CHAPTER 975

SEX CRIMES LAW

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Cross−reference: See definitions in s. 967.02.

975.001 Definition. In this chapter, "department" means the department of health services.

History: 1989 a. 31; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

975.01 End of commitments; declaration of policy. (1) No person may be committed under this chapter after July 1, 1980.

(2) The legislature finds and declares that persons violating s. 940.225, 948.02, 948.025 or 948.06 or committing crimes when motivated by a desire for sexual excitement may be in need of specialized treatment. The legislature intends that the department should provide treatment for those persons.

History: 1975 c. 184 s. 13; 1975 c. 421; 1979 c. 117; 1987 a. 332 s. 64; 1993 a. 227.

The trial court had no authority to vacate a sex crimes act commitment for the purpose of sentencing the offender under the criminal code. State v. Machner, 101 Wis. 2d 79, 303 N.W.2d 633 (1981).

Repeal of the Wisconsin sex crimes act. 1980 WLR 941.

975.06 Commitment to the department. (1) (a) If the department recommends specialized treatment for the defendant's mental or physical aberrations, the court shall order a hearing on the issue of the need for specialized treatment unless such hearing is expressly waived by the defendant. The hearing shall be conducted by the court or as provided in par. (b). The court may consider any department rule established in accordance with ch. 227 establishing criteria for recommending specialized treatment. The defendant shall be afforded the opportunity to appear with counsel; process to compel the attendance of witnesses and the production of evidence; and a physician, or clinical psychologist of defendant's choosing to examine the defendant and testify in defendant's behalf. If unable to provide counsel or expert witness, the court shall appoint such to represent or examine the defendant.

(b) The hearing shall be to a jury, unless the defendant waives a jury. The number of jurors shall be determined under s. 756.06 (2) (b). The procedure shall be substantially like a jury trial in a civil action. The judge may instruct the jurors in the law. No verdict is valid or received unless agreed to and signed by five−sixths of the jurors. At the time of ordering a jury to be summoned, the court shall fix the date of hearing, which date shall be not less than 30 days nor more than 40 days after the demand for the jury was made. The court shall submit to the jury the following form of verdict:

STATE OF WISCONSIN

.... County

Members of the Jury:

Do you find from the evidence that the defendant .... (Insert name) .... is in need of specialized treatment? Answer "Yes" or "No".

(2) If, upon completion of the hearing as required in sub. (1), it is found that the defendant is in need of specialized treatment the court shall commit the defendant to the department. The court may stay execution of the commitment and place the defendant on probation under ch. 973 with a condition of probation that the defendant receive treatment in a manner to be prescribed by the court. If the defendant is not placed on probation, the court shall order the defendant conveyed by the proper county authorities, at county expense, to the sex crimes law facility designated by the department.

(3) Probation under sub. (2) shall be construed as a commitment to the department for the purposes of continuation of control as provided in this chapter.

(4) If, upon the completion of the hearing required in sub. (1), it is found that the defendant is not in need of such specialized treatment the court shall sentence the defendant as provided in ch. 973.

(5) If records of the department are required for any hearing under this chapter, they shall be made available upon a subpoena directed to the coordinator of the special review board of the department, who may respond in person or designate an agent to produce the records of the department.

(6) Persons committed under this section who are also encumbered with other sentences, whether concurrent with or consecutive to the commitment, may be placed by the department in any of the facilities listed in s. 975.08 (2) or (3) (a). Such facilities may be regarded as state prisons for the purpose of beginning the other sentences, crediting time served on them, and computing parole eligibility dates.

(7) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the facility to which the defendant is conveyed under sub. (2) determines that the defendant should be subject to such a court order, the facility may file with the court with notice to the counsel for the defendant, the defendant and the district attorney, a motion for a hearing, under the standard specified in s. 51.61 (1) (g) 4., on whether the defendant is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this subsection, the court without a jury shall determine the defendant's competency to refuse medication or treatment. At the request of the defendant, the defendant's counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this subsection. If the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall determine without a jury the defendant's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Upon consent of all parties and approval by the court for good cause shown, testimony may be received into the record of the hearing by telephone or live audiovisual means. If the state proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in s. 51.61 (1) (g) 4., the court shall

make a determination and issue as part of the defendant's commitment order an order that the defendant is not competent to refuse medication or treatment and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

History: 1973 c. 44; 1975 c. 155, 199, 200; 1977 c. 318; 1977 c. 447 s. 210; 1981 c. 20; 1989 a. 31; 1995 a. 268; Sup. Ct. Order No. 96−08, 207 Wis. 2d xv (1997); 1999 a. 85.

