CHAPTER 957.

CRIMINAL TRIALS.

957.01 Jury trial; waiver. (1) Except as otherwise provided in this chapter, criminal cases in courts of record shall be tried by a jury of 12, drawn as prescribed in ch. 270, unless the defendant waives a jury trial in writing or by statement in open court, entered in the minutes, with the approval of the court and the consent of the state. A defendant charged with a misdemeanor in county court waives trial by a jury of 12 if he elects to be tried by a jury of 6.

(2) At any time before verdict the parties may stipulate in writing or by statement in open court, entered in the minutes, with the approval of the court, that the jury shall consist of any number less than 12.

(3) In a case tried without a jury the court shall make a general finding and may in addition find the facts specially.

History: 1961 c. 561.

Defendant need not himself waive a jury where his counsel does so in open court in his presence and he does not object. State ex rel. Derber v. Skaff, 22 W (2d) 269, 125 NW (2d) 561.

A 6-man jury trial may not be granted unless the state consents. State ex rel. Sauk County D. A. v. Gollmar, 32 W (2d) 406, 145 NW (2d) 670.

A district attorney may not refuse as a matter of practice to consent to a trial to the court or with a jury of 6 in all misdemeanor cases in county court in order to force the trial to be held in circuit court. State ex rel. Murphy v. Voss, 34 W (2d) 501, 149 NW (2d) 595.

A review of Wisconsin criminal procedure. 1966 WLR 430.

957.02 Grand juror not to serve on trial jury. No member of the grand jury which found the indictment shall be a juror for the trial of the indictment if challenged for that cause.

957.03 Peremptory challenges. Each side is entitled to only 4 peremptory challenges except as provided otherwise in this section. When the crime charged is punishable by life imprisonment, each side is entitled to 12 peremptory challenges. If there is more than one defendant, the court shall divide the challenges as equally as practicable among them; and if their defenses are adverse and the court is satisfied that the protection of their rights so requires, the court may allow the defendants additional challenges. If the crime is punishable by life imprisonment the total peremptory challenges allowed the defense shall not exceed 16 if there are only 2 defendants and 18 if there are more than 2 defendants; in other cases 6 challenges if there are only 2 defendants and 9 challenges if there are more than 2.

957.04 Exercise of challenges. The parties shall exercise or waive their peremptory challenges alternately as nearly as practicable, the state beginning. Twenty jurors shall be called, and that number (exclusive of those challenged peremptorily and those excused for cause) shall be maintained in the jury box until all peremptory challenges in excess of 8 have been exercised or waived. From the 20 remaining the parties shall exercise in their order the remaining 8 challenges; and if any party declines to challenge in turn such challenge shall be made by the clerk by lot.

957.05 Alternate jurors. If the court is of the opinion that the trial of the action is likely to be protracted, it may, immediately after the jury is impaneled and sworn, call one or 2 alternate jurors. They shall be drawn in the same manner and have the same qualifications as regular jurors and shall be subject to like examination and challenge. Each party shall be allowed one peremptory challenge to each alternate juror. The alter-

nate jurors shall take the oath or affirmation and shall be seated next to the regular jurors and shall attend the trial at all times. If the regular jurors are kept in custody, the alternates shall also be so kept. If before the final submission of the cause a regular juror dies or is discharged, the court shall order an alternate juror to take his place in the jury box. If there are 2 alternate jurors, the court shall select one by lot. Upon entering the jury box, the alternate juror becomes a regular juror.

957.052 Jurors. The method of selecting jurors for the county court shall be the same as the method used for circuit court and shall be governed by ss. 255.04 to 255.095, except that the jurors on jury lists shall serve as provided by rule of court under s. 255.04 (6).

History: 1961 c. 561, 614.

957.053 12-man jury trial. The procedure used for a 12-man jury trial in county court shall be the same as that used in circuit court and shall be governed by this chapter.

History: 1961 c. 561.

957.054 Selecting a 6-man jury. (1) If a 6-man jury is demanded by the defendant before the trial begins, the judge shall direct the clerk of the court to select by lot from the current jury panel the names of 18 residents of the county qualified to serve as jurors in courts of record, from which lists the defendant and the state may each strike 5 names. If either party neglects to strike out names, the clerk shall strike out names for him. Except in counties having a population of 500,000 or more, no voir dire examination or challenge for cause shall be permitted. The clerk shall issue a venire to the sheriff or constable to summon any 6 persons whose names are not struck out, to appear at the time and place named in the venire.

