARE OF MENTALLY ILL, INFIRM AND DEFICIENT PERSONS.

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GENERAL COMMENT OF INTERIM COMMITTEE, 1947: In recommending this bill to the 1947 Legislature for passage, the Joint Interim Committee on Revision of Public Welfare Laws, appointed pursuant to Jt. Res. No. 72, S., 1945 session, wishes to direct special attention to some of the principal features of the bill:

The committee has consolidated old Chapter 51, entitled "Hospitals and Asylums for the Insane", and old Chapter 52, entitled "Homes for the Feeble-Minded", into new Chapter 51, entitled, "Care of Mentally Ill, Infirm and Deficient Persons", for the reason that the two chapters relate to the same general subject.

The commitee has adopted a new terminology in regard to mental ailments and mental institutions which it considers a marked improvement over the terminology employed at the present time. Thus the term *mentally ill* is used instead of *insane, mentally infirm* instead of *senile, mentally deficient* instead of *feeble-minded, idiotic* or *imbecilic, county hospitals* instead of *county asylums* or *county asylums for the insane.* This is done in an effort to eliminate the stigma and taint too often associated with mental cases. The committee has also adopted terms like *conditional release* in place of *parole,* and *patients* instead of *inmates,* avoiding expressions commonly associated with the criminal law. The new terminology probably will not achieve immediate general acceptance, but correct and approved use of words at least should begin in the statutes. The name *county hospital* as applied to our county mental institutions was adopted in order to make uniform the names of all institutions for the mentally ill in the state, following the precedent that our state institutions at Winnebago and Mendota have been called state hospitals for some years.

The committee has attempted to make procedures to determine mental condition as informal, and as unlike ordinary court procedure, as possible, in order that afflicted persons may not be made to feel that they are offenders against the law rather than ill persons, or that they are to receive punishment rather than care and treatment. For example, the hearing is held before the judge instead of the court, and may be held in the court room or any other place; and the public is not admitted. The committee also has recommended a number or changes in the detention of afflicted persons pending the hearing, or prior to their commitment, for the purpose of easing as much as possible the mental strain to which they are subjected. No mentally affected person may be detained in any jail or place of confinement for criminals, (1) if the judge has approved some other available place of detention, or (2) unless the patient is violent or dangerous, and it is necessary for his protection and that of the public to confine him in jail. Whenever practicable the patient must be detained in a state or county hospital. If he is put in jail the judge must be immediately notified. The officer, unless otherwise ordered by the judge, must deliver him to the proper institution on the same day that he is committed. All these safeguards are grounded on the idea that the temporary detention of mentally afflicted persons in improper surroundings in many instances is very likely not only to retard recovery, but to do irretrievable harm. Owing to widely different local conditions in the 71 counties of the state, it was felt that no fixed rule as to what is a proper facility for temporary custody of mental patients can be laid down by statute, and that the designation of a proper place in each instance can best be left to the local judge subject to statutory requirements.

To more adequately meet the various situations which arise, the committee has enlarged the methods of admission and commitment of mentally ill patients to institutions. It has, of course, retained the old system of committing acute cases to state hospitals and chronic cases to county hospitals; and patients may *also* be committed to the Wisconsin Psychiatric Institute established as a department of our state university. The utmost freedom of transfer between institutions by the state department of public welfare is provided for, in order that the one best adapted to the particular case is selected.

The deparment of public welfare may place any state hospital patient out at board in a private home to receive family care, if it is considered that such a course would benefit the patient. The patient may be conditionally released from the hospital at any time in the discretion of the superintendent. The opportunity for voluntary admissions to hospitals has been increased. A person who believes himself to be suffering from a mental disorder and in need of treatment may, upon the supporting certificate of his physician, personally apply for admission to a hospital without an order or the intervention of the court. A new provision has been added, however, that if at any stage of the examination into his mental

condition, at any time prior to commitment, a person prefers to become a voluntary patient, the judge may permit him to do so, whereupon the judge may suspend the hearing or dismiss the proceedings altogether as he thinks best. The committee believes that encouragement of voluntary admissions will tend to increase the persons submitting to treatment who are in need of it. That procedure avoids the need of a formal finding of insanity and an order of commitment by the court which may be a source of future concern to him. A voluntary patient has the same standing as other patients. If he wants to leave before he is cured, opportunity is provided to have him committed prior to his release.

Throughout, the committee has followed the concept that mental disorder is a disease just as much as a physical disorder is a disease; and it has sought to make the laws pertaining to it flexible and adaptable, so as to afford each individual the kind of care and treatment best suited to his particular case.

The committee has enlarged the types of afflicted persons covered by Chapter 51, and has also created new classifications of these persons. Worthy of special mention is the fact that insane or mentally ill persons and senile or mentally infirm persons have been divided into two entirely separate classes. At the present time a mentally infirm person may be committed to a county home as senile, but not to a county hospital as senile; and may be committed to a state or county hospital, but only as an insane person. The committee recommends that the law be amended authorizing the commitment of mentally infirm persons as such to state and county hospitals as well as to county homes. It is manifestly unjust to classify as insane the many fine old-age people, who, after living long, useful, respectable lives, because of arteriosclerosis or other misfortune, find themselves in a condition where they are unable to take care of themselves or are incapable of managing their own affairs or frequently are an undue burden at home. Since 1900, the average life span in America has increased about 17 years; and about 9 million Americans are now 65 years old or older. This has markedly increased the prevalence of old-age mental infirmity in our state and country and has created a problem with which we must be prepared to deal. Obviously, these people should not be mixed with dementia praecox and such-like patients. There should be separate institutions set up in various sections of the state where they are sure to receive kind and considerate attention and care. Until more of these institutions are provided, either as new institutions or as additions to existing ones, all we can do is to enact laws enabling them to be built and utilized.

Six classes of persons are included in Chapter 51: (1) mentally ill, (2) mentally infirm, (3) mentally deficient, (4) epileptics, (5) inebriates, (6) drug addicts. While they are not strictly speaking mental cases, inebriates and drug addicts have been included in the chapter because of the similarity of procedure between these types of cases and purely mental cases. Methods of commitment and voluntary admissiion to institutions for treatment and transfers and removals therefrom, are important factors in all of these cases.

Application for commitment of alcoholics or drug addicts need not be made exclusively to the county or district judge, as in the case of the mentally diseased, but may be made to the judge of any court of record, so that one court will not be overburdened with this type of case. The committee has also eliminated the present requirement that one of the petitioners must be the inebriate's wife or nearest relative, because of the well-known tendency of so many wives to absorb punishment at the hands of drunken husbands, and to forgive them and give them another chance. Application for commitment may be made by the patient himself or by any 3 reputable citizens; no medical examination is required; but the application must be heard by the judge. The limitations regarding the detention of patients in jail do not apply to inebriates or drug addicts.

Probably the foremost recommendation of the committee is one favoring the abolishment of the right to demand a jury trial in sanity hearings. This is a proposed change in the law which the committee feels has been delayed entirely too long in Wisconsin. Jury trials in this type of case are a relic of the harsh days of the past when incarceration and isolation for life from the rest of the world was the common method of dealing with persons of disordered intellect. Today it is generally recognized that mental disturbances are a disease which in most cases is curable, especially in the early stages; and the emphasis is placed on care and treatment rather than on confinement, the object being to return afflicted persons to normal life and a useful place in society in the shortest possible time.

Under our statutes, a person whose sanity is being investigated may demand a jury trial at any time no matter how utterly and completely deranged he may be; and he may demand it as often and as many times as he sees fit, not only before but after commitment. The jury is selected and the trial conducted in the same manner as in the outmoded justice of the peace courts. The patient is entitled to be represented by counsel, but the signers of the petition to have his sanity investigated are seldom represented, and consequently their side of the case is too frequently not adequately presented. At present, if a person is found to be insane, he may demand another trial immediately, and so on times without number.

The jury is comprised of 6 laymen, chosen from a list prepared by a constable or the sheriff, and selected regardless of their fitness or their knowledge of insanity, frequently from among the town idlers. The jurors are the sole judges of the facts and the law. They may entirely disregard the testimony in the case, including the testimony of medical witnesses. The judge is not even permitted to instruct them as to what constitutes insanity; and they may rely entirely upon their own ideas as to whether the person under examination is a fit subject for treatment. Experience has shown that many jurors do not consider a person insane or committable unless he is a raving maniac. Where the jury finds that the person is sane, the judge has no discretion in the matter, but must order his discharge and turn him loose, often as a menace to himself, his relatives and the community at large.

Instances have occurred where such persons, wrongfully turned loose upon society, have committed great bodily harm upon and even murdered witnesses who testified against them, with the result that witnesses often are reluctant and refuse to testify, thus preventing the full picture of a person's mental condition from being revealed.

In the elimination of the jury trial, the committee is satisfied that the patient would not be denied any of his constitutional rights. In Crocker v. State, 60 Wis. 553, the Wisconsin Supreme Court declared, "It has been held in several of the states that this right of trial by jury does not extend to proceedings to commit infants to industrial schools or house of refuge. Nor does it extend to the determination of the mere insanity of a party."

