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WYOMING'S INSANE AND/OR MENTALLY ILL—A COMMENT

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A great deal has been written and said in recent years concerning the subject of mental health. It is not the purpose of this article to evaluate the progress made in the area of diagnosis and treatment of mental illness, but rather, to focus the Wyoming lawyer's attention upon the manner in which local law treats the person who somehow is classified as being insane, incompentent, non compos mentis, or under some other term which is intended to prescribe a different set of consequences for the person. Of particular timely interest is the subject of existing statutory procedures for commitment of the insane person to the Wyoming State Hospital at Evanston. The Conference on Socio-Legal Problems in the Area of Mental Health and Mental Illness held in Jackson, Wyoming, in the summer of 1960, devoted much of its time to discussion of commitment procedures.[1] The reported proceedings indicate that a concensus of the participants was that one of the more immediate areas in which statutory changes should be effected in the broad picture of mental health is Title 25 of Wyoming Statutes, 1957, dealing with commitment of insane persons.[2] The foregoing conference was concluded with the passage of various resolutions which included the following:

1. There should be removed from the hospitalization laws archaic terminology and terminology connoting criminal procedure.
2. The law should be revised so that the procedure for the determination of the necessity for hospitalization for mental illness be separated from the procedure for the determination of incompetence to manage person or estate and that the law should be revised so that an order for the involuntary hospitalization of a mentally ill person would not abridge his individual civil rights.
3. The law for the judicial involuntary hospitalization of mentally ill persons should be made as simple as is consistent with the preservation of the constitutional rights of the persons.
4. The law should be revised to provide, in addition to voluntary admission, a procedure for a non-judicial temporary hospitalization on medical certification, comparable to the provisions in the draft act prepared by the National Institute of Mental Health and sponsored by the Council of State Governments.

Pursuant to another resolution by the members of the conference, a committee was appointed to prepare legislation which was introduced

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1. Held June 30, July 1-2, 1960, under the sponsorship of the National Institute of Mental Health, Wyoming Department of Public Health, Wyoming State Hosptial, and Wyoming Association for Mental Health.
2. Mimegraph report of Proceedings of Conference on Socio-Legal Problems in the Area of Mental Health and Mental Illness prepared by Division of Mental Health, Wyoming Department of Public Health.

to the 1961 legislature as Senate File 92. The proposed act was passed by both the Senate and House but failed to receive the approval of the governor.[3] Inasmuch as the governor's approval was stated as withheld upon the basis of the advice of the attorney general that the proposed act could create serious legal questions in the application of the act, it is apparent that any future change will be possible only after careful consideration of the legal impact of changes in Title 25 upon the remainder of the law dealing with "the insane," as compared with the presently existing interrelationship.

The problems existing in the law with respect to mentally disabled persons have been long recognized. The Special Committee on the Rights of the Mentally Ill of the American Bar Association recommended in 1945 a thoroughgoing research project to study the law as it relates to mentally disabled persons. The American Bar Foundation undertook the study in 1956 and the results were published in 1961 under the title "The Mentally Disabled and the Law."[4] This published report, with its extensive bibliography, reflects intensive study of the laws of all states and presents many aspects of the law which many would not think about without a great deal of effort. It represents a basic study from which those who are interested in the legal problems of Wyoming's mentally disabled could profit in any effort to improve legislation dealing with the mentally disabled. Frequent refernce will be made to this report hereinafter, and one of the report's conclusions is appropriate at this time:

> The development of the law as it affects the rights of the mentally disabled has been dependent upon three factors: (1) the extent of medical knowledge of the cause, care, and proper treatment of the mentally disabled, (2) the degree to which the politically organized community has acknowledged its responsibility for the care and treatment of its afflicted citizens, and (3) the legal profession's awareness of the social realities of mental disability, as well as the acuteness of its concern for those unfortunates who have neither relatives nor close friends to safeguard their rights.[5]

While it is not feasible to treat all aspects of mental disability with relation to existing Wyoming law, an effort will be made to present a summary of current psychiatric points of view regarding law and procedures for treatment of the mentally ill, the statutory history of the institutional confinement or care of those persons considered insane, and existing legal procedures and consequences relative to commitment.

