

**ABSTRACT OF THE STATUTES OF  
THE UNITED STATES AND OF THE  
SEVERAL STATES AND  
TERRITORIES, RELATING TO THE  
CUSTODY OF THE INSANE**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649530342

Abstract of the Statutes of the United States and of the Several States and Territories, Relating to the Custody of the Insane by Charles F. Folsom & Mr. Hollis R. Bailey

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**CHARLES F. FOLSOM & MR. HOLLIS R. BAILEY**

**ABSTRACT OF THE STATUTES OF  
THE UNITED STATES AND OF THE  
SEVERAL STATES AND  
TERRITORIES, RELATING TO THE  
CUSTODY OF THE INSANE**



# ABSTRACT

OF THE

## STATUTES OF THE UNITED STATES, AND OF THE SEVERAL STATES AND TERRITORIES, RELATING TO THE CUSTODY OF THE INSANE.

BY

CHARLES F. FOLSOM, M.D.,

FELLOW OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES; ASSISTANT PROFESSOR OF MENTAL  
DISEASES, HARVARD MEDICAL SCHOOL; PHYSICIAN TO OUT-PATIENTS WITH  
DISEASES OF THE NERVOUS SYSTEM, BOSTON CITY HOSPITAL.

WITH THE ASSISTANCE OF

MR. HOLLIS R. BAILEY,

ATTORNEY AND COUNSELLOR-AT-LAW.



PHILADELPHIA:  
HENRY C. LEA'S SON & CO.  
1884.

## GENERAL CONSIDERATIONS.

---

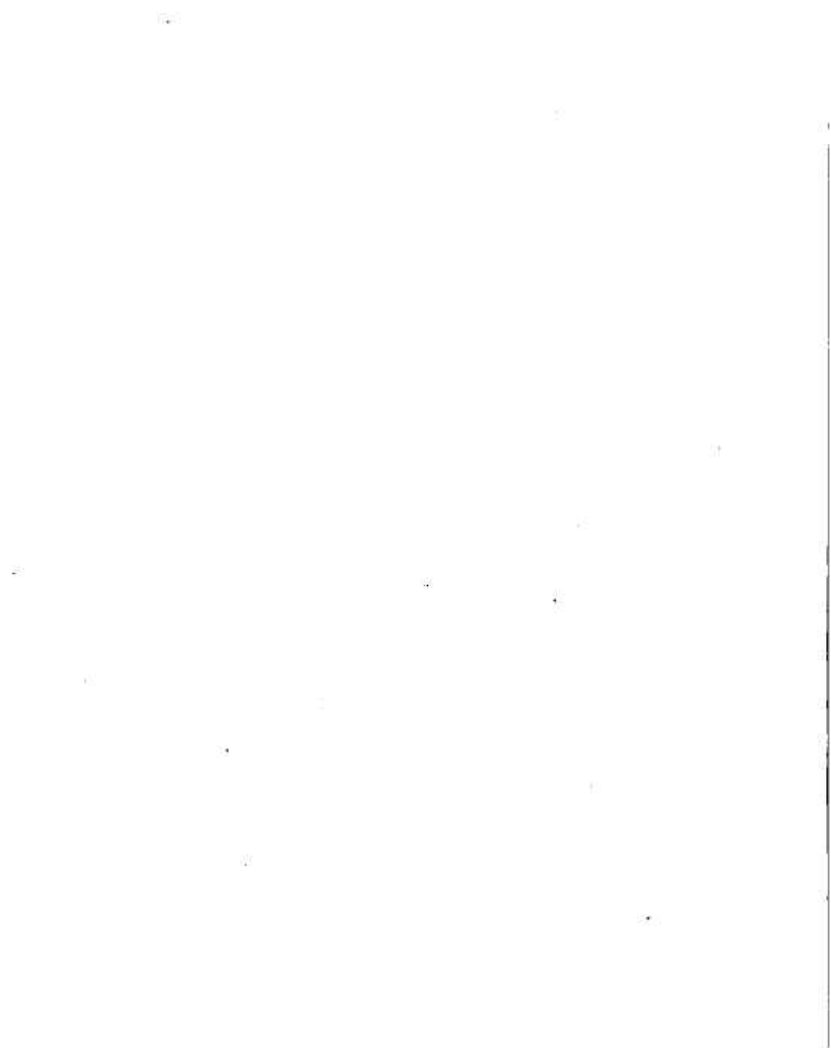
THE insane asylums in the several States are, as a rule, under the direction of a board called trustees, directors, commissioners, visitors, managers, regents or administrators. These boards are in some cases elected by the legislature, more commonly appointed by the governor of the State, with or without the advice or consent of the council, or senate, or legislature. The boards are required to visit the hospitals at stated intervals, and to make annual or biennial reports to the governor or to the legislature. For the most part they appoint the medical officers of the asylums, generally with the approval of the governor. In some States the governor appoints such officers. In Maine one member of the board must be a woman, and in Iowa two may be women.

