

CHAPTER 51.

STATE MENTAL HEALTH ACT.

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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.

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 the jurisdiction of hospital authorities.

History: 1955 c. 457.

51.01 Procedure to determine mental condition. (1) APPLICATION TO COURT. (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 court 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 juvenile court of the county in which such minor is found.

(b) If the judge of the county court or the district court is not available, the application may be made to any court of record of the county.

(2) APPOINTMENT OF EXAMINING PHYSICIANS. (a) On receipt of the application the court 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 court on a list kept in the clerk's office, and neither of whom is related by blood or marriage to the patient or has any interest in his property. The court 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 court, in writing, at the earliest possible time or the time fixed by the court.

(3) FORMS. The department shall prescribe forms for the orderly administration of ch. 51 and furnish such forms to the county courts and to the several institutions. 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 (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 court.

History: 1951 c. 701; 1955 c. 10, 457, 506, 654.

It is not a jurisdictional fact, required to be recited in a commitment by a court commissioner, that the county or district judges and all judges of courts of record of the county are unavailable. 39 Atty. Gen. 620.

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 court 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 s. 262.08 (1), (2) or (3), 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 court 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 court may, in its discretion, cause notice to be given to such other persons as it deems advisable. If the notice is served the court may proceed to hold the hearing at the time and place specified therein; or, if it is dispensed with, at any time. The court may, by attachment for the person of the patient, cause him to be brought before the court for the hearing.

(b) The court shall determine whether the patient is a war veteran. If he is, the court shall promptly notify the state department of veterans' affairs, and in the event of commitment, it shall notify the nearest U.S. veterans' administration facility of the commitment.

(2) **HEARING.** 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 court 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 the court's 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 court may, if it determines that the best interest of the patient requires it, appoint a guardian ad litem for him.

(5) **COURT'S DECISION.** At the conclusion of the hearing the court may:

(a) Discharge the patient if satisfied that he is not mentally ill or infirm or deficient, 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 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.

History: 1951 c. 701; 1953 c. 540; 1955 c. 457, 506, 654.

Entry of an order for observation under (5) (b) does not exhaust the court's jurisdiction, it retains jurisdiction to complete the proceeding by discharge or commitment. An opportunity to be heard should be provided before discharge or commitment on the basis of observation reports, but the patient's personal presence is not necessary if the jurisdictional requirements of this section have been met earlier in the proceeding. 39 Atty. Gen. 318.

51.03 Jury trial. 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 court shall direct that a jury of 6 people be drawn to determine the mental condition of the patient. The procedure shall be substantially like a jury trial in a civil action. The judge may in-

struct 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 court 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 court may order the patient temporarily detained in a designated public institution, until the date of hearing, for observation. The court 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:

(2) If you answer the first question "Yes", then do you further find from the evidence that said patient is a proper subject for custody and treatment? Answer "Yes" or "No".

Answer:

(Signatures of jurors who agree)

History: 1955 c. 457, 506, 654.

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. 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 court 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) **FOR SAFETY.** If it appears from the application for his mental examination or otherwise that safety requires it, the court 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.

(3) **MEDICAL OBSERVATION.** Upon receipt of the report of the physicians the court 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 court may extend the detention period, but the temporary detention shall not exceed 90 days in all.

(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 court, 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.

(5) **TREATMENT.** When a patient is temporarily detained in a state hospital for the mentally ill, the superintendent thereof may cause the patient to be treated during the detention period if in his judgment such treatments are necessary for the patient's health.

History: 1951 c. 701; 1955 c. 457, 506, 654.

Under (3), county judge may commit to state mental hospital for observation only after receipt of report of the physicians. Commitment under that subsection without report of physicians is irregular and patient may be admitted and detained for not over 10 days under 51.05 (4). Thereafter application must be made by the superintendent as provided in 51.05 (4), unless a valid commitment is made in the meantime or the patient is discharged. 38 Atty. Gen. 487.

51.05 Commitments. (1) **TO INSTITUTION.** If the court 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 court 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.