(2) Jurors may all be residents of a municipality in which the court is held unless the defendant demands a county-wide jury. For this purpose a municipal jury list may be established, known as the "..... (name of municipality) jury list", which shall be constituted as follows: The jury commissioners appointed by the circuit court of the county in which the municipality is located shall, from time to time as required by the county court, provide and furnish a list containing the names of 200 jurors selected by them from citizens residing within the municipality involved. The judge or judges of county court may by court order direct the jury commissioners to furnish a list of less than 200 jurors, but in no event shall such list contain less than 50 names. Except as herein provided, the provisions of s. 255.04, relating to the preparation of jury lists for the circuit court, so far as applicable, shall apply to and govern the preparation of such list, but the slips containing the names of jurors so selected shall be deposited in a box designated the "..... (name of municipality) jury list."

(3) Subsection (2) and s. 957.053 shall not apply in counties having a population of 500,000 or more. In such counties all county court juries shall be supplied from the circuit court jury venire.

History: 1961 c. 561, 643; 1963 c. 407.

See note to 957.01, citing State ex rel. Sauk County D. A. v. Gollmar, 32 W (2d) 406, 145 NW (2d) 670.

957.055 Service of venire. The officer shall summon the jurors personally and shall make a list of the persons summoned, which he shall certify and annex to the venire and return to the clerk within the time therein specified.

History: 1961 c. 561.

957.056 Second jury. If the officer fails to return the venire as required, or if the jury fails to agree and is discharged, a new jury shall be selected and summoned in the same manner as the preceding one, and the same proceedings shall thereupon be had as that prescribed with respect to the first jury, unless jury trial is waived as in s. 957.01, in which case the court shall proceed as if no jury had been demanded.

History: 1961 c. 561.

957.07 Defendant to be present. A defendant accused of a felony shall be personally present during the trial. A defendant accused of a misdemeanor may at his written request and by leave of court be tried in his absence if represented by his attorney duly authorized for that purpose.

It could not be assumed that the record's silence as to whether defendants were present when the jury was taken to view the scene of the crime reflected irregularity and that accordingly they were deprived of their right to be "personally present" during the trial, since there is no requirement that the record affirmatively show an accused's attendance at a view of the scene of the crime. Cullen v. State, 26 W (2d) 652, 133 NW (2d) 284.

957.08 View. The court may order a view by the jury.

957.09 Conviction of included crime. When a defendant is tried for a crime and is acquitted of part of the crime charged and is convicted of the residue thereof, the verdict may be received and thereupon he shall be adjudged guilty of the crime which appears to the court to be substantially charged by such residue of the indictment or information and shall be sentenced accordingly.

957.11 Plea of insanity as defense. (1) No plea that the defendant indicted or informed against was insane or feeble-minded at the time of the commission of the alleged crime shall be received unless it is interposed at the time of arraignment and entry of a plea of not guilty unless the court for cause shown otherwise orders. When such plea is interposed the special issue thereby made shall be tried with the plea of not guilty; and if the jury finds that the defendant was insane or feeble-minded or that there is reasonable doubt of his sanity or mental responsibility at the time of the commission of the alleged crime, they shall find the defendant not guilty because insane or feeble-minded.

(2) The presumption of the defendant's sanity and mental normality at the time he committed the alleged crime shall prevail on the trial of the special issue unless the evidence creates in the minds of the jury reasonable doubt of his sanity or mental responsibility at said time.

(3) If found not guilty because insane or not guilty because feeble-minded, the defendant shall be committed to the central state hospital or to an institution designated by the state department of public welfare, there to be detained until discharged in accordance with law.

(4) A re-examination of his mental condition may be had as provided in s. 51.11, except that his application for rehearing shall be to the committing court. If upon such re-examination the court finds he is insane or feeble-minded, another re-examination shall not be had unless the court is satisfied there is reasonable cause to believe that his mental condition is improved, in which case the court may order another examination. No person so committed shall be discharged unless the court, in addition to finding him sane and mentally responsible, also finds that he is not likely to have a recurrence of insanity or mental irresponsibility as will result in acts which but for insanity or mental irresponsibility would be crimes.