In Steward v. State, 124 Wis. 623, 631 (1905), a murder case, which involved a statute (Sec. 4700, Stats. 1898) to the effect that an inquisition into the accused's sanity may be made at any time during his trial "by a jury or otherwise as the court deems most proper," the Supreme Court held, "It was not necessary that the issue should be tried by a jury. It was within the power of the legislature to prescribe the mode of trial, and, the statute having left it to the court, it was entirely proper that the court should hear and determine the issue without the intervention of a jury." (citing Crocker v. State, supra, and Nobles v. Georgia, 168 U. S. 398).

In 1927 Substitute Amendment No. 1, S., to Bill No. 156, S., providing for eliminating the jury trial, passed the Senate without a roll call and passed the Assembly unanimously, but was vetoed by the Governor. The present Governor was on the Senate committee which reported unanimously in favor of the passage. The State Medical Society appeared before the Judiciary Committee in favor of that bill. The Interim Committee is completely convinced that the action taken by the legislature in 1927 was sound.

Elimination of trial by jury in sanity hearings is not a new or novel idea, but is supported by well-established precedent in this state. Situations where persons are committed to custody by the court without the right to jury trial are quite common, among which may be mentioned the commitment of juvenile delinquents, both boys and girls, to our industrial schools; the commitment of tuberculous persons to a sanatorium; the commitment of persons accused of crime, but insane, to a mental institution; and the commitment to jail of persons guilty of violating orders of the court for the support of wife and minor children, and similar orders.

Persons who are afflicted with communicable venereal disease and who refuse to receive treatment "may be committed by the judge of any court of record to any county or state institution where proper care * * * can be provided." (Section 143.07 (5). The procedure is summary and without a jury.

"Any person declared * * * to be a typhoid carrier" who does not "conduct himself in the manner required by the state board of health" may be committed by the county court without a jury. (Section 143.14).

The state board of health may quarantine persons and places to prevent the spread of disease and may station guards around homes to enforce the quarantine without jury action. (Section 143.05).

The committee is strongly of the opinion that the bill as submitted amply protects the rights of alleged mentally ill persons, and adequately safeguards them against hasty, arbitrary or ill-advised action; and, as stated, the committee recommends its adoption.

Additional details regarding this bill are to be found in the commitee comments immediately following the sections of the bill.

The absence of a note to a section indicates that its meaning is not changed by this bill. (Bill 19-S)

Revisor's Note, 1947: The provisions for a jury trial were restored by Am. No. 3-S and Am. No. 1-S to Am. No. 3-S to Bill 19-S.

51.001 Definitions. As used in this chapter:

(1) Mental illness is synonymous with insanity; mental infirmity with senility; and mental deficiency with feeble-mindedness.

(2) County hospital means a hospital for mental disturbances. [*1947 c. 485*]

51.01 Procedure to determine mental condition. (1) APPLICATION TO JUDGE. (a) Written application for the mental examination of any person (herein called "patient") believed to be mentally ill, mentally infirm or mentally deficient or epileptic, and for his commitment, may be made to the county or district judge of the county in which the patient is found, by at least 3 adult residents of the county, one of whom must be a person with whom the patient resides or at whose home he may be or a parent, child, spouse, brother, sister or friend of the patient, or the sheriff or a police officer or public welfare or health officer. However, if the patient is under 18 years of age, the application shall be made to the judge of the juvenile court of the county in which such minor is found.

(b) If the county judge or the district judge is not available, the judge of any court of record of the county may act on the application. If no such judge is available, any court commissioner of the county may act.

(2) APPOINTMENT OF EXAMINING PHYSICIANS. (a) On receipt of the application the judge shall appoint 2 duly licensed reputable physicians to personally examine the patient, one of whom, if available, must have had 2 years' practice of his profession or one year of practice in a hospital for the mentally ill, and who are so registered by the judge on a list kept in his office, and neither of whom is related by blood or marriage to the patient or has any interest in his property.

(b) The examining physicians shall personally observe and examine the patient and satisfy themselves as to his mental condition and report the result to the judge, in writing, at the earliest possible time or the time fixed by the judge.

(3) FORMS. The department shall prescribe forms for the orderly administration of chapter 51, and furnish such forms to the county judges and to the several institutions. Until such forms are so furnished, the interrogatories in section 51.01, statutes of 1945, and other forms in common use continue in force. A substantial compliance with prescribed forms is sufficient.

(4) REPORT OF EXAMINING PHYSICIANS. The examining physicians, as part of their report, shall make and file substantially the following affidavit:

We, ... and ...., the examining physicians, being severally sworn, do certify that we have with care personally examined [insert name of person examined] now at .... in said county, and as a result of such examination we hereby certify that he is mentally ill and a proper subject for custody and treatment [or, he is mentally infirm, or mentally deficient, or epileptic, and a proper subject for custody and treatment; or, he is not mentally ill or infirm or deficient or epileptic]; that our opinion is based upon the history of his case and our examination of him; that the facts stated and the information contained in this certificate and our report are true to the best of our knowledge and belief. We informed the patient that he was examined by us as to his mental condition, pursuant to an application made therefor, and of his right to be heard by the judge. [*50.01 Stats. 1945; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.01 is revised. The proposed changes are stated in this note. The definitions of senile ward and senile are omitted as not needed. The provisions in (1) as to the judge of any court of record and court commissioners are new. Mentally deficient and epileptic persons are specifically included. The provision in (2) that the physicians are not to be related or have an interest in patient's property is

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new. Change has been made in (1) as to who may make the application. Under (3) the power of prescribing forms for procedings under chapter 51 is limited to the department. Until it prescribes forms, the interrogatories in 51.01, Stats. 1945, and other forms now in use, continue applicable * * * (Bill 19-S)

Note: An application for a judicial inquiry as to the mental condition of an allegedly feeble-minded person, which application stated that one of the applicants was the nearest friend available and on its face showed full compliance with the provisions of 51.01 (1) and 52.02 (1), Stats. 1939, relating to the making of such an application conferred jurisdiction on the judge of the county court. Whether a social worker, stated in the application for a judicial inquiry to be the nearest friend available of the allegedly feeble-minded person, was the nearest friend available, presented an issue of fact for the judge of the county court to determine, and the evidence sustained his finding in the affirmative on such issue. In re Terrill, 240 W 53, 2 NW (2d) 847.

[*51.015 created by 1947 c. 459 renumbered section 51.37 by 43.08 (2)*]

51.02 Procedure to determine mental condition (continued). (1) NOTICE OF HEARING. (a) On receipt of the application or of the report of the examining physicians, the judge shall appoint a time and place for hearing the application and shall cause notice thereof to be served upon the patient in the manner prescribed in section 262.08 (1), which notice shall state that application has been made for an examination into his mental condition (withholding the names of the applicants) and that such application will be heard at the time and place named in the notice; but if it appears to the satisfaction of the judge that the notice would be injurious or without advantage to the patient by reason of his mental condition, the service of notice may be omitted. The judge may, in his discretion, cause notice to be given to such other persons as he deems advisable. If the notice is served the judge may proceed to hold the hearing at the time and place specified therein; or, if it is dispensed with, at any time.

(b) The judge shall determine whether the patient is a war veteran. If he is, the judge shall promptly notify the state department of veterans' affairs, and in the event of commitment, he shall notify the nearest United States Veterans' Administration facility of the commitment.

(2) HEARING. At the hearing any party in interest may examine the physicians and other witnesses, on oath, before the judge and may offer evidence. At the opening of the hearing the judge shall state to the patient, if present, in simple, nontechnical language the purpose of the examination and his right to be heard and to protest and oppose the proceedings and his commitment; but where it is apparent to the judge that the mentality of the patient is such that he would not understand, he may omit such statement. The hearing may be had in the court room or elsewhere and shall be open only to persons in interest and their attorneys and witnesses. Before making his decision the judge shall personally observe the patient.

(3) DISTRICT ATTORNEY TO HELP. If requested by the judge, the district attorney shall assist in conducting proceedings under this chapter.

(4) APPOINTMENT OF GUARDIAN AD LITEM. At any stage of the proceedings, the judge may, if he thinks the best interest of the patient requires it, appoint a guardian ad litem for him.

(5) JUDGE'S DECISION. At the conclusion of the hearing the judge may:

(a) Discharge the patient if satisfied that he is not mentally ill or infirm or deficient or epileptic, so as to require care and treatment, or

(b) Order him detained for observation if in doubt as to his mental condition, or

(c) Order him committed if satisfied that he is mentally ill or infirm or deficient or epileptic and that he is a proper subject for custody and treatment, or

(d) In case of trial by jury, order him discharged or committed in accordance with the jury verdict. [*1933 c. 330; 1939 c. 458; 1943 c. 190; 1945 c. 326; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.02 is revised. The procedure is changed in several respects. * * * Under new (2) it is provided that the judge must personally observe the patient, but the patient's presence at the hearing is not required. (3) is new but appears to be in accord with present practice. The petitioners may appear at the hearing and the district attorney may appear for them. In re Terrill, 240 W 53. Compensation of the guardian ad litem is omitted because covered by new 51.07 (4). (Bill 19-S)

Note: It was not error to permit an assistant district attorney to appear for the applicants and participate in proceedings on an application for a judicial inquiry as to the mental condition of an allegedly feeble-minded person, since both the state and county are interested in such proceedings, and 59.47 (1) makes it the duty of the district attorney to prosecute or defend in the courts of his county all actions, applications, or motions, civil or criminal, in which the state or county is interested. In re Terrill, 240 W 53, 2 NW (2d) 847.