(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 court is satisfied that the mental illness or infirmity of the patient is chronic, it 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 court shall, in a summary manner, ascertain the place of the patient's legal settlement. The court'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, infirmary or hospital for the care and treatment of mentally infirm persons. Section 46.17 shall apply to such facilities.

History: 1951 c. 724; 1953 c. 385; 1955 c. 457, 506, 654.

Commitment of mentally defective and thorty to make commitment of mentally mentally disordered children under 18 is defective and mentally disordered children governed by the provisions of 51.05, and not under 18 to private institution. 38 Atty. Gen. by 48.07 (1) (b). Juvenile judge has no au- 615.

51.06 Execution of commitment; expenses. (1) The sheriff and such assistants as the court 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 court, 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 court 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. Names of applicants shall be omitted from such copies.

History: 1953 c. 260; 1955 c. 457, 506, 654.

51.065 Alternate procedure for commitment of mentally deficient persons. (1) In all cases of mental deficiency which have been definitely and conclusively established by 2 physicians licensed in Wisconsin specializing preferably in pediatric or psychiatric medicine, whose opinions concur with regard to said mental deficiency, the physicians may, upon receiving a written request from the parents or surviving parent or general guardian of such person, issue a report on a form furnished by the court, which report shall have appended to it the affidavit of the physicians that they have personally examined the patient; that in their opinion he is mentally deficient and a proper subject for custody and treatment; that the parents or surviving parent or general guardian of such person have requested in writing that he be committed to the southern, central or northern colony and training school.

(2) The report of the 2 examining physicians shall contain a recommendation that the mentally deficient person be committed to the northern, central or southern colony and training school, and shall be forwarded by the physicians to the county court of the county in which the patient is found, and in Milwaukee county to the district court. In the case of minors under the age of 18 years, the report and recommendation of the examining physicians shall be forwarded to the juvenile court.

(3) The court to whom said report and recommendation is forwarded may enter same in the records of his court and may issue an order of commitment of the patient to the

superintendent of the southern, the central or the northern colony and training school, which order will authorize the admission of the mentally deficient patient to the specified colony and training school forthwith upon issuance. In all cases in which a parent supervises the person alleged to be mentally deficient, the court may, and in cases in which neither parent supervises, but there is a duly appointed general guardian, the court shall appoint a guardian ad litem in advance of making any entry in the court records, and in advance of issuing an order of commitment.

History: 1951 c. 453; 1953 c. 385; 1955 c. 506, 654.

51.07 Fees of judges, examining physicians, witnesses; expenses of proceedings.

(1) Except in Milwaukee county, the judge shall receive a fee of \$5 and 10 cents per mile for necessary travel for holding court on 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 court, for participation in the proceedings, and 10 cents per mile for necessary travel.

(3) Witnesses subpoenaed before the court shall be entitled to the same fees as witnesses subpoenaed before the court in other cases. 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 court 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 s. 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.

History: 1955 c. 457, 506, 654.

51.08 Maintenance. (1) The expense of maintenance, care and treatment of each patient in any state hospital shall be at the rate of \$5 per week, and in any county hospital or facility for the mentally infirm at the rate of \$10 per week for the year beginning July 1, 1950 and annually thereafter equal in amount to the actual average per capita cost of maintenance, care and treatment of such patients therein as determined from annual individual hospital reports filed with the state department of public welfare under the mandatory uniform cost record-keeping requirement of section 46.18 (8), (9) and (10). 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 and medical care or both, the state charges or aid provided for in this subsection shall continue during the period of such transfer. Such charge 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.

(2) Beginning with the fiscal year ending June 30, 1952, the records and accounts of each county hospital or facility for the mentally infirm shall be audited annually. Such audits shall be made by the department of state audit as provided in section 15.22 (12) (d) and (e) as soon as practicable following the close of the institution's fiscal year. In addition to other findings, such audits shall ascertain compliance with the mandatory uniform cost record-keeping requirements of section 46.18 (8), (9) and (10) and verify the actual per capita cost of maintenance, care and treatment of patients. Any resulting adjustments to settlements already made under section 46.106 shall be carried into the next such settlement.

History: 1951 c. 688.