PSYCHIATRIC POINTS OF VIEW REGARDING COMMITMENT LAWS

While man sources may be found which set forth similar views, a recent circular containing testimony presented to a U. S. Senate Subcommittee on behalf of the American Psychiatric Association and the National

3. Letter from Governor Jack R. Gage to the President and Member of the Senate of the Thirty-sixth Legislature of February 16, 1961.
4. American Bar Foundation, The Mentally Disabled and the Law (University of Chicago Press, 1961).
5. Id at 13.

Association for Mental Health succinctly states criticisms frequently heard. A portion of the testimony follows:

"Throughout their history, psychiatrists as physicians have taken issue with the laws and procedures which govern the admission, treatment and discharge of patients to mental hosptials. From a medical point of view these procedures impede and delay treatment and since they often involve procedures similar in nature to criminal proceedings, they perpetuate the stigma attached to the mentally ill.

"We, as doctors, want our psychiatric hosptials and outpatient facilities to be looked upon as treatment centers for sick people in the same sense that general hospitals are so viewed. We want people in need of our services to come to them in the expectation of being benefitted, not incarcerated. We want to be considered doctors, not jailers. We know that if our patients are committed, locked up, shorn of their civil liberties, that they will react with the same rage as would any citizen, and such rage is not an auspicious starting point for treatment. We look with envy at out colleagues in England where 80% of all admissions to mental hospitals are voluntary as compared with our own country where certainly not more than 20% are voluntary.

"Since it is a feature of some mental illness that the victim does not admit to his illness, the problem arises of how to obtain treatment for such people. In short, treatment must be provided against the patient's will. This is the point at which the trouble starts. It is by no means entirely a legal problem. It is also a social and cultural problem. When one reviews the sorry history of standards of treatment and care of the mentally ill in American mental hospitals it is little wonder that legal safeguards have been established to make it difficult for a citizen in need to be admitted to them. They have, until recent years, been viewed as places of custody rather than treatment, places for the custody of citizens who, albiet not criminal, were still troublesome enough to be put 'out of sight, out of mind.'

"In recent decades, however, the new medical science of psychiatry, fighting an uphill battle, has advanced sufficiently that the public has become more sympathetic with the view that accepts mental illness as an illness which is correctable and modifiable if treated by modern therapies. It is in this context that psychiatry now seeks to revise legal procedures to facilitate and not hinder prompt access to treatment by all citizens who need it, and this without the embarrassment, the stigma, and the deprivation of civil rights all too often associated with otbaining treatment.

"Psychiatrists are quite as much concerned as any citizen that no person shall be deprived of his life and liberty without due process of law; but they must, as physicians, also be concerned with a *citizen's right to medical treatment.* Admittedly, there is need of legal safeguards against what is commonly called the 'railroading of people into mental hospitals';

but we would contend that this can be accomplished—and indeed has been in several states and foreign countries—without jeopardizing prompt and effective treatment of the mentally ill.

"The problem is complicated by the fact that laws and procedures governing mental illness are formulated by some fifty state jurisdictions. They vary a great deal from one jurisdiction to another. Encouragingly, in recent years state laws governing the commitment and rights of the mentally ill have tended to become more flexible and more in accord with the medical point of view. But they are uneven in their development. It would be a great boon to the advancement of the treatment and care of the mentally ill of America if some national influence could be brought to bear that would encourage the states to adopt more uniform laws that more nearly reflected the medical view of a citizen's right to treatment.

"Among the major principles that the medical profession, and psychiatry in particular, would like to see established in legal procedures are the following:

"Dr. Isaac Ray, one of the Founding Fathers of the American Psychiatric Association, said in 1869 what has never been better said, to-wit, that any statute designed to regulate hospitalization should:

> In the first place put no hindrance in the way to prompt use of those instrumentalities which are regarded as the most effectual in promoting the comfort and restoration of the patient. Secondly, it should spare all unnecessary exposure of private troubles and all unnecessary conflict with popular prejudices. Thirdly, it should protect individuals from wrongful imprisonment. It would be objection enough to any legal provision that it failed to secure these objects in the completest possible manner.

