

1993 Senate Bill 666

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1993 WISCONSIN ACT 474

AN ACT to amend 48.13 (14), 48.295 (2) (a), 48.295 (2) (b), 48.30 (5) (a) (intro.), 48.30 (5) (b), 51.20 (1) (a) 2. b. and 51.20 (1) (b); and to create 48.30 (5) (a) 3, 48.30 (5) (bm), 48.30 (5) (d) and 48.30 (5) (e) of the statutes, relating to: children who have been found to be not competent to proceed on a delinquency petition.

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

SECTION 1. 48.13 (14) of the statutes is amended to read:

48.13 (14) Who has been determined, under s. 48.30 (5) (c), to be not responsible for a delinquent act by reason of mental disease or defect or who has been determined, under s. 48.30 (5) (d), to be not competent to proceed.

SECTION 1m. 48.295 (2) (a) of the statutes is amended to read:

48.295 (2) (a) If there is probable cause to believe that the child has committed the alleged offense and ~~is not competent~~ if there is reason to doubt the child's competency to proceed, or upon entry of a plea under s. 48.30 (4) (c) the court shall order the child to be examined by a psychiatrist or licensed psychologist. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination. Evaluation shall be made on an outpatient basis unless the child presents a substantial risk of physical harm to the child or others; or the child, parent or guardian, and legal counsel or guardian ad litem consent to an inpatient evaluation. Any inpatient evaluation shall be for a specified period no longer than is necessary to complete the evaluation.

SECTION 2. 48.295 (2) (b) of the statutes is amended to read:

48.295 (2) (b) ~~If the examination is ordered under s. 48.30 (5) (a), the~~ The examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to

the district attorney or corporation counsel and to the child's counsel. The report shall describe the nature of the examination and identify the persons interviewed, the particular records reviewed and any tests administered to the child. ~~The~~ If the examination is ordered following a plea under s. 48.30 (4) (c), the report shall also contain an opinion regarding whether the child suffered from mental disease or defect at the time of the commission of the act alleged in the petition and, if so, whether this caused the child to lack substantial capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law. If the examination is ordered following a finding that there is probable cause to believe that the child has committed the alleged offense and that there is reason to doubt the child's competency to proceed, the report shall also contain an opinion regarding the child's present mental capacity to understand the proceedings and assist in his or her defense and, if the examiner reports that the child lacks competency to proceed, the examiner's opinion regarding the likelihood that the child, if provided treatment, may be restored to competency within the time specified in s. 48.30 (5) (e) 1. The report shall also state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

SECTION 3. 48.30 (5) (a) (intro.) of the statutes is amended to read:

48.30 (5) (a) (intro.) If there is probable cause to believe that the child has committed the alleged offense and if there is reason to doubt the child's competency to proceed, or if the child enters a plea of not responsible by

reason of mental disease or defect, the court shall order an examination under s. 48.295 and shall specify the date by which the report must be filed in order to give the district attorney or corporation counsel and the child's counsel a reasonable opportunity to review the report. The court shall set a date for hearing as follows:

SECTION 4. 48.30 (5) (a) 3. of the statutes is created to read:

48.30 (5) (a) 3. If the court has found probable cause to believe that the child has committed the alleged offense and reason to doubt the child's competency to proceed, the hearing to determine whether the child is competent to proceed shall be held no more than 10 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child who is not held in secure custody.

SECTION 5. 48.30 (5) (b) of the statutes is amended to read:

48.30 (5) (b) If the court, after a hearing under par. (a) 1 or 2, finds that the child was responsible, the court shall proceed to a dispositional hearing.

SECTION 6. 48.30 (5) (bm) of the statutes is created to read:

48.30 (5) (bm) If the court, after a hearing under par. (a) 3., finds that the child is competent to proceed, the court shall resume the delinquency proceeding.

SECTION 7. 48.30 (5) (d) of the statutes is created to read:

48.30 (5) (d) If the court finds that the child is not competent to proceed, as described in s. 971.13 (1) and (2), the court shall suspend proceedings on the petition and shall also do one of the following:

1. If the court finds that there is probable cause to believe that the child meets the conditions specified under s. 51.20 (1) (a) 1. and 2., order the county department under s. 46.22, 46.23 or 46.215 in the county of the child's residence or the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 48.12 or 48.13 (12) to file a petition alleging that the child is in need of protection or services under s. 48.13 (14).

SECTION 8. 48.30 (5) (e) of the statutes is created to read:

48.30 (5) (e) 1. A child who is not competent to proceed, as described in s. 971.13 (1) and (2), but who is likely to become competent to proceed within 12 months or the maximum sentence that may be imposed on an adult for the most serious delinquent act with which the child is charged, whichever is less, and who is committed under s. 51.20 following an order under par. (d) 1. or who

is placed under a dispositional order following an order under par. (d) 2., shall be periodically reexamined with written reports of those reexaminations to be submitted to the court every 3 months and within 30 days before the expiration of the child's commitment or dispositional order. Each report shall indicate either that the child has become competent, that the child remains incompetent but that attainment of competence is likely within the remaining period of the commitment or dispositional order or that the child has not made such progress that attainment of competency is likely within the remaining period of the commitment or dispositional order.

2. The court shall cause copies of the reports under subd. 1 to be transmitted to the district attorney and the child's counsel. If a report under subd. 1 indicates that the child has become competent, the court shall hold a hearing within 10 days after the court receives the report to determine whether the child is competent. If the court determines that the child is competent, the court shall terminate the child's commitment or dispositional order and resume the delinquency proceeding.

3. If the child is receiving medication, the court may make appropriate orders for the continued administration of the medication in order to maintain the competence of the child for the duration of the proceeding.

SECTION 9. 51.20 (1) (a) 2. b. of the statutes is amended to read:

51.20 (1) (a) 2. b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. In this subd. 2. b., if the petition is filed under a court order under s. 48.30 (5) (c) 1 or (d) 1., a finding by the court exercising jurisdiction under ch. 48 that the child committed the act or acts alleged in the petition under s. 48.12 or 48.13 (12) may be used to prove that the child exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm.

SECTION 10. 51.20 (1) (b) of the statutes is amended to read:

51.20 (1) (b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual, except that this requirement does not apply if the petition is filed pursuant to a court order under s. 48.30 (5) (c) 1. or (d) 1.

SECTION 11. Initial applicability. This act first applies to delinquent acts committed on the effective date of this SECTION.