Per capita cost at state mental institution must be calculated on the basis of the entire institution and not on the basis of separate buildings and facilities. 38 Atty. Gen. 487.

Increase in rate charged to counties for maintenance of patients at state mental hospitals under (1), as made by ch. 688,

Laws 1951, became effective August 9, 1951, the day after publication. 40 Atty. Gen. 327.

Audit of records of county hospitals or facilities for the mentally infirm by the department of state audit is mandatory under (2). 40 Atty. Gen. 374.

Computation for expense of maintenance, care and treatment of patients in county

mental hospitals under 51.08 (1) and 51.24 hospitals and then dividing by the total (2) is to be made by totaling the entire number of patient weeks of all county men- operating costs of all the county mental tal hospitals. 41 Atty. Gen. 286.

51.09 Inebriates and drug addicts. (1) **HEARING.** If it appears to any 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 addicted to the use of narcotic drugs or barbiturates and in need of confinement or treatment, the court 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 court may cause notice to be given to such other persons as it deems advisable. The court may, by attachment for the person, require the sheriff or other police officer to take the alleged inebriate or drug addict into custody, detain him pending the hearing (but not to exceed 3 days) and bring him before the court at the hearing. The court may require notice to be given to known relatives of the person. At such hearing if the court finds that such person is an inebriate or a 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 the county reforestation camp or to Winnebago or Mendota state hospital or, in counties having a population of 500,000 or more, to the hospital ward of the house of correction of such county. At the hearing the court 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 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 court may act summarily upon the application and may take testimony. If it finds that the applicant satisfies the conditions of this section, it shall commit him as it would had there been an application under sub. (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.

History: 1951 c. 605, 701; 1953 c. 61, 353; 1955 c. 180, 506, 654.

51.10 Voluntary admissions. (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 court 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.

(2) The superintendent shall forward to the county court of the patient's residence a copy of his application. The court 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 to the county where the institution is located, as provided in s. 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 court of the county where the institution is located, as provided in s. 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 court may permit him to become a voluntary patient pursuant to sub. (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.

History: 1955 c. 457, 506, 654.

51.11 Re-examination of patients. (1) Except as otherwise provided in ss. 51.21, 957.11 and 957.13, 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 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 court shall thereupon appoint 2 disinterested physicians, each having the qualifications prescribed in s. 51.01, to examine and observe the patient and report their findings in writing to the court. For the purpose of such examination and observation the court may order the patient confined in a convenient place as provided in s. 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 court.

(4) Upon the filing of the report the court 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 s. 51.02, so far as applicable, shall govern the procedure.

(5) If the court determines that the patient is no longer in need of care and treatment it shall enter judgment to that effect and order his discharge; if it shall not so determine, it shall order him returned under the original commitment, except that if he is at large on conditional release or leave, the court 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 court'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 court. 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 court 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 court but may be compelled after one year of the preceding one.

History: 1955 c. 457, 506, 654.

The word "detained" means: (a) Where the patient remains in the institution to which he is committed, the county in which the institution is located is the county in which he is detained. (b) Where the patient is transferred to another institution, the county in which that institution is located is the county in which he is detained. (c) Where the patient receives a conditional release or a temporary discharge from a state institution, the county where that institution is located is the county in which he is detained. 40 Atty. Gen. 169.

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 hospital committed under s. 957.11 or 957.13, 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 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.

(7) The department shall advise the department of veterans' affairs of the transfer or discharge or conditional release of any veteran.

History: 1955 c. 457.

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 court 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.

History: 1955 c. 506.

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 ss. 957.11 and 957.13, 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.

History: 1955 c. 457.

Presumption of competence may be rebutted by proper proof. 39 Atty. Gen. 227.

51.14 Superintendent's reports to county court; 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 court of the county of his legal settlement. The superintendent shall also notify such court whenever any patient dies, is discharged, transferred, escapes, is conditionally released or returns from such release. The court shall keep a record of the facts so reported.

History: 1955 c. 506.

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.

51.16 Superintendent's oath and duties; subpoenas 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 subpoena 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 court shall make a special order therefor, and the subpoena, 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.