51.03 Jury trial. If a jury is demanded by the alleged mentally ill, infirm, deficient or epileptic patient or by a relative or friend in his behalf, before commitment, the judge shall direct that a jury be summoned to appear before him to determine the mental condition of the patient. The procedure shall be substantially like a jury trial in a civil action before a justice of the peace, and the 6 jurors shall be selected as in justice court. The judge may instruct the jurors in the law. No verdict shall be valid or received unless agreed to and signed by at least 5 of the jurors. At the time of ordering a jury to be sum-

moned, the judge shall fix the date of the hearing, which date shall be not less than 30 days nor more than 40 days after the demand for a jury is made. In the meantime the judge may order the patient temporarily detained in a designated public institution, until the date of hearing, for observation. The judge shall submit to the jury the following form of verdict:

STATE OF WISCONSIN
.... County.

Members of the Jury:

Do you find from the evidence that the patient .... (insert his name) is mentally ill or mentally infirm or mentally deficient or epileptic? Answer yes or no.

Answer ....

(Signature of jurors who agree to verdict)

[*1943 c. 190; 1943 c. 552 s. 5; 1947 c. 485*]

Note: An instruction, given on a jury trial in an inquiry into the mental condition of a person previously adjudged insane, that it was necessary that all six jurors sign the verdict agreed on, was erroneous because it was only necessary that five members of the jury agree on their verdict, but, since such instruction was favorable to the subject of the inquiry, he could not complain thereof, and, since the jury's verdict was unanimouse, such instruction did not in any event constitute reversible error. [Decided 1939] In re Hogan, 232 W 521, 287 NW 725.

51.04 Temporary detention of persons. (1) EMERGENCY PROVISIONS. The sheriff or any other police officer may take into temporary custody any person who is violent or who threatens violence and who appears irresponsible and dangerous. This is an emergency provision intended for the protection of persons and property. Such person may be kept in custody until regular proceedings are instituted to cope with the case, but not exceeding 3 days.

(2) FOR SAFETY. If it appears from the application for his mental examination or otherwise that safety requires it, the judge may order the sheriff or other police officer who has such person in custody to confine him in a designated place for a specified time, not exceeding 10 days.

(3) MEDICAL OBSERVATION. Upon receipt of the report of the physicians the judge may order his detention in a designated institution for a stated period not exceeding 30 days. Upon the application of the superintendent of the institution or any interested person the judge may extend the detention period, but the temporary detention shall not exceed 90 days in all.

(4) USE OF JAILS RESTRICTED. No patient shall be detained in any jail or other place of confinement for criminals unless there is no other place of detention available which has been approved by the judge, or unless the patient is violent or dangerous and it is necessary to confine him in jail. If the patient is jailed, the officer shall immediately notify the county judge or district judge, or in their absence, the judge of any other court of record. [*1943 c. 190; 1947 c. 485*]

Comment of Interim Committee, 1947: (1) is new. Old (1) and (2) are carried into new (2) and (3), with several changes, including a provision from extending the period of observation. New (4) is from old (3) with several changes, including approval by the judge of the places of detention and notice to the judge when a patient is jailed. (Bill 19-S)

Note: Expenses of detention pending sanity hearings are governed as to rates by 51.08 and as to payment by 51.07, Stats. 1935. Costs and expenses of proceedings include detention. 25 Atty. Gen. 332.

51.05 Commitments. (1) TO INSTITUTION. If the judge or jury finds that the patient is mentally ill or infirm and should be sent to a hospital for the mentally ill or infirm, the judge shall commit him to a hospital, stating in the commitment whether the notice specified in section 51.02 was served, and if not, the reasons. If the judge or a jury finds that the patient is mentally infirm, commitment may be to the facility mentioned in subsection (5). If it is found that the patient is mentally deficient or epileptic and should be committed, the commitment shall be to the northern colony and training school or the southern colony and training school.

(2) TO WHAT DISTRICT. Commitments of mentally ill or infirm persons from any county (other than a county having a population of 500,000) of persons whose mental illness has not become chronic, or who do not have legal settlement in the county, and commitments of chronic cases from a county not having a county hospital, shall be to the state hospital for the district in which the county is situated, unless the department consents to a different commitment.

(3) LEGAL SETTLEMENT RULE. If the patient has a legal settlement in a county which has a county hospital and the judge is satisfied that the mental illness or infirmity of the patient is chronic, he may commit him to the county hospital. If he has a legal settlement in a county having a population of 500,000, the commitment shall be to any of the

county's hospitals for mental diseases, having due regard to the condition of the patient and the nature of his malady. If the patient has no legal settlement he shall be committed to a state hospital. The judge shall, in a summary manner, ascertain the place of the patient's legal settlement. The judge's finding shall be included in the order of commitment.

(4) TO AWAIT LEGAL PAPERS. If a patient is brought to or applies for admission to any hospital without a commitment or application or under a void or irregular commitment or application, the superintendent may detain him not exceeding 10 days to procure a valid commitment or application or for observation. If the patient needs hospitalization, in the opinion of the superintendent, he may make the application provided for in section 51.01; and thereafter the proceedings shall be as upon other applications. His signature to the application shall suffice. The superintendent's application shall be made in the county where the institution is located.

(5) MENTALLY INFIRM FACILITY. The county board may provide a facility in the county home or hospital for the care and treatment of mentally infirm persons. Section 46.17 shall apply to such facilities. [*1935 c. 336; 1943 c. 190, 402; 1943 c. 552 s. 6; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.05 gathers types of commitments (except inebriates and drug addicts). (1) comes from old 51.05 (1) and (7) and 52.02 (1). The names of the colonies are shortened by omitting "Wisconsin." The exception in (2) is new. (3) restates old (3) and (4). The provision in (4) to authorize the superintendent to make application under 51.01 for the mental examination of a patient is new. The need for it seems obvious. Of course this provision applies only to patients who have not been legally committed. The word "facility" is used in (5) instead of "ward." The closing sentence of old (7), "Persons found senile under chapter 52 may also be committed to such ward," is covered by new (1). Old (5) and (8) are omitted as not needed. (Bill 19-S)

Note: Under present statutes (1943) there is no warrant for granting a "rehearing" by the committing judge in cases of insanity or epilepsy or feeble-mindedness of children under 18. In re Ziegler, 245 W 453, 15 NW (2d) 34.

Within the purview of 52.02, Stats. 1943, epilepsy is a form of insanity, although it may not be so regarded in criminal prosecutions. Mere error by the committing judge, in respect to determining whether as a matter of fact a child was insane or his epileptic condition such as to warrant his commitment, cannot be reviewed by habeas corpus but can be reviewed only by appeal or writ of error. In re Ziegler, 245 W 453, 15 NW (2d) 34.

51.06 Execution of commitment; expenses. (1) The sheriff and such assistants as the judge deems necessary shall execute the commitment; but if any competent relative or friend of any patient so requests, the commitment may be delivered to and executed by him. For such execution he shall be entitled to his necessary expenses, not exceeding the fees and expenses allowed to sheriffs. The officer, unless otherwise ordered by the judge, shall on the day that a patient is adjudged mentally ill or infirm or deficient or epileptic, deliver him to the proper institution. Every female patient transported to a hospital shall be accompanied by a competent woman. The judge shall prescribe the kind of transportation to be used.

(2) Copies of the application for examination and of the report of the examining physicians and the adjudication and the commitment shall be delivered to the person in charge of the institution to which the patient is committed. [*51.01 (6), 51.06 Stats. 1945; 1947 c. 485*]

Comment of Interim Committee, 1947: Old 51.06 (1) is amended to provide that all female patients, regardless of age, shall be accompanied by a woman and that the judge shall prescribe the type of transportation. The provision for sheriff's fees in old (2) is omitted here and is placed in 59.28 (the general sheriff's fee section) by another section of this bill and the witness fee provision of (2) is moved to 51.07 (3). 51.06 (2) is a restatement of old 51.01 (6) without change of meaning other than providing for copies instead of originals. It seems obvious that the county court should retain the original papers. (Bill 19-S)

51.07 Fees of judges, examining physicians, witnesses; expenses of proceedings. (1) Except in Milwaukee county, the judge shall receive a fee of $5 for the hearing of an application for commitment and all matters and papers connected therewith.

(2) Unless previously fixed by the county board of the county in which the examination is held, the examining physician shall receive a fee of not less than $4 nor more than $10, as fixed by the examining judge, for each day that he is required to attend, and 10 cents per mile for necessary travel.

(3) Witnesses subpoenaed before the judge shall be entitled to the same fees as witnesses before courts of record. Such fees and charges shall be paid by the county.

(4) Expenses of the proceedings, from the presentation of the application to the commitment or discharge of the patient, including a reasonable charge for a guardian ad litem, shall be allowed by the judge and paid by the county from which the patient is committed or discharged, in the manner that the expenses of a criminal prosecution in justice court are paid, as provided in section 59.77.

