

CHAPTER 457

AN ACT to amend 46.03 (5) (a), 46.048, 46.12 (1), 51.01 (1) (a), (2) and (4), 51.02 (2) and (5) (a) and (c), 51.03 (intro. par.) and (1), 51.04 (1) and (2), 51.05 (1), 51.06 (1), 51.07 (1) and (2), 51.10 (1), 51.11 (1) and (5), 51.12 (6), 51.13 (3), 51.17, 51.21 (3) (a), (b), (d) and (e), 51.22 (1) and (5), 51.23, 51.27 (2) (a) and (3), 51.31 and 59.28 (37); to repeal and recreate 51.04 (4); and to create 51.005 of the statutes, relating to mental illness, infirmity and deficiency, and removing epileptics from category of mentally ill.

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

SECTION 1. 46.03 (5) (a) of the statutes is amended to read:

46.03 (5) (a) Execute the laws relating to the custody, care and treatment of mentally ill, mentally infirm * * * and mentally deficient * * * persons, inebriates and drug addicts. It shall examine all institutions, public and private, authorized to receive and care for such persons, and inquire into the method of government and the management of persons therein, and examine into the condition of buildings, grounds and other property connected with any such institution and into matters relating to its management.

SECTION 2. 46.048 of the statutes is amended to read:

46.048 There is established a new institution to be located near the city of Madison and to be known as the central Wisconsin colony and training school. The state department of public welfare, with the approval of the governor, is authorized to purchase lands for a suitable site and to erect and equip such buildings as it deems necessary from funds appropriated for the long-range building program. Such institution when constructed shall be maintained and operated by the department and all laws pertaining to the care of mentally deficient * * * patients shall apply.

SECTION 3. 46.12 (1) of the statutes is amended to read:

46.12 (1) The department may appoint * * * a surgeon and a psychiatrist, of recognized ability, as experts, who (in conjunction with the superintendents of the state and county institutions who have charge of criminal, mentally ill * * * and mentally deficient * * * persons) shall examine inmates and patients of such institutions as to their mental and physical condition.

SECTION 4. 51.005 of the statutes is created to read:

51.005 PURPOSE OF CHAPTER. (1) PURPOSE. It is the purpose of this chapter to provide for care and treatment in state and county hospitals for persons who by reason of mental illness, infirmity or deficiency are in need of care and treatment not feasible in their own homes or in private facilities.

(2) LEGAL EFFECT OF HOSPITALIZATION. Hospitalization under this chapter, whether by voluntary admission or commitment, is not an adjudication of legal incompetency, but merely raises a rebuttable or disputable presumption of incompetency while the patient is under jurisdiction of hospital authorities.

SECTION 5. 51.01 (1) (a), (2) and (4) of the statutes are amended to read:

51.01 (1) (a) Written application for the mental examination of any person (herein called "patient") believed to be mentally ill, mentally infirm or mentally deficient * * *, 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 state, 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.

(2) (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, * * * shall be a physician with special training in psychiatry, 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. The judge may, by attachment for the person of the patient, compel him to submit to the examination of the physicians at a specified time and place.

(b) The examining physicians shall personally observe and examine the patient at any suitable place 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.

(4) 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 * * * a. That he is mentally ill [or mentally infirm or mentally deficient] or that he is not mentally ill [or mentally infirm or mentally deficient]; and b. that he is [or is not] a proper subject for custody and treatment; 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.

SECTION 6. 51.02 (2) and (5) (a) and (c) of the statutes are amended to read:

51.02 (2) At the hearing any party in interest, upon demand made to the judge a reasonable time in advance of the hearing, 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 courtroom 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.

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

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

SECTION 7. 51.03 (intro. par.) and (1) of the statutes are amended to read:

51.03 (intro. par.) If a jury is demanded by the alleged mentally ill, infirm * * * or deficient * * * 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 summoned, 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 } ss

Members of the Jury:

(1) Do you find from the evidence that the patient -----
(insert his name) is mentally ill or mentally infirm or mentally deficient
* * * ? * * * Answer "Yes" or "No".

Answer: -----
* * *

SECTION 7a. 51.04 (1) and (2) of the statutes are amended to read:

51.04 (1) 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. *The sheriff or other police officer shall take temporary custody of any person when it appears by application delivered to such officer and executed by 3 persons, one of whom shall be a physician licensed to practice medicine and surgery in this state, that such person has a mental illness, is in need of hospitalization, and is irresponsible and dangerous to himself or others. The application shall set forth the name and address of the patient together with a statement by the physician which describes the illness and reasons why the patient is considered 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 * * * 5 days. *The application provided for herein shall be presented by such sheriff or other police officer to the county or district judge of the county in which the patient is found, and shall be considered an application for mental examination within the meaning of s. 51.01 (1) (a).*

(2) If it appears from the application for his mental examination or otherwise that safety requires it, the judge, *or a court commissioner if the judge is not available.* 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.

