

**CHAPTER 542.**

AN ACT to repeal 51.37; to amend 351.66; and to create 340.485 of the statutes, relating to dealing with certain sex crimes and to the meaning of "sexual psychopath" with reference to a defense to a charge of crime.

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

SECTION 1. 51.37 of the statutes is repealed.

SECTION 2. 340.485 of the statutes is created to read:

340.485 SEX CRIMES. (1) RAPE AND RELATED CRIMES; COMMITMENT FOR PRE-SENTENCE EXAMINATION. If a person is convicted under sections 340.46 to 340.48, 351.34, or ~~351.14~~, the court shall commit him to the department of public welfare for a pre-sentence social, physical and mental examination. The court and all public officials shall make available to the department upon its request all pertinent data in their possession in respect to the case.

(2) OTHER SEX CRIMES. If a person is convicted of any sex crime other than those specified in subsection (1), the court may commit him to the department for such a pre-sentence examination, if the department certifies that it has adequate facilities for making such examination and is willing to accept such commitment. The court and all public officials shall make available to the department upon its request all pertinent data in their possession in respect to the case.

(3) TRANSPORTATION. When the court commits a person to the department in accordance with subsection (1) or (2) for pre-sentence examination, the court shall order him conveyed by the proper county authorities at the sole expense of the county, to some place of detention approved or established by the department.

(4) REPORT OF EXAMINATION. Upon completion of the examination, but not later than 60 days after the date of the commitment order, a report of the results of the examination and the recommendations of the department shall be sent to the court.

(5) SENTENCE IMPOSED. If it appears from such report that the department does not recommend specialized treatment for his mental and physical aberrations, the court shall order the proper county authorities to bring him before the court at county expense and shall sentence him in the manner provided by law.

(6) COMMITMENT TO THE DEPARTMENT. If it appears from said report that the department recommends specialized treatment for his mental and physical aberrations, the court shall either place him on probation with the requirement as a condition of such probation, that he receive outpatient treatment in such manner as the court shall prescribe, or commit him to the department under this section.

(7) THE EFFECT OF APPEAL FROM A JUDGMENT OF CONVICTION. (a) The right of a convict to appeal from the judgment of conviction is not affected by this section.

(b) If a person who has been convicted and committed to the department appeals from a conviction, the execution of the commitment to the department shall not be stayed by the appeal except as provided in paragraph (c).

(c) If the committing court is of the opinion that the appeal was taken in good faith and that the question raised merits review by the appellate court, or when there has been filed with the court a certificate that a judge of an appellate court is of the opinion that questions have been raised that merit review, the judge of the court in which the person was convicted, or in the case of his incapacity to act, the judge by whom the certificate was filed, may, direct that such person be left at liberty under such conditions as in the judge's opinion will insure his submission to the control of the department at the proper time if it is determined on the appeal that the department is entitled to custody.

(8) NOTICE OF COMMITMENTS: TREATMENT, TRANSFER, USE OF OTHER FACILITIES. (a) If a court commits a person to the department it shall at once notify the department of such action in writing.

(b) The department shall then arrange for his treatment in the institution best suited in its judgment to care for him. It may transfer him to or from any institution to provide for him according to his needs and to protect the public. The department may irrespective of his consent require participation by him in vocational, physical, educational and correctional training and activities; may require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public; and may make use of other methods of treatment and any treatment

conducive to the correction of the person and to the prevention of future violations of law by him.

(c) The department may make use of law enforcement, detention, parole, medical psychiatry, educational, correctional, segregative and other facilities, institutions, and agencies, public or private, within the state. The department may enter into agreements with public officials for separate care and special treatment (in existing institutions) of persons subject to the control of the department under this section. Nothing herein contained shall give the department control over existing institutions or agencies not already under its control, or give it power to make use of any private agency or institution without its consent.

(d) Placement of a person by the department in any institution or agency not operated by the department, or his discharge by such institution or agency, shall not terminate the control of the department over him. No person placed in such institution or agency may be released therefrom except to the department or after approval of such release by the department.

(9) PERIODIC EXAMINATION. The department shall make periodic examinations of all persons within its control under this section for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding one year. The department shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under its control. Failure of the department to examine a person committed to it or to make periodic examination shall not entitle him to a discharge from the control of the department, but shall entitle him to petition the committing court for an order of discharge, and the court shall discharge him unless it appears in accordance with subsection (13) that there is necessity for further control.

(10) PAROLE. Any person committed as provided in this section may be paroled if it appears to the satisfaction of the department after recommendation by a special review board, appointed by the department (a majority of whose members shall not be connected with the department) that he is capable of making an acceptable adjustment in society. The chief officer of the institution wherein he is confined shall report in writing at least annually to the department concerning his condition with a recommendation as to continued confinement or parole. The department may promulgate regulations for parole, revocation of parole, and the supervision of parolees.