(5) If the patient has a legal settlement in a county other than the county from which he is committed or discharged, that county shall reimburse the county from which he was committed or discharged all such expenses. The county clerk on July 1 shall

submit evidences of payments of all such proceedings on nonresident payments to the department, which shall certify such expenses for reimbursement in the form of giving credits to the committing or discharging county and assessing such costs against the county of legal settlement or against the state at the time of the annual audit. [*1939 c. 458; 1943 c. 190; 1943 c. 552 s. 8; 1945 c. 342; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.07 is restated to make its meaning clear and complete. (2) is amended to give the judge discretion as to fees and to express plainly the per diems and which county fixes the rate (see 34 Atty. Gen. 276). Old (3) is renumbered (4) and restated without change of meaning. Old (4) is renumbered (5) and is amended to show that reimbursement is for proceedings when the patient is discharged as well as when he is committed and shall ultimately be paid by the county of his legal settlement, and if he has no settlement in this state, the expenses shall be paid by the state; and to show how the item is handled. New (3) is from old 51.06 (2). (Bill 19-S)

Note: County judge who commits A and B on the same day on criminal charges and commits C to hospital for insane is entitled to $5 for commitment of A and B under (2) of 253.15, and to $5 for committing C to hospital for insane under 51.07 (1), Stats. 1931. 20 Atty. Gen. 530.

In event a county board acts to establish a fee for a medical examination made in connection with the commitment of persons alleged to be insane or senile at a sum greater than $4 as provided by (2), the increased fee could only be paid for examinations made and certificates furnished after effective date of such action by the county board. 34 Atty. Gen. 276.

51.08 Maintenance. (1) The expense of maintenance, care and treatment of each patient in any state hospital shall be at the rate of $3.25 per week, and in any county hospital or facility for the mentally infirm at the rate of $6.50 per week. For each such patient in any county hospital maintained at public charge elsewhere than in the county of his legal settlement the whole rate shall be charged to the state and one-half charged over by the state against the county of his legal settlement. For other patients maintained in any county hospital at public charge one-half of said rate shall be charged to the state and one-half to the county of their legal settlement. When any patient is temporarily transferred from any state or county hospital to a hospital for surgical or medical care or both, the state charges or aid provided for in this subsection shall continue during the period of such transfer. Such charges shall be adjusted as provided in section 46.106, but nothing herein shall prevent the collection of the actual per capita cost of maintenance or a part thereof by the department or by a county having a population of 500,000. This amendment (1947) shall be effective so as to apply to the cost of county operation of hospitals beginning July 1, 1946. [*1933 c. 140 s. 3; 1933 c. 470 s. 7m, 8; 1935 c. 336, 535; 1939 c. 393; 1943 c. 95, 190, 490, 542; 1945 c. 33, 244; 1947 c. 485, 508, 602*]

[*51.09 Stats. 1945 repealed by 1947 c. 485*]

51.09 Inebriates and drug addicts. (1) HEARING. If it appears to any judge of a court of record, by an application of 3 reputable adult residents of the county, that a resident of the county or person temporarily residing therein is an inebriate or a narcotic drug addict and in need of confinement or treatment, the judge shall fix a time and place for hearing the application, on reasonable personal notice to the person in question, requiring him to appear at the hearing, and shall summarily hear the evidence. The judge may require notice to be given to known relatives of the person. At such hearing if the judge finds that such person is an inebriate or a narcotic drug addict, and requires confinement or treatment, or that it is necessary for the protection of himself or the public or his relatives that he be committed, he may be committed to the county hospital or to Winnebago or Mendota state hospital. At the hearing the judge shall determine the person's legal settlement, and the county of such settlement shall be liable over for his maintenance and treatment. The provisions against detaining patients in jails shall not apply to inebriates or drug addicts except in case of acute illness.

(2) COMMITMENT. The commitment of an inebriate or a drug addict shall be for such period of time as in the judgment of the superintendent of the institution may be necessary to enable him to take care of himself. He shall be released upon the certificate of the superintendent that he has so recovered. When he has been confined 6 months and has been refused such a certificate he may obtain a hearing upon the question of his recovery in the manner and with the effect provided for a re-examination under section 51.11.

(3) VOLUNTARY PATIENTS. Any adult resident of this state who believes himself to be an inebriate or a drug addict may make a signed application to the presiding judge of a court of record of the county where he resides to be committed to a hospital. His application must be accompanied by the certificate of a resident physician of the county that confinement and treatment of the applicant are advisable for his health and for the public welfare. The judge may act summarily upon the application and may take testimony. If he finds that the applicant satisfies the conditions of this section, he shall commit him as he would had there been an application under subsection (1), including a finding as to legal settlement.

(4) CONDITIONAL RELEASE. A conditional release may be granted to the inebriate or drug addict under the provisions of section 51.13.

(5) TREATMENT OF DRUG ADDICTS. The department shall provide treatment for drug addicts at the state institutions to which they are committed; and counties having a population of 500,000 shall provide treatment of drug addicts in local institutions to which they are committed. For each drug addict treated in such local institutions the county shall receive the same allowance from the state as it receives for the care of other patients in the same institutions. [*51.26 (5), (6), 161.28 to 161.30 Stats. 1945; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.09 (1) is a consolidation of 51.26 (5) and part of (6). It changes the law as to who may make the application and eliminates the specific provision for 3-day notice. The provision for committing to the hospital of an adjoining county is omitted. It is not practical or equitable and is probably not used. There is no such provision as to other types of patients. The judge is given discretion as to notifying relatives. The provision as to the finding of legal settlement is new. So is the last sentence of (1). 51.04 applies to inebriates and drug addicts but not the restriction as to confinement in jail (except in case of acute illness). (2) is from 51.26 (6) and 161.28. The term of commitment is changed. At present the commitment of an inebriate is for "such period * * * as * * * may seem necessary for curing the malady * * * or for such * * * time as * * * the superintendent and attending physician" think he is cured. The proposed commitment is without express time limit. It is till the superintendent thinks the patient is able to care for himself, i. e., no longer needs hospitalization. 161.28 provides for a commitment of drug addicts for not less than 6 months or until cured but not more than 12 months. A uniform provision for rehearing is added. (3) is new. 161.30 contained a provision for voluntary admission of addicts, from which new (3) varies considerably. (4) is new. It provides for conditional release in the same manner as for the mentally ill. (5) is substantially like 161.29. Chapter 161 is entitled "Uniform Narcotic Drug Act." Secs. 161.28 to 161.30 are not part of that act and are, for more logical arrangement, placed in 51.09. The punishment feature of 161.28 is moved to new 348.35 by this bill. (Bill 19-S)

51.10 Voluntary admissions. (1) Any resident adult of this state, believing himself to be suffering from any mental disorder, upon his written application stating his condition, supported by the certificate of his physician, based upon personal examination, may be admitted as a voluntary patient to any suitable state or county institution without an order of the judge and in the discretion of the superintendent. Any resident minor or incompetent may be admitted upon application signed by parent, spouse or legal guardian, supported by a like certificate.

(2) The superintendent shall forward to the county judge of the patient's residence a copy of his application. The judge shall determine the patient's legal settlement and certify the same to the superintendent. The county of his legal settlement (if he has one) shall be charged with his care, unless his care is privately paid for. A voluntary patient shall be subject to the same laws, rules and regulations as a regularly committed patient, except that he may leave at any time if, in the judgment of the superintendent, he is in fit condition, on 5 days' written notice to the superintendent of his intention to leave, given by the patient or his guardian. The patient shall not be detained over 35 days after such notice is given. If, in the opinion of the superintendent, the patient needs further hospitalization, he may make application in the county where the institution is located, as provided in section 51.01; and thereafter proceedings shall be as upon other applications. The superintendent's signature on the application shall suffice.

(3) If a voluntary patient is found to be a nonresident of this state and does not apply for a discharge, the superintendent shall make application for commitment to the county judge of the county where the institution is located, as provided in section 51.01. The application of the superintendent alone is sufficient.

(4) If at any stage of an inquiry under this chapter, the patient prefers to enter an institution voluntarily, the judge may permit him to become a voluntary patient pursuant to subsection (1) upon his signing an application therefor in the presence of the judge; and the judge may continue the hearing or dismiss the proceedings and shall notify the institution of his action. [*1935 c. 336; 1943 c. 275 s. 19; 1945 c. 340; 1947 c. 485*]

Comment of Interim Committee, 1947: The requirement of legal settlement is changed simply to "Any resident adult of this state." "Or incompetent" is inserted in (1), and a "spouse" is added to those who may apply for admission of a minor. Under (2) the superintendent is required to send a copy of the application to the judge whether the patient is indigent or not, and the judge makes a finding in every case as to legal settlement and certifies it to the superintendent. The provision as to the patient leaving the hospital is changed and the superintendent is authorized to apply for his commitment. (3), as to nonresident patients, is a new provision. (4) is new and permits the person under consideration to "sign himself in" as a voluntary patient and gives the judge power to suspend the proceedings. (Bill 19-S)

51.11 Re-examination of patients. (1) Except as otherwise provided in sections 51.21, 357.11 and 357.13, any person adjudged mentally ill or infirm or deficient or epileptic, or restrained of his liberty because of alleged mental illness or infirmity or deficiency or epilepsy, may on his own verified petition or that of his guardian or some relative or friend have a re-examination before the judge of any court of record, either of the county from which he was committed or in which he is detained.

(2) The petition shall state the facts necessary to jurisdiction, the name and residence of the patient's general guardian, if he has one, and the name, location and superintendent of the institution, if the person is detained.