SECTION 8. 51.04 (4) of the statutes is repealed and recreated to read:

51.04 (4) TEMPORARY CUSTODY. Temporary custody or detention shall be in a hospital where there are suitable psychiatric facilities and which has been approved by the judge, or if there is no such hospital in the

county, in a place of temporary detention until arrangements can be made for transportation to a facility where psychiatric services are available. If a facility other than a hospital is used, the patient shall be under the care of a physician during the period of temporary detention.

SECTION 9. 51.05 (1) of the statutes is amended to read:

51.05 (1) 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 s. 51.02 was served, and if not, the reasons. If * * * *it is found* that the patient is mentally infirm, commitment may be to the facility mentioned in sub. (5). If it is found that the patient is mentally deficient * * * and should be committed, the commitment shall be to the northern colony and training school, the central colony and training school or the southern colony and training school.

SECTION 10. 51.06 (1) of the statutes is amended to read:

51.06 (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 * * *, 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.

SECTION 11. 51.07 (1) and (2) of the statutes are amended to read:

51.07 (1) Except in Milwaukee county, the judge shall receive a fee of \$5 *and 10 cents per mile for necessary travel* 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 * * * \$20, as fixed by the examining judge, for * * * *participation in the proceedings*, and 10 cents per mile for necessary travel.

SECTION 12. 51.10 (1) of the statutes is amended to read:

51.10 (1) Any resident adult of this state, believing himself to be suffering from any mental * * * *illness, infirmity or deficiency*, 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 * * * may be admitted upon application signed by a parent * * * *with actual custody or the legal guardian of the person of such minor*, supported by a like certificate.

SECTION 13. 51.11 (1) and (5) of the statutes are amended to read:

51.11 (1) Except as otherwise provided in ss. 51.21, 357.11 and 357.13, any person adjudged mentally ill or infirm or deficient * * *, or restrained of his liberty because of alleged mental illness or infirmity or deficiency * * *, 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.

(5) If the judge determines that the patient is * * * *no longer in need of care and treatment* 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 s. 51.03, and the judge's order or determination shall be in accordance with the jury's verdict.

SECTION 14. 51.12 (6) of the statutes is amended to read:

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

SECTION 15. 51.13 (3) of the statutes is amended to read:

51.13 (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 * * *.

SECTION 16. 51.17 of the statutes is amended to read:

51.17 Any person may pay (in whole or in part) for the maintenance and clothing of any mentally ill or infirm or deficient person * * * 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.

SECTION 17. 51.21 (3) (a), (b), (d) and (e) of the statutes are amended to read:

51.21 (3) (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 * * *, 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. When a prisoner is removed to central state hospital or Winnebago state hospital, the superintendent thereof may cause such treatments to be administered as in his judgment are necessary or beneficial.

(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 s. 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 * * *, 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 * * *, he may commit the prisoner to the central state hospital or commit her to the Winnebago state hospital.

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

(e) The provisions of s. 51.11 relating to re-examination shall apply to such prisoner if found to be mentally ill or infirm or deficient * * *, except that the application shall be made to the judge of the court which made such finding, *or if he is detained by transfer under sub. (2), to the county judge of the county in which he is detained.* If upon such rehearing he is found not to be mentally ill or infirm or deficient * * *, 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.

SECTION 18. 51.22 (1) and (5) of the statutes are amended to read:

51.22 (1) The purpose of the northern colony and training school, of the central colony and training school and of the southern colony and training school is to care for, train and have the custody of mentally deficient * * * persons.

(5) 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 * * * any mentally deficient * * * 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.

SECTION 19. 51.23 of the statutes is amended to read:

51.23 Sections 51.01 to 51.11, 51.125, 51.14, 51.16, 51.17, 51.19 and 51.215 shall govern the examination and commitment of mentally deficient * * * persons to such colony and training schools, so far as may be applicable. In cases of alleged mental deficiency, one of the examiners under s. 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.

SECTION 20. 51.27 (2) (a) and (3) of the statutes are amended to read:

51.27 (2) (a) If any county operates a separate hospital or facility for the chronic tuberculous mentally ill or infirm or adult mentally deficient * * *, the department may transfer thereto any mentally ill or infirm person or adult mentally deficient * * * in any state or county hospital who is afflicted with pulmonary tuberculosis. The state shall be charged at the rate of \$10 per week for each patient whose legal settlement is in the county which maintains the hospital and \$20 per week for each other patient; and of the latter rate \$10 for each patient shall be charged over to the county of his legal settlement. Such charges shall be adjusted as provided in s. 46.106. This amendment (1951) shall be effective as of July 1, 1950.

(3) The provisions of s. 50.03 as to free care of patients apply to tuberculous mentally ill or infirm patients or adult mentally deficient * * *, who satisfy the conditions of subs. (1) and (2).

SECTION 21. 51.31 of the statutes is amended to read:

51.31 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 * * *.

SECTION 22. 59.28 (37) of the statutes is amended to read:

59.28 (37) For bringing a person alleged to be mentally ill or infirm or deficient * * * before the judge and subpoenaing witnesses, the fees allowed him in other cases; for taking such patient to a hospital or removing one therefrom, \$5 per day and his necessary expenses and the actual expenses for the support and transportation of the patient, and \$3 per day and necessary expenses of such assistants as may be ordered by the judge.

Approved July 21, 1955.