(11) DURATION OF CONTROL. The department shall keep every person committed to it under this section under its control and shall retain him, subject to the limitations of subsection (12), under supervision and control, so long as in its judgment such control is necessary for the protection of the public. The department shall discharge any such person as soon as in its opinion there is reasonable probability that he can be given full liberty without danger to the public, but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to 2 years after the date of his commitment.

(12) TERMINATION OF CONTROL. Every person committed to the department who has not been discharged from its control as provided in subsection (11) unless the department has previously thereunto made an order directing that he remain subject to its control for a longer period and has applied to the committing court for a review of said order as provided in subsection (13) shall be discharged at the expiration of the maximum term prescribed by law for the offense for which he was convicted, subject to the provisions of section 53.11, or at the expiration of one year, whichever is the greater. For the purposes of this subsection, sentence shall begin at noon of the day of commitment by the court to the department.

(13) CONTINUANCE OF CONTROL; ORDER AND APPLICATION FOR REVIEW BY THE COMMITTING COURT. If the department is of the opinion that discharge of a person from its control at the time provided in subsection (12) would be dangerous to the public for reasons set forth in subsection (14), it shall make an order directing that he remain subject to its control beyond that period; and shall make application to the committing court for a review of that order at least 90 days before the time of discharge stated.

(14) ACTION OF COMMITTING COURT UPON APPLICATION FOR REVIEW; REASONS FOR CONTINUANCE OF CONTROL BY THE DEPARTMENT. (a) If the department applies to the committing court for the review of an order as provided in subsection (13), the court shall notify the person whose liberty is involved, and, if he be not sui juris, his parent or guardian as practicable, of the application, and shall afford him opportunity to appear in court with counsel and of process to compel the attendance of witnesses and the

production of evidence. He may have a doctor or psychiatrist of his own choosing, examine him in the institution to which he is confined or at some suitable place designated by the department. If he is unable to provide his own counsel, the court shall appoint counsel to represent him. He shall not be entitled to a trial by jury.

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

(15) REVIEW BY COURT OF SUBSEQUENT ORDERS OF THE DEPARTMENT. (a) When an order of the department is confirmed as provided in subsection (14), the control of the department over the person shall continue, but unless he is previously discharged, the department shall within 5 years after the date of such confirmation make a new order and a new application for review thereof in accordance with this section. Such orders and applications may be repeated as often as in the opinion of the department it may be necessary for the protection of the public.

(b) Every person shall be discharged from the control of the department at the termination of the periods stated in paragraph (a) of this subsection unless the department has previously acted therein as required, and shall be discharged if the court fails to confirm the order as provided in subsection (14).

(16) APPEAL FROM JUDGMENT OF COMMITTING COURT. (a) If under the provisions of this section the court affirms an order of the department, the person whose liberty is involved may appeal to the proper appellate court for a reversal or modification of the order. The appeal shall be taken in the manner provided by law for appeals to said court from the judgment of an inferior court.

(b) At the hearing of an appeal the appellate court may base its judgment upon the record, or it may upon its own motion or at the request of either the appellant or the department refer the matter back for the taking of additional evidence.

(c) The appellate court may confirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged.

(d) Pending appeal the appellant shall remain under the control of the department.

(17) VOLUNTARY ADMISSION TO DIAGNOSTIC INSTITUTIONS; TREATMENT. Any person believing himself to be afflicted by a physical or mental condition which may result in sexual action dangerous to the public may apply upon forms prescribed by the department for voluntary admission to some institution which provides diagnosis for such persons. If the application is approved and he is admitted by the department, he shall be given a complete physical and mental examination. If it appears upon the examination that he is afflicted by a physical or mental condition that may prove dangerous to the public, such fact shall be certified to him and to the department. If he desires treatment, he may apply for admission to an institution designated by the department and upon approval of his application, he may be received in the designated institution and shall there receive the treatment indicated by his condition. If he is able to defray all or a part of the cost of his care and treatment, he shall be required to do that. If he desires to leave the institution he must give 5 days written notice to the superintendent of the institution of his intention to leave. The department may provide outpatient treatment for him at his expense.

(18) CONFLICT OF PROVISIONS; EFFECT. All statutes conflicting with this section are superseded to the extent of the conflict and the provisions of this section shall prevail over conflicting provisions heretofore enacted.

(19) SEPARABILITY. It is the intent of the legislature that the provisions of this act are separable and if any provision shall be held unconstitutional, such decision shall not affect the remainder of this act.

SECTION 3. 351.66 of the statutes is amended to read:

351.66 The determination by the court that any person is a sexual psychopath as defined \* \* \* *herein* shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility or lunacy within the meaning of the statute relating to crime and criminal procedure. *The term "sexual psychopath" as used in this section 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*

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*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.*

Approved July 6, 1951.

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