(3) The judge shall thereupon appoint 2 disinterested physicians, each having the qualifications prescribed in section 51.01, to examine and observe the patient and report their findings in writing to the judge. For the purpose of such examination and observation the judge may order the patient confined in a convenient place as provided in section 51.04.

(3a) If the patient is under commitment to a hospital, a notice of the appointment of the examining physicians and a copy of their report shall be furnished to such hospital by the judge.

(4) Upon the filing of the report the judge shall fix a time and place of hearing and cause reasonable notice to be given to the petitioner and to the hospital and to the general guardian of the patient, if he has one, and may notify any known relative of the patient. The provisions of section 51.02, so far as applicable, shall govern the procedure.

(5) If the judge determines that the patient is sane he shall enter judgment to that effect and order his discharge; if he shall not so determine, he shall order him returned under the original commitment, except that if he is at large on conditional release or leave, the judge may permit him so to continue. If a jury trial is demanded, the procedure shall, as near as may be, be the same as in section 51.03, and the judge's order or determination shall be in accordance with the jury's verdict.

(6) All persons who render services in such proceedings shall receive the same compensation and all expenses of such proceedings shall be paid and adjusted as provided in section 51.07.

(7) When a proceeding for retrial or re-examination is not pending in a court of record and a jury trial is not desired by the persons authorized to commence such proceeding, the department may, on application, determine the mental condition of any patient committed to any institution under this chapter, and its determination shall be recorded in the county court of the county in which the patient resides or from which he was committed, and such determination shall have the same effect as though made by the county judge. The department may also, with or without application, if it has reason to doubt the mental illness or infirmity of any such patient, require the judge of the county from which he was committed or in which he is detained to determine his mental condition pursuant to this section.

(8) Subsequent re-examinations may be had at any time in the discretion of the judge but may be compelled after one year of the preceding one. [*1943 c. 93, 190; 1947 c. 485*]

Comment of Interim Committee, 1947: * * * Two physicians are provided for, the same as in original commitments. The county of re-examination in (1) and at the end of (7) is that from which the patient was committed or in which he is detained. The provisions for notice and report to the hospital in (3a) and (4) are new. (8) is a new provision to place a limit on repeated re-examinations. * * * (Bill 19-S)

Note: A person charged with crime who was committed for insanity at the time of the trial is entitled to a re-examination and a jury trial on the question of sanity, but he is not entitled to be discharged in case the jury should find him sane except upon the order of the court. State ex rel. Ribansky v. Shaughnessy, 205 W 136, 236 NW 567.

51.12 Transfer and discharge of patients; mentally ill veterans. (1) Patients may be transferred by the department from any state hospital or county hospital or facility to any other state hospital or county hospital or facility when the transfer would be for the best interest of the patient or for the benefit of other patients or to prevent the exclusion of patients whose cases are of a more hopeful character. This subsection shall not apply to veterans who are patients in the Wisconsin memorial hospital.

(2) The department may, if any county has not provided for the proper care of its mentally ill or infirm, direct their removal to the hospital or facility of any other county possessing suitable accommodations; and such removal shall be made at the expense of the county from which such patients are removed.

(3) The department may, with the approval of the committing court, transfer to any county hospital any inmate of the central state hospial committed under section 357.11 or 357.13, and may, without such approval, transfer to a county hospital any patient transferred to the central state hospital whose term has expired, if, in its opinion, the mental condition of such inmate or patient is chronic and he can be properly cared for in a county hospital.

(4) The superintendent of any state hospital, with the approval of the department, may at any time discharge any patient (including those on conditional release) who in his judgement is recovered, or who is not recovered but whose discharge will not be detrimental to the public welfare or injurious to the patient.

(5) When the department has notice that any person is entitled to receive care and support in a veterans' administration facility, it shall, in co-operation with the department of veterans' affairs, procure his admission to said facility.

(6) If the department, acting under section 51.11, determines that any person in any state or county institution under its jurisdiction is mentally deficient or epileptic, it may transfer him to an institution mentioned in section 51.22.

(7) The department shall advise the department of veterans' affairs of the transfer or discharge or conditional release of any veteran. [*51.12, 52.02 (4) Stats. 1945; 1947 c. 485*]

Comment of Interim Committee, 1947: (1), (2) and (3) are generalized, so as to give broader authority to the department for transferring patients. Old (4) is omitted. It provided for release of a patient on the giving of a bond by relatives or friends for his safekeeping. New 51.12 (4) provides both for discharge of recovered patients and those who have not recovered but whose discharge is proper. Old (7) is made 51.27 (1) by Section 42 of this bill. (6) is a restatement of 52.02 (4) without change of meaning. The veterans' affairs department wishes the information under (7) for their records. (Bill 19-S)

Note: Custody and supervision by department of mental hygiene would not be lost if department, acting under 51.12 (3), Stats. 1937, transfers to county asylum person sentenced to life imprisonment who was subsequently transferred to Winnebago state hospital by board of control acting as commission in lunacy. 51.13 (2) would not apply and county institution would receive patient subject to 51.23 (3) and 51.22. 28 Atty. Gen. 193.

51.125 Transfer for better placement. (1) If it appears to the department at any time that a patient should have been committed to a different institution, it may transfer him thereto. The department shall notify the committing judge of such transfer.

(2) If a change in the patient's condition makes it advisable that he be transferred to a different institution, the department may transfer him. [*1947 c. 485*]

Comment of Interim Committee, 1947: 51.125 is a new section and is for better placement of patients. It covers cases where the original placement was mistaken and where a change in the patient's condition makes it advisable to transfer him. It is an omnibus provision. (Bill 19-S)

51.13 Conditional release of patients; presumption of competency and discharge by lapse of time. (1) The superintendent of the Mendota state hospital and of the Winnebago state hospital and of the Milwaukee county hospitals for mental diseases may grant any patient a conditional release if in his opinion it is proper to do so. If within one year after such release it becomes unsafe or improper to allow him to remain at large, the superintendent shall require his return to the hospital. If the superintendent so requests, the sheriff shall return the patient, and the costs incident to such return shall be paid out of the hospital's operating funds and be charged back to the county of the patient's legal settlement.

(2) The superintendent of any county hospital or home may, upon the written recommendation of the visiting physician, grant any patient a conditional release for such time and under such conditions as the physician directs, except patients transferred from the central state hospital, who may not be released without the consent of the department, and in the case of those committed under sections 357.11 and 357.13, without also having the approval of the committing court.

(3) Upon the expiration of one year from the granting of a conditional release the authority of the superintendent to require the patient's return shall end, and the patient shall be presumed competent and his civil rights thereby restored. [*1943 c. 190; 1947 c. 485*]

Comment of Interim Committee, 1947: The term of parole is changed from 2 years to 1 year, and (1) is made to refer to Milwaukee county hospitals rather than only one hospital. The last sentence of (1) is new. "Conditional release" is substituted for "parole." Exceptions are added to (2). The clause regarding civil rights in (3) is new. (Bill 19-S)

[*51.134 Stats. 1945 renumbered section 51.18 by 1947 c. 485*]

51.14 Superintendent's reports to county judge; record. When any person is committed to any hospital or home from any county other than the county of his legal settlement, the superintendent of such hospital or home shall immediately notify the county judge of the county of his legal settlement. The superintendent shall also notify such judge whenever any patient dies, is discharged, transferred, escapes, is conditionally released or returns from such release. The judge shall keep a record of the facts so reported. [*1943 c. 190; 1943 c. 552 s. 10; 1947 c. 485*]

51.15 State hospitals; districts. The hospital for the mentally ill located at Mendota is known as the "Mendota State Hospital" and the state hospital located at Winnebago is known as the "Winnebago State Hospital." The department shall divide the state by counties into 2 districts, and from time to time may change the bounds of these districts, arranging them with reference to the number of patients supposed to be in them and the capacity of the hospitals and the convenience of access to them. [*1935 c. 9; 1943 c. 93; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.15 is restated without change of meaning except that the department is substituted for "the governor and the state department of public welfare" and the provision about the district to which patients are sent is omitted because it is covered by 51.05 (2). (Bill 19-S)

51.16 Superintendent's oath and duties; subpœnas on. (1) The superintendent of each said hospital shall take and file the official oath, and shall devote all his time and attention to his official duties.