History: 1955 c. 506.

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 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.

History: 1955 c. 457.

51.18 Family care; costs to state; to county. The department may place any state hospital or colony 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 or colony. Bills for his board shall be payable monthly out of the operating funds of such state hospital or colony and shall be audited as are other bills. The county of his legal settlement shall be charged with the rates and expenses provided under s. 51.08 and such charges shall be adjusted in the same manner as if the patient were at the hospital or colony. The department may visit and investigate such home and may return the patient to the hospital or colony or place him in another home when deemed advisable. Such placement shall not be considered a conditional release or temporary discharge.

History: 1955 c. 566.

State hospital patients maintained in boarding homes under 51.18 are patients in an institution for mental diseases within the meaning of the definitions of aid to the

blind in 49.18, of old-age assistance in 49.20 (2), and of aid to the totally and permanently disabled in 49.61 (1m). 41 Atty. Gen. 247.

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 court 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 s. 46.106. The court shall notify the juvenile court of the county of the mother's legal settlement of the filing of such petition.

History: 1955 c. 506.

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.

51.21 Central state hospital. (1) 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 ss. 957.11 and 957.13. Whenever the superintendent is not a psychiatrist, all psychiatric reports, testimony or recommendations regarding the mental condition of a patient or prisoner shall be made by a staff psychiatrist of the hospital or the division of mental hygiene.

(2) **TRANSFERS.** The department may transfer to the central state hospital any male patient confined in a state or county hospital or the northern, central 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, 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 county court where the hospital is located for an inquiry as to the prisoner's mental condition. Thereafter the proceeding shall be as upon 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 court is satisfied that the prisoner is not mentally ill or infirm or deficient, it may dismiss the application and order the prisoner returned to the institution from which transferred. If the court finds that the prisoner is mentally ill or infirm or deficient, it 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, 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, infirm or deficient, except that the application shall be made to the court which made such finding, or if he is detained by transfer under sub. (2), to the county court of the county in which he is detained. If upon such rehearing he is found not to be mentally ill, 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.

(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 or the Milwaukee county hospital for mental diseases any person committed under s. 957.11 or 957.13 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.

(7) TRANSFER FOR MEDICAL CARE. In order to expeditiously provide hospitalization or emergency surgery and also proper security of the person, the department is given authority, regardless of any statutory provision to the contrary, to temporarily remove any patient or prisoner in need of hospitalization or emergency surgery to the hospital ward of the Wisconsin state prison. As soon as practical after completion of such necessary hospitalization or emergency surgery, the department shall return any such patient or prisoner to the central state hospital. The state charges shall continue during the period of such transfer.

History: 1953 c. 66, 139, 385; 1955 c. 457, 506, 561, 654.

Guards at central state hospital may, under 340.29, use deadly force to prevent the escape of inmates who are charged with felonies. But a mental hospital, though re-

quired to use ordinary care to prevent the escape of patients, may not use deadly force if the patient is not charged with felony. Employees of such hospitals have the right

of self-defense, but must take account of the character of the attacking inmate and the special duty owed to him. 39 Atty. Gen. 2. Superintendent of central or Winnebago state hospital may change parole supervisor of paroled patient without first obtaining approval of committing court. 39 Atty. Gen. 588.

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 s. 51.01 to the court 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.

History: 1955 c. 506.

51.22 Colonies and training schools. (1) **PURPOSE.** 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.

(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 facilities as the welfare of the patients requires. The department shall establish vocational training therein.

(2m) **LIMITATION OF LIABILITY.** Beginning July 1, 1951, whenever the actual per capita cost for care and maintenance of patients at the colonies and training schools shall exceed \$40 for a month of 31 days, liability of patients or parents under section 46.10 (2) shall be limited to \$40 per month. In any case the department may grant a lesser special rate per month based on the ability to pay of the patient or parent, and no liability shall accrue for the difference between the lesser special rate and \$40.

(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. The superintendent of the central state hospital may, if he deems it proper so to do, grant any patient transferred to that institution from either colony or training school a temporary discharge and release him pursuant thereto without first returning the patient to the institution from which he came.