Legislative Council Note, 1975: This bill inserts provisions for a jury trial in the procedures to commit (s. 975.06) and recommit (s. 975.14) convicted defendants for special treatment under the Sex Crimes Law. In State ex rel. Farrell v. Stovall (1973), 59 Wis. 2d 148, the Wisconsin Supreme Court ruled, on equal protection grounds, that hearings on commitment and recommitment under the Sex Crimes Law must give the defendant the same rights as a proceeding under Ch. 51 (commitment for mental illness); i.e., a hearing on the issue to a jury. This bill provides for a 12−person jury, but allows the defendant to request a 6−person jury or waive a jury. It also requires that jury verdicts favoring special treatment must be agreed to by five−sixths of the jurors. The five−sixths requirement is drawn from ch. 51, and is also the standard for civil actions (see s. 270.25 [805.09 (2)]). [Bill 259−A]

A commitment to the department does not constitute cruel and unusual punishment. Howland v. State, 51 Wis. 2d 162, 186 N.W.2d 319 (1971).

The defendant is entitled to a jury determination on the question of his sexual deviancy at his initial commitment and any recommitment under s. 975.14. The procedure is substantially like a jury trial in a civil action. Some distinctions as to judicial review and release are still permitted. State ex rel. Farrell v. Stovall, 59 Wis. 2d 148, 207 N.W.2d 809 (1973).

A defendant, convicted of rape, committed while out on bail awaiting a new trial on a prior rape charge, who was placed on probation and ordered to receive outpatient treatment as a sex deviate upon the department's recommendation, did not, after retrial and conviction of the first offense and a change in the department's report, establish trial court abuse of discretion in committing him to the department. Cousins v. State, 62 Wis. 2d 217, 214 N.W.2d 315 (1974).

A court may impose a criminal sentence consecutive to a sex crimes commitment. State v. Kruse, 101 Wis. 2d 387, 305 N.W.2d 85 (1981).

975.07 The effect of appeal from a judgment of conviction. (1) The right of a defendant to appeal from the judgment of conviction is not affected by this chapter.

(2) If a person who has been convicted and committed to the department appeals from a conviction, the execution of the commitment to the department shall not be stayed by the appeal except as provided in sub. (3).

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

History: 1993 a. 486.

975.08 Notice of commitments; treatment, transfer, use of other facilities. (1) If a court commits a person to the department under s. 975.06 it shall at once notify the department of such action in writing.

(2) The department shall then arrange for the person's treatment in the institution best suited in its judgment to care for him or her. It may transfer him or her to or from any institution, including any correctional institution listed under s. 302.01, to provide for his or her needs and to protect the public. The department may irrespective of the person's consent require him or her to participate in vocational, physical, educational and correctional training and activities; may require such modes of life and conduct as seem best adapted to fit him or her for return to full liberty without danger to the public; and may make use of other methods of treatment and any treatment conducive to the correction of the person and to the prevention of future violations of law by him or her.

(3) (a) The department may make use of law enforcement, detention, parole, medical, psychiatric, psychological, educational, correctional, segregative and other resources, institutions and agencies, public or private, within the state. The department may enter into agreements with public officials for separate care and special treatment, in existing institutions, of persons subject to the control of the department under this chapter.

(b) Nothing contained in par. (a) gives the department any of the following:

1. Control over existing institutions or agencies not already under its control.

2. Power to make use of any private agency or institution without that agency's or institution's consent.

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

History: 1981 c. 20; 1989 a. 31; 1993 a. 486; 1999 a. 85.

975.09 Periodic examination. (1) The department shall make periodic examinations of all persons within its control under s. 975.06 for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding one year. The department shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under its control. Failure of the department to examine a person committed to it or to make periodic examination does not entitle the person to a discharge from the control of the department, but does entitle the person to petition the committing court for an order of discharge, and the court shall discharge the person unless it appears in accordance with sub. (3) that there is necessity for further control.

(2) If the person petitions the court for discharge under sub. (1), the person may appear in court with counsel and compel the attendance of witnesses and the production of evidence. The person may have a physician or clinical psychologist of the person's choosing examine the person and the medical records in the institution to which confined or at some suitable place designated by the department. If unable to provide counsel, the court shall appoint counsel to represent the person. Section 975.06 (1) governs the procedure of the hearing.

(3) If, after a hearing, it is found that discharge from the control of the department of the person to whom the order applies would be dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality, the court shall dismiss the petition. If it is found that discharge from the control of the department would not be dangerous to the public for the causes stated, the court shall order that the person be discharged from the control of the department.

History: 1979 c. 117.

Minimum due process requirements for reexamination of a sex crimes commitment between the initial commitment and expiration of the maximum time are discussed. State ex rel. Terry v. Percy, 95 Wis. 2d 476, 290 N.W.2d 713 (1980).