The burden of proof on the special issue of insanity in criminal cases is imposed on the state if there is evidence which raises a reasonable doubt of the defendant's sanity. The jury need not be satisfied that the elements required by the definition of the defense of insanity in a criminal case are present in fact, and a defendant succeeds if he is able to raise a reasonable doubt that they may be present. State v. Esser, 16 W (2d) 567, 115 NW (2d) 505.

The supreme court declines to declare that psychopaths fall without the pale of such "abnormal conditions of the mind" as to bring them within the definition of insanity set forth in State v. Esser, 16 W (2d) 567. Brook v. State, 21 W (2d) 32, 123 NW (2d) 535.

While continuing to approve the Esser rule, where a defendant produces evidence that as a result of mental disease or defect he lacks substantial capacity to conform his conduct to the requirements of law, he is to be permitted to assume the burden of proof on the issue and have the jury instructed under the American Law Institute definition. State v. Shoffner, 31 W (2d) 412, 143 NW (2d) 458.

While the supreme court would prefer that upon request the trial court instruct the jury in a criminal trial where the issue of insanity was raised that a finding of not guilty because of insanity will not free the defendant but subject him to hospitalization as required by (3) and (4), refusal to give such instruction does not constitute prejudicial error. State v. Shoffner, 31 W (2d) 412, 143 NW (2d) 458.

Valid instructions to the jury defining insanity consistent with the Esser rule were not impaired by additional instructions which had the effect of ruling out temporary frenzy or passion arising from excitement or anger, and not from mental disease, as an abnormal condition of the mind. Simpson v. State, 32 W (2d) 195, 145 NW (2d) 206.

While this section precludes a split trial of the issues of insanity and guilt in fact, the constitution requires a sequential order of proof procedure to insure a fair trial when an accused who was subjected to a compulsory mental examination can show a disclosure of inculpatory statements, admissions, or confessions in response to questions of the examining doctor, and such compulsory statements and confessions can only be used on the issue of insanity and not in any way upon the issue of guilt. Procedure in such trials discussed. State ex rel. La Follette v. Raskin, 34 W (2d) 607, 150 NW (2d) 318.

Insanity as a defense. 45 MLR 477.

Equal protection and commitment of the insane in Wisconsin. 50 MLR 120.

A new approach to the defense of insanity. 50 MLR 688.

A critique of current psychiatric roles in the legal process. Halleck, 1966 WLR 379.

957.13 Mentally ill or deficient at time of trial. (1) If the court is reliably advised before or at his trial or after conviction and before commitment that the defendant is probably insane or feeble-minded, the court shall in a summary manner make inquiry thereof.

(2) If the court finds that the defendant as a result of mental illness or deficiency lacks capacity to understand the proceedings against him or to assist in his own defense, his trial or sentence or commitment to prison shall be postponed indefinitely and the court shall thereupon commit the defendant to the central state hospital (if male) or the Winnebago state hospital (if female).

(3) When the hospital superintendent considers that the defendant has recovered sufficiently to understand the proceedings against him and to assist in his own defense the hospital superintendent shall notify the committing court thereof. The court shall thereupon issue an order remanding the defendant to the custody of the sheriff pending further proceedings in the cause, but if the court finds that the defendant has not so recovered the defendant shall be recommitted to the hospital.

(4) A person committed under this section shall be entitled to a rehearing as to his sanity, as provided by s. 51.11, except that his application for rehearing shall be to the court which committed him. If he is found insane or feeble-minded, another rehearing shall not be had unless the court is satisfied there is reasonable cause to believe that there is improvement in his mental condition, in which case the court may order another rehearing. If it is determined upon reexamination that the insanity or feeble-mindedness of the defendant is chronic, he shall be recommitted to such institution and shall not be discharged except upon the order of the court which committed him.

(5) The fact that the defendant is unfit to proceed does not prevent the making and determination pursuant to s. 955.09 of any legal objection which is susceptible of fair determination before trial without the personal participation of the defendant.

History: 1965 c. 132.

The trial judge could appoint a general practitioner to examine defendant as to competency to stand trial rather than a psychiatrist. Cullen v. State, 26 W (2d) 652, 133 NW (2d) 284.

See note to 954.08, citing State v. McCredden, 33 W (2d) 661, 148 NW (2d) 33.

Equal protection and commitment of the insane in Wisconsin. 50 MLR 120.