In West Virginia the board is appointed by the board of public works. In Florida, Nevada, Rhode Island, and Wisconsin, the board of commissioners of charitable and correctional institutions is the board of trustees. In the District of Columbia the visitors are appointed by the President. In North Carolina, Tennessee, and Virginia, there are separate asylums for negroes. County asylums, where they exist, are not much better than almshouses or houses of correction for the most part: and the laws requiring them, in the few States where there are such, are often disregarded. In Massachusetts there were never more than three, and there is now only one.

The various asylums have different by-laws regarding payment of dues for patients, etc. Women are employed as physicians in some, and in one State, Nebraska, there must be one female physician.

In those States where the laws do not specify regulations for the commitment, or admission, of private patients, the trustees are allowed to include that matter under their by-laws; and they generally prescribe a medical certificate from one physician, or two, which in some States must be signed under oath.

The civil laws of all the States provide the right of habeas corpus, according to law, and the possibility of a jury trial to a person demanding his discharge from an insane asylum; they deal in various ways with the disqualifications of the insane as to holding office, voting, serving as jurors or witnesses, managing property, marrying, and guardianship. In a few States incurable insanity is ground for divorce.



STATUTES OF THE UNITED STATES, AND OF THE SEVERAL  
STATES AND TERRITORIES, RELATING TO THE  
CUSTODY OF THE INSANE.

ALABAMA.<sup>1</sup>

Patients are received at the insane asylum from the several counties of the State in proportion to the numbers of their insane population. In order of admission the indigent insane have precedence over those able to pay, and recent cases over those of long standing.

Paying patients are received on the following requirements: (1) security for the payment of charges and expenses; (2) a certificate of insanity from one or more respectable physicians; (3) certain prescribed information as to the condition of the patient.

Indigent patients are admitted only after application to the judge of the probate court in the county where the patient resides. The judge being informed that there is room for the patient at the asylum, must call one respectable physician and other witnesses, and, either with or without the verdict of a jury, at his discretion, decides the questions of insanity and indigence. The physician's certificate of insanity is taken under oath.

If a paying patient, after three months, becomes indigent, and the superintendent certifies that he is a fit patient to remain, he may be retained at the expense of the State, on the certificate of the probate judge of his county.

Indigent patients after two years' residence in the hospital, if they are not likely to be benefited by longer treatment, and are not dangerous, may be removed by order of the superintendent to the poor-house of the county of which they are resident.

When a person has escaped indictment, or has been acquitted of a criminal charge, on the ground of insanity, the court shall ascertain whether the insanity in any degree continues; in which case the court shall order the prisoner to be sent to the insane asylum.

If a person, held in confinement to await trial or for want of bail, appears to be insane, the court must make an investigation, call a respectable physician and other witnesses, and, if necessary, a jury. If it is proved that the person is insane, the court may discharge him from imprisonment and order his removal to the hospital, where he must remain

<sup>1</sup> Code of Alabama, 1876, §§ 1470-1508, 2753-2760, 2782, 2795-2799, 2802-2807, 2894, 2895, 3756, 3758, 3838, 3838, 3843.



until restored to his right mind. In case of a recovery he is remanded to jail.

Convicts who become insane while serving their sentence, or who are insane at the expiration of their term, if found to be suitable patients for the insane asylum, may be sent there by the Governor. A convict sent to the insane asylum who recovers before the expiration of his term of imprisonment must be returned to the penitentiary or discharged, as the Governor may order.

---

#### ARIZONA.<sup>1</sup> (TERRITORY.)

Provisions for the confinement and care of all insane persons in each county shall be made by the board of supervisors of each county, either in the county jail or in such other place as they shall think best. The Governor may make contracts for the keeping and treatment of the insane in any hospitals in the State of California.

The probate judge of any county, upon an application under oath, stating that a person by reason of insanity is dangerous, shall cause the person to be brought before him for examination, shall summon two or more witnesses acquainted with the accused, and shall cause to appear one or more graduates in medicine who are also reputable practitioners. The physician or physicians shall be present during the hearing, and shall make a personal examination of the accused, and shall set forth in a written statement to be made upon oath: (1) his or their opinion as to the insanity of the party charged; (2) whether it be dangerous to the accused, or to the person or property of others, that the accused go at large; (3) whether such insanity is, in his or their opinion, likely to prove permanent or only temporary. The judge, if satisfied that the person is insane and unfit to be at liberty, shall make an order directing his confinement. The property of the insane person is applied, so far as it will go, to paying the expense of his commitment and maintenance.

Upon proof that a person confined for insanity is no longer insane or dangerous, the probate judge may direct that he be set at liberty.

The Governor shall appoint some suitable person to visit once in three months the asylums in California where there are patients from Arizona, to see that they are properly treated, and to direct the discharge of those who are sufficiently restored to reason.

