

No. 236, A.]

[Published April 16, 1901.

## CHAPTER 163.

AN ACT to amend section 587, of the statutes of 1898, relating to the re-examination of persons alleged to be sane and a jury trial thereon and the powers of the state board of control in reference thereto.

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

**Hearing or re-trial, how had; petition, what to contain; judge to appoint physicians; notice to parties; when person is reported sane; findings of jury; when board of control may act as commission in lunacy.** SECTION 1. Section 587 of the statute of 1898 is hereby amended by striking out all thereof down to and including the word "examination," in the eighteenth line of said section, and inserting in lieu thereof the following: "Except as hereinafter provided, any person who has heretofore been or may hereafter be adjudged insane by any court, tribunal or officer having lawful authority so to adjudge, or any person restrained of his liberty because of his alleged insanity, may on his own verified petition or that of his guardian or some relative or friend, have a re-trial or re-examination of the question whether such person is sane or insane, before the judge of the circuit or county court or any other court of record of the county in which such person resides, or in which he was so adjudged to be insane, or in which the hospital or asylum for the insane is located in which he is detained, if he is so detained. The petition shall state the facts necessary to show that the judge to whom it is addressed and presented has jurisdiction to re-try or re-examine the question of the present mental condition as to sanity or insanity of the person in whose behalf such petition is presented. It shall also state whether such person has a general guardian and if so, the name and residence of such guardian, and whether such person is detained in any hospital or asylum for the insane and if so its name and location and the name of the superintendent thereof. Any such judge receiving such petition shall thereupon by order appoint two physicians, each having the qualifications prescribed by section 585 of the statutes of 1898, to examine and report to him whether in their opinion the person in whose behalf the petition is made, is sane or insane. The judge shall also fix the time

and place of such examination and shall cause reasonable notice thereof to be given to the guardian of the person to be examined, if he has a general guardian, and to the superintendent of the hospital or asylum in which such person is detained, if he is so detained. Such general guardian and any relative or friend of the person to be examined, and such superintendent, may appear at such examination, and either of them may offer testimony on the examination which if competent shall be received. Should the state board of control certify that such superintendent cannot attend such examination without danger of injury to his institution, his deposition may be taken and returned pursuant to the statute for taking and returning depositions and the same shall be admissible testimony on the examination." Also by striking out the words "if they find that the person is insane the judge shall make a further order of commitment to some hospital or asylum or not, as in his judgment the facts warrant," in lines twenty-nine, thirty, and thirty-one, and inserting in place thereof the following: "if the jury finds that the person so examined is sane, the judge shall order his immediate discharge. If it finds that such person is insane, if he is detained in any such hospital or asylum, the judge shall order him returned thereto. If at large on parole or leave of absence, he shall be allowed to remain at large unless the judge is satisfied that it will be unsafe to do so, in which case the judge may order him committed to some hospital or asylum for the insane." Also by adding to the section the following: "provided however the foregoing provisions of this section shall not apply to any person awaiting hearing, trial or sentence on a charge of crime, who was committed as insane to a hospital or asylum for the insane by any competent court, nor to any person sentenced to confinement in the state prison or state reformatory who has been lawfully adjudged insane and transferred from either of those institutions to such hospital or asylum until after the expiration of the term for which such convict or inmate was sentenced to imprisonment or detention in said prison or asylum." So that said section when thus amended shall read as follows: Section 587. Except as hereinafter provided, any person who has heretofore been, or may hereafter be adjudged insane by any court, tribunal or officer having lawful authority so to adjudge, or any person restrained of his liberty because of his alleged insanity, may on his own verified petition or that of his guardian or some relative or friend, have a re-trial or re-examination of the question whether such person is sane or insane before the judge of the circuit court or county court or any other court of record of the county in which such person resides or in which he was so ad-

judged to be insane or in which the hospital or asylum for the insane is located in which he is detained, if he is so detained. The petition shall state the facts necessary to show that the judge to whom it is addressed and presented has jurisdiction to re-try or re-examine the question of the present mental condition as to sanity or insanity of the person in whose behalf such petition is presented. It shall also state whether such person has a general guardian and if so the name and residence of such guardian and whether such person is detained in any hospital or asylum for the insane, and if so its name and location and the name of the superintendent thereof. Any such judge receiving such petition shall thereupon by order appoint two physicians, each having the qualifications prescribed by section 585 of the statutes of 1898, to examine and report to him whether in their opinion the person in whose behalf the petition is made is sane or insane. The judge shall also fix the time and place of such examination and shall cause reasonable notice thereof to be given to the guardian of the person to be examined, if he has a general guardian, and to the superintendent of the hospital or asylum in which such person is detained, if he is so detained. Such general guardian and any relative or friend of the person to be examined, and such superintendent may appear at such examination and either of them may offer testimony on the examination, which if competent, shall be received. Should the state board of control certify that such superintendent cannot attend such examination without danger of injury to his institution, his deposition may be taken and returned pursuant to the statute for taking and returning depositions, and the same shall be admissible testimony on the examination. If such physicians report such person sane and the judge is satisfied that he is sane and no demand for a jury trial is made, a judgment to that effect shall forthwith be entered, but if the judge shall direct or the person examined, his guardian or any such person's friends or relatives shall demand a trial by jury, an order for such a trial shall forthwith be entered. The procedure on such trial shall be as near as may be the same as in trials by jury in justices' courts. The person examined, his counsel, relatives, immediate friends, general guardian and the witnesses may be present, the court may exclude all others. After hearing the evidence and arguments, the jury shall return a verdict of sane or insane as they shall agree; if they disagree they shall be discharged and another jury may be impaneled. Judgment shall be entered in accordance with the fact found by the jury. If the jury finds that the person so examined is sane, the judge shall order his immediate discharge. If it finds that such per-

son is insane if he is detained in any such hospital or asylum the judge shall order him returned thereto. If at large on parole or leave of absence, he shall be allowed to remain at large unless the judge is satisfied that it will be unsafe to do so, in which case the judge may order him committed to some hospital or asylum for the insane. All persons who render services in such proceedings shall receive the same compensation as the law provides for similar services rendered in criminal cases in justices' courts to be paid in like manner. In cases wherein no jury is demanded, the state board of control acting as a commission in lunacy, may by like procedure determine the sanity or insanity of any person committed to either of the state hospitals for the insane, whether an actual inmate thereof or at large on parole or committed to any other hospital or asylum for the insane, and its determination shall be recorded in the office of the proper county judge and shall have the same force and effect as though made by such judge, or such board may, if it has reason to doubt the insanity of such person, request the proper county judge to make due inquiry and determine the mental condition of such person, pursuant to this section, and it shall be the duty of said judge to do so. Provided however the foregoing provisions of this section shall not apply to any person awaiting hearing, trial or sentence on a charge of crime who was committed as insane to the hospital or asylum for the insane by any competent court, nor to any person sentenced to confinement in the state prison or state reformatory who has been lawfully adjudged insane and transferred from either of those institutions to such hospital or asylum until after the expiration of the term for which such convict or inmate was sentenced to imprisonment or detention in said prison or asylum.

SECTION 2. This act shall take effect and be in force, from and after its passage and publication.

Approved April 12, 1901.