957.14 Rules of civil trials. The summoning of jurors; the impaneling and qualifications of the jury; the challenge of jurors for cause; the duty of the court in charging the jury and giving instructions and discharging the jury when unable to agree shall be the same in criminal as it is in civil actions, except that s. 270.18 shall not apply to criminal actions. Section 889.25 applies to criminal proceedings.

An instruction in a criminal case to the effect that should the jury make a certain finding "you would disregard the undisputed facts and the law applicable to this case" is improper. State v. Weinman, 20 W (2d) 106, 121 NW (2d) 295.

While it was error for the trial court to permit a prosecution witness' wife to serve as a jury matron, such error was not prejudicial where as here there was no showing that any actual impropriety with the jurors took place; the record failed to reflect that there was an awareness by the jury of her identity; the testimony of her husband was not crucial to the conviction, and the period of the jury matron's contact with the jury was inappreciable. Cullen v. State, 26 W (2d) 652, 133 NW (2d) 284.

957.16 Variances disregarded; amendment. (1) The trial court may allow amendments in case of variance between the complaint or indictment or information and the proofs in all cases where the variance is not material to the merits of the action. After verdict the pleading shall be deemed amended to conform to the proof if no objection based on such variance was timely raised upon the trial.

(2) Upon allowing an amendment to the complaint or indictment or information, the court may direct other amendments thereby rendered necessary and may proceed with or postpone the trial.

957.25 Plea of guilty or nolo contendere. Upon the request of a defendant stating that he desires to plead guilty or nolo contendere the trial court may at any time at a regular or special term require the district attorney to file an information against him and may receive his plea and enter judgment thereon. If the defendant is arraigned on a charge of misdemeanor, the plea may be to the complaint. The court may in its discretion refuse to accept a plea of nolo contendere.

History: 1961 c. 561.

957.255 New trial; service of affidavits; appeal. (1) Within one year after judgment has been rendered and on motion in writing of the defendant the court may grant a new trial for any cause for which a new trial may be granted in the circuit court or when it appears to the court that justice has not been done, and on such terms and conditions as the court directs. The motion shall be signed by the defendant or his attorney and shall set forth the grounds upon which the defendant relies for a new trial. The motion together with any affidavits intended to be used in connection therewith shall be served on the district attorney and filed with the clerk of the court at least 20 days before the argument on said motion, but the court may, by order, fix a shorter time. If the trial judge is disabled or no longer in office, his successor or another judge may hear and determine the motion.

(2) If a new trial is denied an appeal may be taken therefrom to the circuit court within 15 days of the date of such denial, and said circuit court may review the order refusing a new trial and if reversed and the crime involved is a felony then the circuit

court may order a new trial to be had in said circuit court, and if the crime involved is a misdemeanor then the case shall be remanded to the county court for trial, or said circuit court may render such other order or judgment as it deems proper.

(3) A new trial shall proceed in all respects as if there had been no former trial. On the new trial the defendant may be convicted of any crime charged in the complaint or other pleading irrespective of the verdict or finding on the former trial. The former verdict or finding shall not be used or referred to on the new trial.

History: 1961 c. 561.

Under (2) the circuit court does not have the authority to review the record, exercising a fact-finding function, and come to an independent conclusion by substituting its discretion for that of the trial court nor does it have power to order a new trial in the interest of justice. State v. Waters, 28 W (2d) 148, 135 NW (2d) 768.

957.26 Counsel for indigent defendants charged with felony; advice by court. (1) A person charged with a crime shall, at his initial appearance before a court or magistrate, be advised of his right to counsel and, that in any case where required by the United States or Wisconsin constitution, counsel, unless waived, will be appointed to represent him at county expense if he is financially unable to employ counsel. A record of such advice and of the defendant's reply, if any, shall be made in the docket or reported.

(1m) In all cases involving indigent defendants the county shall be liable for only the first $10,000 of costs arising from the trial of such case. The state shall be liable for any additional costs and shall reimburse the county out of the appropriation provided by s. 20.625 (2). Upon completion of the trial and compilation of the costs of a case, the clerk of court shall file with the administrative director of the courts the county claim for reimbursement of court costs which shall include the following items:

(a) Costs of preliminary hearing.
(b) Court expenses prior to trial.
(c) Jurors.
(d) Bailiffs.
(e) Witnesses, expert witnesses and medical expenses.
(f) Extra help in office of clerk of courts, and supplies.
(g) State crime laboratory charges.
(h) Attorney fees.
(i) Meals, lodging and mileage for attorneys.
(j) Transcript fees.
(k) Total costs to sheriff's department of prisoner's expenses and other items.
(l) Any other expenses related to the case.