(5) **PERMANENT DISCHARGE.** The superintendent of either school or central state hospital, 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 court 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.

History: 1951 c. 279 s. 9; 1951 c. 507; 1953 c. 385; 1955 c. 199, 457, 506, 654.

Feeble-minded person committed to one of the state colonies and training schools and transferred in 1945 to Milwaukee county asylum pursuant to 52.03 (2), Stats. 1945, and subsequently given a leave of absence from said institution pursuant to 51.13 (2), Stats. 1945, was not restored to competency upon the expiration of 2 years pursuant to 51.13 (3), Stats. 1945, since that subsection applies only to persons adjudged insane or senile. Under 51.22 (3), (4) and (5), Stats. 1949, legal status of such person is the same as under the 1945 statutes. Hence such patient, who has not been granted a permanent discharge under 51.22 (5), Stats. 1949, is not restored to competency and may be required by the superintendent of the county hospital to return to said institution without any further commitment by any judge, notwithstanding that the patient has been at large for over 5 years, 40 Atty. Gen. 214.

51.23 Mentally deficient; examination; commitments. 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 school, 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.

History: 1953 c. 519; 1955 c. 457.

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.

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 of patients in the hospital mentioned in subsection (1) who are maintained at public expense, at the rate of \$5 per week for each chronic case for the year beginning July 1, 1950 and annually thereafter at a rate determined in accordance with the provisions of section 51.08 (1). For patients who are maintained at public expense the state shall compensate the county for each acute case at the rate of \$5 per week and, commencing July 1, 1951, at a rate equal in amount to the full average per capita cost of care and maintenance of patients in Mendota state hospital and Winnebago state hospital minus the charge made by the state to counties pursuant to the provisions of section 51.08. The average of the full per capita cost of the Mendota state hospital and Winnebago state hospital for the fiscal year ending June 30 shall be the basis for computation of the compensation for the ensuing calendar year. When a patient is temporarily transferred from the hospital for mental diseases to the county hospital for physical or acute mental illness or surgical or medical care or all of them, 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.

History: 1951 c. 381, 688.

The rate of state aid to Milwaukee county as recreated by ch. 688, Laws 1951, discussed, for caring for acute mental cases, under (2), 40 Atty. Gen. 327.

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.

51.27 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) (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.

(b) Beginning July 1, 1953, and annually thereafter, in addition to the charges provided by par. (a) the difference between such aid and the actual per capita cost of care and maintenance of such tuberculous mental patients as determined by the department of public welfare and department of state audit shall be charged to the county of the patient's legal settlement, or to the state if the patient has no legal settlement. Provided that for the fiscal years 1954-55, 1955-56 and 1956-57 the per capita cost of care and maintenance shall include a charge for depreciation of not more than 2 per cent on all present sanatorium structures and attached fixtures erected or installed prior to January 1, 1937, and 5 per cent on all additions to sanatorium structures and attached fixtures erected or installed after January 1, 1937; and provided further, that depreciation of equipment, furniture and furnishings, including X-ray equipment but not including structures and attached fixtures may be included at the rate of 10 per cent per annum.

(c) Beginning with the first charge made for cost of care incurred after July 1, 1954, as provided in s. 46.106 the county may add 4 per cent to such charge to recover the costs to the county in carrying such charges.

(d) Beginning with the first charge made for cost of care incurred after July 1, 1954, as provided in s. 46.106 the county may add 10 per cent to such charge to generate sufficient earnings in addition to depreciation accruals to provide funds to cover replacement costs for buildings, fixtures and equipment as they are replaced.

(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).

History: 1951 c. 449; 1953 c. 649; 1955 c. 224, 457.

51.30 Records closed. The files and records of the court in proceedings under this chapter shall be kept in locked files and shall not be open to inspection except upon specific permission of the court. 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.

History: 1955 c. 506.

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.

History: 1955 c. 457.

51.32 Nonresident escaped patients. The county court 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 court for an additional period if it is necessary to consummate the deportation of the escaped person.

History: 1955 c. 506.

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.

51.50 Short title. This chapter shall be known as The State Mental Health Act.