(2) The superintendent shall not be compelled to obey the subpœna of any court in any case, civil or criminal, if he shall file with the magistrate or clerk his affidavit that to obey the same would be seriously detrimental and hazardous to the welfare of the hospital under his charge, except when an accusation of murder is to be tried; nor in such case unless the judge shall make a special order therefor, and the subpœna, with a memorandum thereof indorsed thereon, be served one week before the time when he shall be required to appear; but no superintendent shall be entitled in any case to make and file such affidavit, who shall, upon tender of the usual fees of witnesses in courts of record, refuse to be present and to give his deposition at his office, usual place of business, or usual place of abode; and any superintendent so present and giving his deposition who shall be detained 4 hours from the time fixed for the taking thereof or from the time to which the taking of the same may have been adjourned may make affidavit that further detention would be seriously detrimental or hazardous to the welfare of the persons or business in his charge whereupon the officer before whom such deposition is being given shall adjourn further proceedings thereon to a future day. [*1947 c. 485*]

51.17 Private pay for patients. Any person may pay (in whole or in part) for the maintenance and clothing of any mentally ill or infirm or deficient person or epileptic or inebriate or drug addict, at any institution for the treatment of persons so afflicted; and his account shall be credited with the sums paid. He may also be likewise provided with such special care or attendant as is agreed upon with the superintendent, upon monthly payment in advance of the charges therefor. [*51.17, 51.26 (4) Stats. 1945; 1947 c. 485*]

Comment of Interim Committee, 1947: Old 51.17 (1) is omitted because not needed. 51.17 (2) and 51.26 (4) are made 51.17 and generalized to include all types of patients and all state or county institutions. Provision is made for monthly instead of quarterly payments. (Bill 19-S)

[*51.18 Stats. 1945 repealed by 1947 c. 485*]

51.18 Family care; costs to state; to county. The department may place any state hospital patient in a suitable family boarding home upon such terms and conditions as it determines, if it considers that such course would benefit the patient. The cost to the state of the supervision and maintenance of any patient so boarded out shall not exceed the average per capita cost of his maintenance in the state hospital. Bills for his board shall be payable monthly out of the operating funds of such state hospital and shall be audited as are other bills. The county of his legal settlement shall be charged with the rates and expenses provided under section 51.08 and such charges shall be adjusted in the same manner as if the patient were at the hospital. The department may visit and investigate such home and may return the patient to the hospital or place him in another home when deemed advisable. Such placement shall not be considered a conditional release. [*1945 c. 250; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.134 is renumbered 51.18 and is restated without change of meaning. (Bill 19-S)

51.19 Child born in hospital. A child born in any state or county hospital or state colony and training school shall be promptly removed therefrom by the mother's friends or by the county of her legal settlement. The superintendent shall petition the juvenile judge of the county in which the institution is located to make such removal, and until the child is removed the superintendent shall make suitable provision for its care and comfort, and charge all expenses to the county of the mother's legal settlement, to be adjusted as provided in section 46.106. The judge shall notify the juvenile judge of the county of the mother's legal settlement of the filing of such petition. [*1947 c. 485*]

Comment of Interim Committee, 1947: County hospitals and state colonies are added. The provision as to the length of time the mother has been in the hospital is omitted. "The juvenile judge of the county in which the institution is located" is substituted for "the county judge," and a petition is required rather than notice. The county of *legal settlement* is substituted for *residence*. * * * The last sentence is new. (Bill 19-S)

51.20 Records of patients. The superintendent of each state hospital shall keep such records and make such reports as the rules and regulations of the department require. [*1943 c. 93; 1947 c. 485*]

Comment of Interim Committee, 1947: Enumeration of details as to records and reports is omitted. Present department requirements go further than the statute. (Bill 19-S)

51.21 Central state hospital. (1) PURPOSE. The state hospital at Waupun is known as the "Central State Hospital"; and shall be used for the custody, care and treatment of persons committed or transferred thereto pursuant to this section and sections 357.11 and 357.13.

(2) TRANSFERS. The department may transfer to the central state hospital any male patient confined in a state or county hospital or the northern or southern colony and training school, if his or the public welfare requires it or if he is dangerous to himself or

others or to property; and it may return him to the institution from which he came if in its judgment he has recovered sufficiently to warrant his return.

(3) REMOVALS. (a) When the physician of any state prison or home for women or state reformatory or county jail or a psychiatrist of the department reports in writing to the officer in charge thereof that any prisoner is, in his opinion, mentally ill or infirm or deficient or epileptic, such officer shall make a written report to the department. Thereupon the department may transfer the prisoner (if male) to the central state hospital or (if female) to the Winnebago state hospital; and if the prisoner's term has not expired, the department may order his return in the event that it is satisfied that he has recovered.

(b) The superintendent of the hospital shall receive the prisoner and shall, within a reasonable time before his sentence expires, make a written application to the judge of the county court where the hospital is located for an inquiry as to the prisoner's mental condition. Thereafter the proceeding shall be as upon an application made under section 51.01, but no physician connected with the prison, reformatory, home for women, Winnebago or central state hospital or county jail shall be appointed as an examiner. If the judge is satisfied that the prisoner is not mentally ill or infirm or deficient or epileptic, he may dismiss the application and order the prisoner returned to the institution from which transferred. If the judge finds that the prisoner is mentally ill or infirm or deficient or epileptic, he may commit the prisoner to the central state hospital or commit her to the Winnebago state hospital.

(c) The provisions of section 51.07 relating to fees and costs shall apply.

(d) When such prisoner is found mentally ill or infirm or deficient or epileptic, the superintendent of the institution shall retain him until he is legally discharged or removed.

(e) The provisions of section 51.11 relating to re-examination shall apply to such prisoner if found to be mentally ill or infirm or deficient or epileptic, except that the application shall be made to the judge of the court which made such finding. If upon such rehearing he is found not to be mentally ill or infirm or deficient or epileptic, he shall be returned to the prison unless his term has expired. If his term has expired he shall be discharged. The time spent at the central state hospital or Winnebago state hospital shall be included as part of the sentence already served.

(f) Should the prisoner remain at the hospital after expiration of his term he shall be subject to the same laws as any other patient.

(4) STATUTES APPLICABLE. All statutes relating to state hospitals, except section 51.12 (1), (2), (4) and (5), are applicable to the central state hospital. Sections 51.13 (1) and (3) and 51.22 (4) are applicable only to patients whose prison sentences have expired.

(5) OTHER PRISONERS SUBJECT TO RULES. Persons required to be committed or transferred to the central state hospital, but who remain in any other state hospital because sufficient provision has not been made for them at the central state hospital, shall be subject to the statutes governing patients of the central state hospital.

(6) PAROLES. If in the judgment of the superintendent of the central or Winnebago state hospital any person committed under section 357.11 or 357.13 is not in such condition as warrants his return to the court but is in a condition to be paroled under supervision, the superintendent shall report to the department and the committing court his reasons for his judgment. If the court does not file objection to the parole within 60 days of the date of the report, the superintendent may, with the approval of the department, parole him to a legal guardian or other person, subject to the rules and regulations of the department. [*51.21, 51.22, 51.225, 51.23, 51.234 Stats. 1945; 1947 c. 485*]

Comment of Interim Committee, 1947: 51.21 is renumbered (1) and restated without change of meaning. 51.22 is renumbered (2) and restated without change of meaning. 51.225 is renumbered 51.21 (3) and is revised. The provision for a jury trial is omitted. Mentally infirm persons are specifically included. The county jail is added to the list of institutions covered. The procedure under 51.01 and new 51.21 should be practically identical and the procedure under the latter is by reference to 51.01. The judge is given power to proceed to a hearing even though the medical report indicates that the patient is not ill or infirm. Old 51.23 (1) and (3) are renumbered 51.21 (4) and (5) and restated without change of meaning, except that the reference to 51.13 under new (4) is restricted to 51.13 (1) and (3). Old 51.23 (2) is omitted. It provides for contracts with the Milwaukee county hospital at not over $4.25 per week. Old 51.234 (1) is renumbered 51.21 (6). It specifies the conditions of the parole and old (2) provides that in certain cases the parole may be granted even if the court objects. These provisions are omitted, and also the unusual provision in old (1) that the parole guardian shall be of the same religious faith as the parents of the inmate. The section is amended to provide that the approval of the department is required for paroles and that paroles are subject to the regulations of the department. (Bill 19-S)

Note: Board of control may charge county of legal settlement for support of insane person transferred from Waupun to central state hospital for insane. (46.10 (6), Stats. 1933) Such charge may be for all time spent in central state hospital. 23 Atty. Gen. 9.

Inmate paroled from central state hospital for insane under 51.234, Stats. 1937, is not automatically released after expiration of two-year parole period. Committing court retains jurisdiction to determine sanity or insanity of inmate committed to central state hospital for insane pursuant to 357.13 (4). 27 Atty. Gen. 229.

Liability of parole guardian of inmate of central state hospital for insane paroled under 51.234, Stats. 1939, discussed. 30 Atty. Gen. 114.

51.215 Transfer of mentally ill children from schools for boys and girls. (1) When the physician of the Wisconsin school for boys or of the Wisconsin school for girls, or a psychiatrist of the department, reports in writing to the superintendent of the school that any person confined therein is, in his opinion, mentally ill, the superintendent shall make a written report to the department. Thereupon the department may transfer the person to a state hospital for the mentally ill. The department may order the return of the person to the school in the event that, before the expiration of his commitment, it is satisfied that he has recovered.

(2) Within a reasonable time before the expiration of such person's commitment, if he is still in the hospital, the superintendent of the hospital shall make an application under section 51.01 to the judge of the county in which the hospital is located, for an inquiry into the person's mental condition, and thereafter the proceedings shall be as in other applications under said section. The application of the superintendent of the hospital alone is sufficient. [*1947 c. 485*]

Comment of Interim Committee, 1947: 51.215 is a new and needed provision for the transfer of mentally ill persons from the industrial schools to state hospitals, and for the further disposition of such cases. (Bill 19-S)

[*51.22 Stats. 1945 renumbered 51.21 (2) by 1947 c. 485 s. 31*]

51.22 Colonies and training schools. (1) PURPOSE. The purpose of the Northern Colony and Training School and of the Southern Colony and Training School is to care for, train and have the custody of mentally deficient and epileptic persons.