(2) Courts of record and magistrates who are judges of courts of record shall, unless waived by a defendant, appoint counsel for a defendant charged with a crime and who is without adequate means to employ counsel in all cases where required by the United States or Wisconsin constitution. Such appointment shall be made prior to any plea and prior to any preliminary examination. The judges of courts of record in each county shall establish as rules of court, procedures for the appointment of counsel in that county; except that in any county having a population of 500,000 or more, where a defendant is charged with a felony not triable in the county court and claims to be indigent, unless he waives his right to counsel or waives preliminary hearing, the magistrate before whom he appears shall transfer the case to the circuit court of the county for a determination of the claim, and the clerk of the circuit court, shall assign the same to one of the criminal branches of that court. A determination of indigency shall thereupon be made and the case remanded to the magistrate together with the appointment of counsel, if any.

(3) Counsel appointed to represent indigent defendants shall be compensated for services commencing with the time of their appointment.

(4) The magistrate or court under this section shall fix the amount of compensation for counsel appointed hereunder, which shall be such as is customarily charged by attorneys of this state for comparable service, and shall provide for the repayment of actual disbursements for necessary travel and other expense, automobile travel to be compensated at not over 8 cents a mile. The certificate of the clerk of court shall be sufficient warrant to the county treasurer to make such payment.

(5) If appointment of counsel has not been so made as to include services upon appeal or writ of error, or if no counsel was appointed in the trial court, the supreme court or the chief justice, upon timely notice to the district attorney and upon being satisfied that review is sought in good faith and upon reasonable grounds (or if the appeal or writ of error is prosecuted by the state) may appoint counsel to prosecute or defend such appeal or writ of error. If no counsel was appointed in the trial court, the defendant shall

be required to show his inability to employ counsel. Upon the certificate of the clerk of the supreme court the county treasurer shall pay the attorney such sum for compensation and expenses as the supreme court allows.

(6) Under like circumstances counsel may be appointed and compensated for representing prisoners upon writs of habeas corpus.

History: 1961 c. 500; 1963 c. 536; 1965 c. 433 s. 121; 1965 c. 519; 1967 c. 291 s. 14.

Cross Reference: See 270.125 (4) as to district attorney's duty to inform prisoner of his right to counsel and to compulsory process to procure attendance of witnesses.

Duty of court in determining whether to appoint counsel discussed. State ex rel. Burnett v. Burke, 22 W (2d) 486, 126 NW (2d) 91.

It is not error to fail to advise an experienced prisoner of the possibility of an increased sentence under the repeater statute unless the record would support a finding of unintelligent waiver of counsel. James v. State, 24 W (2d) 467, 129 NW (2d) 227.

Where a convicted and imprisoned defendant who was not represented by counsel applies to the supreme court for a writ of habeas corpus on the ground that he did not intelligently waive his right to counsel the question whether, in fact, he sufficiently understood his rights is explored, and on such inquiry his waiver may be found not to have been intelligent even though the record discloses compliance with (2), or it may be found to have been intelligent even though this statute was not fulfilled. When a convicted defendant applies for relief upon the ground that the court failed to advise him concerning his right to counsel, the trial court should inquire into defendant's knowledge of his rights, and since the statutory policy is that the advice be given and recorded, the state carries the burden of proof (risk of nonpersuasion) in proving by clear and convincing evidence that the advice was unnecessary in the particular case. Van Voorhis v. State, 26 W (2d) 217, 131 NW (2d) 833.

An indigent defendant convicted of a felony based upon a guilty plea entered prior to being afforded counsel could not successfully maintain that he was entitled to withdraw his plea because the same was improvident, where he appeared for sentencing with counsel who on behalf of his client appealed to the court for leniency (which it extended based upon defendant's prior guilty plea), since any violation of defendant's rights upon arraignment were waived by counsel's deliberate choice of strategy. State v. Strickland, 27 W (2d) 623, 135 NW (2d) 295.

Sentencing is a critical stage of a criminal proceeding and when a defendant appears without counsel for sentencing he must be advised of his rights. State v. Strickland, 27 W (2d) 623, 135 NW (2d) 295.