At a hearing under sub. (3), the state's burden of proof is to establish the need for control by a preponderance of the evidence. State v. Hanson, 100 Wis. 2d 549, 302 N.W.2d 452 (1981).

Reexamination of sex crimes commitment is discussed. State v. Higginbotham, 110 Wis. 2d 393, 329 N.W.2d 250 (Ct. App. 1982).

975.10 Parole. (1) Any person committed as provided in this chapter may be paroled if it appears to the satisfaction of the department of health services after recommendation by a special review board, appointed by the department, a majority of whose members shall not be connected with the department, that the person is capable of making an acceptable adjustment in society. Before a person is released on parole under this section, the department of health services shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department of health services a written statement waiving the right to be noti-

fied. Probation, extended supervision and parole agents of the department of corrections shall supervise persons paroled under this section.

(2) If a parolee under sub. (1) violates the conditions of parole, the department of corrections may initiate a proceeding before the division of hearings and appeals in the department of administration. Unless waived by the parolee, a hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking parole. Upon request of either party, the administrator of the division shall review the order. If the parolee waives the final administrative hearing, the secretary of health services shall enter an order either revoking or not revoking parole.

History: 1981 c. 266; 1989 a. 31, 107; 1995 a. 27 s. 9126 (19); 1997 a. 283; 2007 a. 20 s. 9121 (6) (a).

The special review board has no power to recommend forfeiture of good time of a prisoner. State ex rel. Farrell v. Schubert, 52 Wis. 2d 351, 190 N.W.2d 529 (1971).

The special review board. Schmidt, 1973 WLR 172.

975.11 Duration of control. The department shall keep every person committed to it under s. 975.06 under its control and shall retain the person, subject to the limitations of s. 975.12 under supervision and control, so long as in its judgment such control is necessary for the protection of the public. The department shall discharge any such person as soon as in its opinion there is reasonable probability that the person can be given full liberty without danger to the public, but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to 2 years after the date of the person's commitment.

History: 1993 a. 486.

975.12 Termination of control. (1) Every person committed to the department under this chapter who has not been discharged as provided in this chapter shall be discharged at the expiration of one year or the expiration of the maximum term prescribed by the law for the offense for which he or she was committed subject to sub. (2) and the credit provisions of s. 973.155, whichever period of time is greater, unless the department has petitioned for civil commitment of the person under s. 51.20. For the purpose of this subsection, sentence shall begin at noon of the day of the commitment by the court to the department.

(2) All commitments under s. 975.06 for offenses committed after July 1, 1970, shall be subject to ss. 302.11 and 302.12. If the department is of the opinion that release on parole under s. 53.11 (7) (a), 1981 stats., would be dangerous to the public, it shall petition for civil commitment under s. 51.20.

(3) Every person subject to the extended control of the department under ss. 975.13 to 975.15, 1977 stats., shall be discharged 5 years from the date of the commencement of extended control unless previously discharged under s. 975.15. If the department is of the opinion that release of a person from extended control would be dangerous to the public, it shall petition for civil commitment under s. 51.20.

History: 1977 c. 353; 1979 c. 117; 1983 a. 528 s. 28; 1989 a. 31.

Equal protection requires that a sex offender be credited with preconviction detention time in order to accelerate the date of expiration of the maximum term under s. 975.12. Milewski v. State, 74 Wis. 2d 681, 248 N.W.2d 70 (1976).

A ch. 980 commitment is not an extension of a commitment under ch. 975, and ch. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

975.15 Review by court of orders of the department. During any period of extended control, but not more often than semiannually, a person may apply to the committing court for a reexamination of his or her mental condition and the court shall fix a time for hearing the matter. The proceeding shall be as provided in s. 51.20 (16), except as otherwise provided in this section.

History: 1975 c. 430 s. 80; 1977 c. 428 s. 115; 1979 c. 117.

975.16 Appeal from judgment of committing court. (1) If, under this chapter the court affirms an order of the department, the person whose liberty is involved may appeal to the proper appellate court for a reversal or modification of the order. The appeal shall be taken as provided by law for appeals to said court from the judgment of an inferior court.

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

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

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

975.17 Option for resentencing. A person who has been committed under ch. 975, 1977 stats., or the department, may petition the committing court for resentencing. A court shall act upon any petition received, and resentencing shall be in accordance with ch. 973. The person shall be given credit for time served pursuant to the commitment under this chapter.

History: 1979 c. 117; 1981 c. 20.

975.18 Establishment of regulations. The department may promulgate rules concerning parole, revocation of parole, supervision of parolees, and any other matters necessary for the administration of this chapter.

Cross−reference: See also ch. DHS 96, Wis. adm. code.