(2) SCHOOL ACTIVITIES. Each institution shall maintain a school department for the educable grades or classes; and a custodial facility for the helpless and lower types; and such other facilites as the welfare of the patients requires. The department shall establish vocational training therein.

(3) TRANSFERS. If any person is committed to either colony and training school, the department may transfer him to the other school or to a county hospital; and any person so transferred may be returned.

(4) TEMPORARY DISCHARGE. The superintendent of either colony and training school may grant any patient a temporary discharge if, in his opinion, it is proper to do so. The superintendent of any county hospital may, upon the written recommendation of the visiting physician, grant any patient a temporary discharge.

(5) PERMANENT DISCHARGE. The superintendent of either school, with the approval of the department, or the superintendent of any county hospital, with the approval of the visiting physician, may permanently discharge from custody (which shall not be considered a legal restoration of competency) any mentally deficient or epileptic person who has been on a temporary discharge for one year or more, and who has continued to demonstrate fitness to be at large. Notice of such permanent discharge shall be filed with the committing judge by the superintendent. After permanent discharge, if it becomes necessary for such person to have further institutional care and treatment, a new commitment must be obtained, following the procedure for original commitment.

(6) TRANSFER TO WISCONSIN CHILD CENTER. If it appears that the best interests of a patient of either training school will be served, the department may transfer him to the Wisconsin child center. The department may likewise return him to the school from which he was transferred or release him under such conditions as may be prescribed. [*52.01, 52.03 Stats. 1945; 1947 c. 485, 540*]

Comment of Interim Committee, 1947: 52.01 is renumbered 51.22 (1) and (2) and restated without change of meaning. "Mentally deficient" (as defined in 51.001) is used instead of "feeble-minded." 52.03 is restated with minor changes of meaning. It is made part of 51.22 for better arrangement. Old 52.03 (1) is covered by the department's power to make regulations, and it is omitted. The power of transfer is broadened and provision is made for both temporary and permanent discharges. Old 52.03 (4) and (5) are omitted because covered by new 51.125, transfers for better placement. (Bill 19-S)

[*51.225 Stats. 1945 renumbered 51.21 (3) by 1947 c. 485 s. 32*]

[*51.23 Stats. 1945 renumbered 51.21 (4) and (5) by 1947 c. 485 s. 33*]

51.23 Mentally deficient; examinations; commitments. Sections 51.01 to 51.11, 51.125, 51.14, 51.16, 51.17 and 51.19 shall govern the examination and commitment of mentally deficient and epileptic persons to such colony and training schools, so far as may be applicable. In cases of alleged mental deficiency, one of the examiners under section 51.01 (2) may be a clinical psychologist who has a doctorate degree in psychology and who has had 3 years of experience in clinical psychology. This amendment (1947) shall be effective as of July 1, 1946. [*52.02 (1), (2) Stats. 1945; 1947 c. 485, 602*]

Comment of Interim Committee, 1947: 51.23 is from old 52.02. The definition of clinical psychologist has been changed somewhat. By consolidating chapters 51 and 52 and making the procedure for handling the mentally ill apply to the mentally deficient, the need of special procedure for the latter is eliminated. Old 52.02 (3) is repealed by this bill and old (4) is renumbered 51.12 (6). (Bill 19-S)

[*51.234 Stats. 1945 renumbered 51.21 (6) by 1947 c. 485 s. 34*]

51.235 Wisconsin psychiatric institute. (1) The psychiatric institute formerly at Mendota is designated as the Wisconsin Psychiatric Institute.

(2) The statutes relating to the commitment, custody, transfer, conditional release and discharge of mentally ill persons in state hospitals for the mentally ill are applicable to the Wisconsin psychiatric institute. [*1947 c. 485*]

Comment of Interim Committee, 1947: 51.235 is restated without change in meaning. The psychiatric institute statute is 36.227. (Bill 19-S)

51.24 Milwaukee hospital for mental diseases. (1) Any county having a population of 500,000 may, pursuant to section 46.17, establish and maintain a hospital for mental diseases, for the detention and care of drug addicts, inebriates and mentally ill persons whose mental illness is acute. Such hospital shall be governed pursuant to section 46.21.

(2) The state shall compensate the county for the care and maintenance at the hospital of persons mentioned in subsection (1) who are maintained at public expense, at the rate of $5 per week for each acute case and $2.50 per week for each chronic case. Such compensation shall be paid on June 30 and December 31 of each year. When a patient is temporarily transferred from the hospital for mental diseases to the county hospital for surgical or medical care or both, such state compensation shall be paid for the period of such transfer.

(3) The department shall determine the number of weeks that patients have been maintained and the compensation shall be based upon such determination.

(4) The superintendent of the hospital shall, promptly after the expiration of each computation period, prepare a statement giving the name of each person maintained at public expense at the hospital during that period and the number of weeks maintained during said period, and the aggregate of such weeks for all persons so maintained and the amount of compensation to be made by the state, which statement shall be verified by the superintendent and approved by the board of administration of said hospital as correct and true in all respects and delivered to the department.

(5) The department shall attach to the statement its certificate showing the number of weeks' maintenance furnished to acute patients and to chronic patients, and shall file the same with the director of budget and accounts, who shall draw his warrant in favor of the county for the compensation specified in the certificate and deliver the warrant to the state treasurer, who shall thereupon pay the same.

(6) The county shall not be entitled to compensation from the state for the care of any person who is not a public charge. [*1933 c. 140 s. 3; 1943 c. 93; 1945 c. 244; 1947 c. 9, 485*]

Comment of Interim Committee, 1947: (1) is restated without change except that the population figure is made 500,000 (the usual figure) instead of 250,000; (2) is amended to reimburse Milwaukee county for persons mentioned in (1) (so as to include drug addicts and inebriates) instead of only for insane patients. The rest of the section is restated without change of meaning. (Bill 19-S)

Note: Expense of transferring to proper county by board of control persons committed to county hospital for mental diseases who are found to have legal settlement in some other county may not be included in legal six months' bill as submitted under this section and paid out of appropriation provided by 20.18 (2) (b). 22 Atty. Gen. 329.

A partial payment recovered by Milwaukee county in full settlement of its claim for maintenance of a patient in its hospital for the insane may be allocated proportionately over the whole period of maintenance so as to reduce proportionately the state aid to be allowed for the entire period. One making voluntary partial payments for such maintenance may specify that it should apply on current rather than past items. 34 Atty. Gen. 232.

51.25 County hospitals. (1) ESTABLISHED; TRUSTEES; STAFF. Any county may establish a hospital or facilities for the detention and care of chronic mentally ill persons, mentally infirm persons, inebriates, drug addicts and chronic invalids; and in connection therewith a hospital or facility for the care of chronic cases afflicted with pulmonary tuberculosis. In counties having a population of 500,000, the institution shall be governed pursuant to section 46.21. In other counties it shall be governed pursuant to sections 46.18, 46.19 and 46.20. The trustees shall appoint the superintendent. With the approval of the trustees, he shall appoint a visiting physician. The compensation of the trustees shall be fixed by the county board under section 59.15. The salaries of the superintendent and visiting physician shall be fixed by the county board.

(2) COST OF NONRESIDENT PATIENTS. The cost of maintaining nonresident patients shall be adjusted on the basis prescribed in section 51.08. [*51.25, 51.26 (1), (2), (3) Stats. 1945; 1947 c. 485*]

Comment of Interim Committee, 1947: Hospitals or facilities for other patients besides chronic insane are provided for. "Facility" is substituted for "pavilion". The trustees now appoint the physician. This is changed so that the superintendent, with the approval of the trustees, appoints the physician. * * * Old 51.26 tells who may be admitted to county hospitals. It goes without saying that patients who are legally committed may be admitted. 51.05, 51.08, 51.09, 51.10 and 51.12 provide for the commitment or transfer of patients to county hospitals. That undoubtedly implies that the patients

may be admitted there. It implies that some of them *shall* be admitted. Most of 51.26 (1), (2) and (3) is therefore omitted. 51.25 (2) is from old 51.26 (3). 51.26 (4) is made part of new 51.17 and 51.26 (5) and (6) are moved to new 51.09. (Bill 19-S)

[*51.26 Stats. 1945 renumbered 51.25 (2), 51.17 and 51.09 by 1947 c. 485*]

51.27 Tuberculous patients; segregation; transfers; state aid; free care. (1) The department shall make provision for the segregation of tuberculous patients in the state hospitals, and for that purpose may set apart one ward for male patients and one for female patients in said hospitals and equip said wards for the care and treatment of such patients. The department shall transfer from other parts of such hospitals patients who are likely to spread tuberculosis.

(2) If any county operates a separate hospital or facility for the chronic tuberculous mentally ill or infirm or adult mentally deficient or epileptic, the department may transfer thereto any mentally ill or infirm person or adult mentally deficient or epileptic in any state or county hospital who is afflicted with pulmonary tuberculosis. The state shall be charged at the rate of $6.50 per week for each patient whose legal settlement is in the county which maintains the hospital and $11 per week for each other patient; and of the latter rate $5.50 for each patient shall be charged over to the county of his legal settlement. Such charges shall be adjusted as provided in section 46.106. This amendment (1947) shall be effective as of July 1, 1946.