Representation of 2 defendants by the same counsel is proper unless some actual conflict is shown or some other persuasive reason given why the representation was not effective. Mueller v. State, 32 W (2d) 70, 145 NW (2d) 84.

Where 2 court-appointed attorneys concluded that defendant's appeal had no merit, defendant is not entitled to the appointment of a 3rd attorney unless the court feels there is arguable merit to the appeal. McLaughlin v. State, 32 W (2d) 124, 145 NW (2d) 153.

Differentiating in procedure between Milwaukee and other counties with respect to appointment of counsel for an indigent charged with a felony, necessitated by differences in criminal jurisdiction, cannot be said to be discriminatory, since such classification is rooted in reason. Wolke v. Rudd, 32 W (2d) 516, 145 NW (2d) 786.

The failure of the court to advise on the potential sentence does not compel a reversal as a matter of law. The totality of circumstances test still applies. Creighbaum v. State, 35 W (2d) 17, 150 NW (2d) 494.

Trial court authorized to order payment of compensation to court appointed attorney under 957.26 (1), as amended, and the amount is to be determined pursuant to 256.49. 50 Atty Gen. 176.

Counsel for indigent defendants. 47 MLR 111.

Attorney compensation on court appointments. 1964 WLR 507.

957.263 Recovery of legal fees paid for indigent defendants. Whenever a county has paid for legal representation of an indigent defendant and the county board so requires the clerk of the court wherein representation for the indigent was appointed shall prepare, sign and file in the office of the register of deeds, in a record book there to be kept for the purpose, a certificate stating the name and residence of the indigent beneficiary, the amount paid by the county for his legal representation, the date when paid, the court and county in which his case was heard and such other information as the county board directs. When a claim is so filed within 6 months after payment is made by the county it may, any time within 10 years after such filing, commence an action to recover from the indigent defendant, or his estate if the action is commenced within the time set for filing claims by creditors, the amount paid by the county for his legal representation. In any such action the 10-year statute of limitations and s. 313.08, so far as applicable, may be pleaded in defense. Such claim shall not take precedence over the allowances in s. 313.15. It is the duty of the district attorney to commence and prosecute all actions and proceedings necessary under this section to make such recovery when it appears that the indigent defendant or his estate is able to pay the claim.

History: 1965 c. 384.

957.265 Public defender. (1) OFFICE CREATED; QUALIFICATIONS; APPOINTMENT; TERM. The supreme court shall employ a state public defender who shall be an attorney licensed to practice law in this state. He shall be employed for a period of 5 years and shall continue to serve until re-employed, or until a successor is employed. During any such 5-year period he may be removed by the supreme court only for cause. He shall devote full time to the performance of his duties.

(2) SALARY. The salary of the state public defender shall be determined from time to time by the supreme court but shall not exceed the salary paid to the senior assistant

attorney general who represents the state in criminal appeals. He may, with the approval of the supreme court, employ one or more clerical assistants whose compensation shall be the same as that paid to persons performing comparable service in the office of the attorney general.

(3) QUARTERS. The office of the state public defender shall be in the state capitol.

(4) EXPENSES. The state public defender and his employes shall be reimbursed for travel, lodging and subsistence whenever required in the performance of his duties and in the same manner as other state officers and employes.

(5) DUTIES. The duties of the state public defender shall be:

(a) To determine the indigency subject to court review, of any person convicted of a felony or a gross misdemeanor, or of any person confined to central state hospital or an institution designated by the department of public welfare, if any such person petitions either the supreme court or the state public defender requesting relief from his conviction, imprisonment or confinement.

(b) At the request of any such person determined by the state public defender to be indigent, or at the request of the supreme court, to prosecute a writ of error, appeal, writ of habeas corpus or other post-conviction remedy in behalf of such person before that court, if the state public defender is first satisfied that there is arguable merit to the proceeding.

(c) Upon authorization of the supreme court to prosecute any post-conviction remedy in the trial court in behalf of any person convicted of a felony or of a gross misdemeanor, whom the state public defender has determined to be indigent.

(d) Upon authorization of the supreme court, to represent any person confined to central state hospital in any proceedings for re-examination of his mental condition initiated under ss. 957.11 (4) and 957.13 (4) whom the state public defender determines to be indigent.

(e) To perform all other duties necessary or incidental to the performance of any of the specific duties herein enumerated.