<sup>1</sup> Compiled Laws, 1877, §§ 1198-1208.

ARKANSAS.<sup>1</sup>

Each county of the State is entitled to send to the insane asylum a certain number of patients, proportionate to the number of its inhabitants, as shown by the last census.

Patients are committed to the asylum in the following manner :

(1) Some reputable citizen files with the county and probate judge a written statement, certifying that the patient is a resident of the county and is, to the best of his belief, insane, and ought to be committed to the asylum for care and treatment. This statement is subscribed and sworn to before the judge, who also signs it. (2) The judge, at an appointed time, hears the testimony of the witnesses produced, and also causes an examination to be made by one or more regular practising physicians of good standing. Interrogatories, twenty-six in number, touching the habits, history, and condition of the patient are prescribed, and the physician or physicians are required to obtain answers. A sworn statement of the result of the examination, including the questions and answers, must be made by the physician or physicians and presented to the judge. (3) If the judge is satisfied that the person is insane and a fit patient for the asylum, he makes his decision in writing. (4) The superintendent notifies the judge whether there is room in the asylum unoccupied. If there is no room, the name of the insane person is entered on the register of the asylum, and the patient will be entitled to admission as soon as there is a vacancy. (5) If the judge receives word that there is room for the patient, he issues an order to the sheriff to take the insane person and deliver him to the superintendent of the asylum. Any insane person, a citizen of the State, whose estate will not maintain himself and his natural dependents, may be admitted to the asylum and maintained at the public expense. Insane persons having property may be admitted if there be room.

Patients are classified into three classes: acute, chronic, and probably incurable. If the hospital is crowded with patients, a preference is given, in the order of admission, to the acute class, and vacancies may be made by discharging those who are probably incurable.

A patient who has not recovered may be discharged and given into the care of his guardian, relatives, friends, or removed to such place as is provided for his further custody. Such removal is made by the sheriff, or his deputy, by the order of the county and probate judge. Persons who have not recovered may also be removed by their friends with the consent of the superintendent, or by the direction of the board of trustees. Patients who have recovered may be discharged by the superintendent, but notice shall be sent to the county and probate judge, if the removal is without his order.

<sup>1</sup> Arkansas Digest, 1874, §§ 802-826, 1227, 1228, 1828, 1966, 1988, 2001, 2002, 8488-8539, 4496-4500, 4589.

Acts of the General Assembly of the State of Arkansas, 1883, pp. 2, 18-26, 150-153, 182.

The sheriff, of each county, before delivering any patient to the superintendent, shall see that he or she is provided with suitable clothing to the amount prescribed.

Any person attempting to commit a patient in a way contrary to the provisions of the statute, is guilty of a misdemeanor, and liable to a fine of not less than \$50 nor more than \$300.

If a lunatic is furiously mad, so as to be dangerous, it shall be the duty of his guardian or the person in charge of him, to confine him in a suitable place until the next term of the circuit court for the county, which shall make such order for the safe keeping of the person as the circumstances of the case may require. If there is no person in charge, or if the person in charge fails to take care of such lunatic, any judge of a court of record, or any two justices of the peace of the county, may cause such insane person to be taken into custody and confined until the circuit court shall make further order.

Insane persons at large shall be arrested by any peace officer and taken before a magistrate, who shall make such orders as are necessary to keep them in restraint until they can be sent by due process of law to the asylum.

Insane paupers may be taken care of in the poor-house of the county.

If in a criminal case, in the course of trial, or after trial and before judgment, the court shall be of the opinion that there are grounds for believing the defendant insane, all proceedings shall be postponed and a jury called to inquire whether defendant is of unsound mind. If found insane, he shall be kept in confinement in prison or in the county jail, or sent to the lunatic asylum until he is restored. If in the opinion of the court he is sane, the trial is to proceed or judgment be pronounced as the case may be.

If a person is under sentence of death, and the sheriff is satisfied that there are reasonable grounds for believing him insane, he may summon a jury to try the question. If the person be found insane, the sheriff shall suspend the execution and report the case to the Governor.

Persons acquitted of crime on the ground of insanity must be so reported by the jury in their verdict, and they shall be committed to the asylum by the court for further proceedings or for discharge upon their recovery, at the discretion of the court. Convicts becoming insane are not admitted to the asylum during their term of service, but are treated in the penitentiary.

---

## CALIFORNIA.<sup>1</sup>

Patients are committed to the Stockton Asylum in the following manner: Whenever it is made to appear by affidavit to a magistrate of

<sup>1</sup> Codes and Statutes of California, by Hittell, 1876, Vol. I. §§ 2186-2222; Vol. II. §§ 11,763-11,766, 13,361, 14,867-14,878, 14,221-14,224, 14,582; Vol. III. §§ 14,368, 14,870, 14,878. Statutes of California, 1881, Chap. ix.; 1888, Chaps. liv. and lxi.