(3) The provisions of section 50.03 as to free care of patients apply to tuberculous mentally ill or infirm patients or adult mentally deficient or epileptics, who satisfy the conditions of subsections (1) and (2). [*51.12 (7), 51.27 (1), (2) Stats. 1945; 1947 c. 485, 508, 602*]

Comment of Interim Committee, 1947: 51.12 (7) is renumbered 51.27 (1) and restated with no change in meaning. 51.27 (1) and (2) are renumbered (2). It provides for transfers of tuberculous mental cases to the Douglas county sanatorium for such patients. "Legal settlement" is substituted for "residence." * * * (Bill 19-S)

[*51.28 Stats. 1945 renumbered section 155.02 by 1947 c. 485 s. 54*]

[*51.30 Stats. 1933 repealed by 1935 c. 336*]

51.30 Records closed. The files and records of the judge and the court in proceedings under this chapter shall be kept in locked files and shall not be open to inspection except upon the specific permission of the judge. In any action or special proceeding in a court of record, such files and records shall be made available by special order of such court, if they are relevant to the issue and competent. [*1947 c. 485*]

51.31 Mentally infirm or deficient persons, general provision. The provisions for commitment, rehearing, transfer, removal and discharge of mentally ill persons shall, so far as applicable, govern in the matter of mentally infirm and mentally deficient and epileptics. [*1947 c. 485*]

Comment of Interim Committee, 1947: 51.31 is an omnibus provision to make sure that chapter 51 extends to the mentally infirm and mentally deficient and epileptics. (Bill 19-S)

51.32 Nonresident escaped patients. The county judge may, upon written request of the department, order the detention of any nonresident person who escaped from some mental institution of another state. Such detention shall be for a period not to exceed 30 days and may be extended by the judge for an additional period if it is necessary to consummate the deportation of the escaped person. [*1947 c. 485*]

Comment of Interim Committee, 1947: 51.32 is new. * * * (Bill 19-S)

51.35 Communications and packages. (1) COMMUNICATIONS. All communications addressed by a patient to the governor, attorney-general, judges of courts of record, district attorneys, the department or licensed attorneys, shall be forwarded at once to the addressee without examination. Communications from such officials and attorneys shall be delivered to the patient.

(2) PACKAGES AND COMMUNICATIONS TO PATIENTS. Communications and packages for or addressed to a patient may be examined before delivery; and delivery may be withheld if there is any good reason therefor in the opinion of the superintendent of the institution. [*1947 c. 485*]

Comment of Interim Committee, 1947: 51.35 is new. (1) is an adaptation of the Illinois statute. (Bill 19-S)

51.37 Sexual psychopaths. (1) DEFINITION. The term "sexual psychopaths" as used in this section and in section 351.66 means any person suffering from such conditions of emotional instability or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to himself and to other persons.

(2) PETITION FOR COMMITMENT; HEARING. Whenever facts are presented to the district attorney which satisfy him that good cause exists for judicial inquiry as to whether a person is a sexual psychopath, he shall prepare a petition setting forth such facts and requesting a court to conduct an inquiry into the condition of such person. The petition shall be executed and verified by a person having knowledge of the facts upon which it is based. The petition shall be filed with the county court or with a court of record of the county in which such alleged sexual psychopath has his legal settlement or in which such person is present, except that where such alleged sexual psychopath is under the age of 18 the petition shall be filed with the juvenile court of such county. The court shall set a time for examination of the alleged sexual psychopathic person and for hearing. The court may, at its discretion, exclude the general public from attendance at such hearing. The alleged sexual psychopathic person may be represented by counsel; and if the court determines that he is financially unable to obtain counsel, the court may appoint counsel for him. Such alleged sexual psychopathic person shall be entitled to have subpoenas issued out of said court to compel the attendances of witnesses in his behalf. The court shall appoint 2 physicians having the qualifications provided in section 51.01 (2) to assist in the examination of the alleged sexual psychopathic person. The proceedings had shall be reduced to writing and shall be part of the records of such court. The physicians shall file with the court their written findings as to whether or not the person under examination is a sexual psychopath. The court shall make an order determining whether or not the person under examination is a sexual psychopath. From such order, the person determined to be a sexual psychopath may appeal directly to the supreme court.

(3) COMMITMENT. Any person determined by the court to be a sexual psychopath shall be committed to an institution designated by the county board of supervisors of any county having a population of 500,000 or more, which shall make adequate provision at such institution to house such persons and for their medical care while at such institution. Provision shall be made for detention, housing, care and treatment of sexual psychopaths under 18 separately from those over that age. In making such commitment the court shall determine the legal settlement of the person found to be a sexual psychopath.

(4) JURY TRIAL. If a jury is demanded by the alleged sexual psychopathic person or by any relative or friend acting in his behalf, the court shall direct that a jury be summoned as provided in section 51.03 and the trial procedure shall be as provided in such statute, except that the issue shall be as to whether such person is or is not a sexual psychopath.

(5) DETENTION PENDING INQUIRY. On the receipt by a court of the application, the judge thereof may, if in his opinion the public safety requires it, deliver to the sheriff a written order requiring him forthwith to take and confine the person alleged to be a sexual psychopath, in some specified place until the proceedings provided for in this section can be had or until further order.

(6) APPLICABILITY OF LAWS RELATING TO MENTALLY ILL PERSONS. After commitment of any person found to be a sexual psychopath such provisions of chapter 51 as are not in conflict with the provisions of this section shall be applicable with respect to the care and custody of such sexual psychopath except that the re-examination as permitted by section 51.11 shall be had before the court making the original commitment of such person as a sexual psychopath; and except further that as to the right of parole provided by section 51.13 the superintendent of the institution to which commitment is made shall make written recommendation for parole to the court from which the person was committed. Such court after considering such recommendation may at its discretion free the person committed on parole.

(7) PERSON EXECUTING PETITION FOR EXAMINATION EXEMPT FROM DAMAGES. The person who, acting in good faith, executes the petition for examination specified in subsection (2) of this section shall not be liable in damages to any other person for such act.

(8) PAYMENT FOR MAINTENANCE; REIMBURSEMENT. The county from which a person found to be a sexual psychopath is committed, if not the county wherein such person has his legal settlement, shall pay the costs of maintenance, care and treatment of such person during his commitment excluding, however, any depreciation charges for building to the county wherein the institution of commitment is located but shall be reimbursed out of such person's estate, or if he be indigent, by the county of his legal settlement. [*1947 c. 459*]

51.40 State bureau of alcohol studies. There is created within the state department of public welfare a bureau of alcohol studies to administer the powers and functions prescribed in sections 51.40 to 51.42. The director of the state department of public welfare shall employ such assistants as may be deemed necessary to carry out the purposes of sections 51.40 to 51.42. [*1947 c. 385; 43.08 (2)*]

51.41 Duties of the bureau. (1) It shall be the duty of the state bureau of alcohol studies:

(a) To co-operate with departments of the state, county and local government and with associations, organizations, groups, industries, professions and individuals, public or private, interested in the prevention and control of alcoholism or its treatment.

(b) To promote, conduct and finance, in full or in part, studies, investigations and research independently or in co-operation with universities, colleges, scientific organizations and state and federal government departments concerning matters pertaining to the causes, extent, prevention, control and treatment of alcoholism, and to make recommendations to the legislature pertaining thereto.

(c) To promote the establishment of facilities for the treatment and rehabilitation of alcoholics by the state or by counties, municipalities, or by nonprofit associations, hospitals or clinics.

(d) To establish standards for the treatment and rehabilitation of alcoholics.

(e) To give financial aid out of the funds provided by section 20.432 for the maintenance and operation of county or municipal facilities for the treatment of alcoholics provided such facilities are operated in accordance with the standards prescribed by the bureau, are open to all regardless of ability to pay, and provided the county or municipality operating the facility supply at least 50 per cent of the cost of maintenance and operation, except that the bureau may require a lesser amount of local financial participation for a period of not to exceed 2 years for the purpose of demonstrating the services of such a facility.

(2) The bureau and its director shall not participate in the enforcement of the laws pertaining to the taxing and sale of intoxicating liquors. [*1947 c. 385; 43.08 (2)*]

51.42 Establishment of local facilities. Any county, town, city or village may establish and maintain such facilities and employ such personnel as may be needed to implement and carry out the purposes and provisions of sections 51.40 to 51.42 and may co-operate with state agencies for such purposes. [*1947 c. 385; 43.08 (2)*]

[*52.01 Stats. 1945 renumbered section 51.22 by 1947 c. 485*]
[*52.015 Stats. 1925 repealed by 1927 c. 178 s. 1*]
[*52.02 (1), (2) Stats. 1945 renumbered section 51.23 by 1947 c. 485*]
[*52.02 (3) Stats. 1945 repealed by 1947 c. 485*]
[*52.02 (4) Stats. 1945 renumbered section 51.12 (6) by 1947 c. 485*]
[*52.03 Stats. 1945 renumbered section 51.22 (3) to (6) by 1947 c. 485*]
[*52.04 Stats. 1945 repealed by 1947 c. 485*]
[*52.10 to 52.12 created by 1947 c. 385 renumbered sections 51.40 to 51.42 by 43.08 (2)*]