(f) To require to be printed by the state printer, when necessary, his briefs and appendices and those of indigent defendants represented by other attorneys.

(6) SUPREME COURT MAY APPOINT. Nothing in sub. (5) shall prevent the supreme court from appointing counsel for indigent persons convicted of crime, or confined to central hospital for the insane, in those situations where the state public defender deems the application of such persons is without arguable merit or in other situations where the court determines it advisable that the state public defender not act. The court shall also be empowered to continue the appointment of counsel, who represented any such convicted indigent criminal defendant in the trial court, to prosecute a writ of error, appeal, writ of habeas corpus or other post-conviction remedy.

History: 1965 c. 479; 1967 c. 43.

957.27 Expert witnesses. (1) EXPERTS TO BE APPOINTED BY JUDGE. Whenever, in any criminal case, expert opinion evidence becomes necessary or desirable the judge of the trial court may after notice to the parties and a hearing, appoint one or more disinterested qualified experts, not exceeding three, to testify at the trial. Before entering upon such investigation such expert shall take and subscribe the following oath, before the judge making the appointment or some officer designated by him: "I do solemnly swear that I will make a faithful and impartial examination of the matters to be investigated by me and that I will make a true report thereon according to the best of my knowledge, belief and understanding. So help me God." The compensation of such expert witnesses shall be fixed by the court and paid by the county upon the order of the court as a part of the costs of the action. The receipt by any expert witness summoned under this section of any other compensation than so fixed by the court and paid by the county, or the offer or promise by any person to pay such other compensation shall be unlawful and punishable as contempt of court. The fact that such expert witnesses have been appointed by the court shall be made known to the jury, but they shall be subject to cross-examination by both parties, who may also summon other expert witnesses at the trial, but the court may impose reasonable limitations upon the number of witnesses who may give opinion evidence on the same subject.

(2) EXPERTS TO EXAMINE THE ACCUSED. No testimony regarding the mental condition of the accused shall be received from witnesses summoned by the accused until the expert witnesses summoned by the prosecution have been given an opportunity to examine and observe the accused, if such opportunity shall have been seasonably demanded.

(3) ACCUSED MAY BE COMMITTED TO HOSPITAL. Whenever the existence of mental illness or deficiency on the part of the accused is suggested or becomes the subject of inquiry pursuant to s. 957.13, the court before which the accused is to be tried or is

being tried may, in its discretion, after reasonable notice and opportunity for hearing, commit the accused to a state or county mental hospital to be detained there for a reasonable time, to be fixed by the court, for the purpose of observation. The superintendent of the hospital shall permit all the expert witnesses summoned in the case to have free access to the accused for the purpose of observation. The court may direct the chief physician of the hospital to cause the preparation of a report regarding the mental condition of the accused, which may be introduced in evidence on motion of the court at the request of either the state or the defense at the trial under the oath of said chief physician or other qualified physician designated by him who may be cross-examined regarding the report by counsel for both parties. It is the duty of the sheriff to convey the accused to and from the place of commitment, and if the sheriff fails to call for the accused upon expiration of the time fixed by the court the accused shall be retained in custody in the hospital and if the accused is not removed upon the expiration of the time fixed by the court the superintendent shall give notice thereof by registered mail to the judge and the sheriff; and the county shall pay to the hospital for the keep and maintenance of the accused the sum of $10 per day after the expiration of the time fixed by the court until the accused is removed.

(4) EXPERTS, WRITTEN REPORTS OF. Each expert witness appointed by the court may be required by the court to prepare a written brief report under oath upon the mental condition of the person in question and such report shall be filed with the clerk at such time as may be fixed by the court. Such report may with the permission of the court be read by the witness at the trial.

History: 1965 c. 132.

While it may be desirable to appoint psychiatrists only to conduct mental examinations when the defense of insanity is raised, neither our statutes nor constitutional guarantees of due process and equal protection of the law require that this be done. Nelson v. State, 35 W (2d) 797, 151 NW (2d) 694.

Compulsory mental examinations and the privilege against self-incrimination. 1964 WLR 671.

957.28 Forms. The state department of public welfare shall prescribe forms for the orderly commitment of defendants to mental hospitals under ss. 957.11, 957.13 and 957.27 (3), and furnish such forms to the clerks of court of each county. A substantial compliance with prescribed forms is sufficient.

History: 1965 c. 132.