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It is possible that our laws governing mental illness have contributed to protecting citizens from 'wrongful imprisonment'; but they have certainly not, in general, met the other two of Dr. Ray's criteria. Some states, until very recently, actually required a jury trial with all its attendant embarrassment, indignity, publicity, and exposure of the patient's private affairs before he could be committed.

"To illustrate how far astray the law can go from a medical point of view, Dr. Karl Bowman tells of a case with which he was acquainted involving a wife who decided that her husband was mentally sick. He was depressed and had delusions that persons were trying to kill him. Following the regular legal procedure, she swore out a warrant. The sheriff arrested the patient and he was taken to the county jail, there to await a hearing before the judge. That night he hanged himself in the jail. Sticklers for legal procdure, Dr. Bowman comments, may deprive comfort from the fact that the sick man's legal rights were well preserved. He was arrested on a warrant by a sheriff. He was not sent to a hospital without

due process of law and a chance to appear before a judge. Perhaps if he had, however, he might be alive today. In short, Dr. Bowman notes, the public has been so obsessed with the legal point of view and the alleged infallibility of legal procedures that they insist on protecting the so-called legal rights of the patient without thinking of what his medical rights are.

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"From a medical point of view, the worst features of the commitment laws and procedures of the past (and some of these features are still with us in some states) include these: Insistence that the patient appear personally in court with consequent exposure of his problems to the public; the frequent identification of mental illness with criminality as a result of court procedures; the acceptance of a lay judgment as to the degree of illness as occurs, for example, in a jury trial; frequent acceptance of commitment as tantamount to legal incompetence, thus depriving a mental patient of his civil rights; the use of archaic legal terminology such as 'insane,' 'of unsound mind,' 'idot,' 'feebleminded,' etc. – all of them conveying a legal, rather than a medical, meaning; and embarrassing inquiries into the patient's financial status at the time of his commitment.

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"In general, psychiatrists favor a simple commitment procedure entaling an application to the hosptial by a close relative or friend, and a certification by two qualified physicians that they have examined the subject and found him to be mentally ill. If judicial procedures must be brought into play at all, it is suggested that the court should have descretionary power to designate proper personnel to notify the patient that he is ill and in need of hospital care rather than require the patient to be present in person at a public hearing. The examination by court-appointed physicians may be properly conducted in a medical facility, or at the home of the patient, informally and in a manner that will have the least traumatic effect on him. In short, any procedures used should eliminate all public exposure and eschew any appearance of a criminal procedure.

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"It is of great importance that laws should provide for *emergency commitments* for limited periods of time without involving any court procedure. Over twenty states now have streamlined procedures for emergencies whereby a hearing may be waived, or a single physician instead of two physicians may commit a patient for a limited period of time. In such states there is a growing tendency to use emergency commitments for abvious reasons. They are speedier than regular commitment procedures and make it relatively easy for the doctors and the family concerned to take the patient directly to a hosptial without going through the routine of a formal eharing. It allows for a temporary period of observing the patient in a medical setting during which formal commitment procedures may be instituted if deemed necessary. It is interesting that in

Connecticut about 80% of all admissions to mental hospitals are accomplished by emergency commitment.

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"All but a handful of states now provide for voluntary admissions to mental hospitals. The provisions, sadly, have not been used to any great extent in this country, for whatever reasons. Some states require a medical certificate in support of a voluntary admission. In all cases a voluntary patient must be released upon his request, although there is often provision that such request need not be acted upon for several days during which time formal commitment procedures may be initiated, if deemed proper in the physician's judgment. Perhaps 10 - 20% of admissions to U. S. mental hospitals are voluntary. That more are not so is probably due to such factors as lack of general public respect for the mental hospital as a treatment center; the fact that the hospitals are overcrowded and understaffed; and the lingering stigma associated with being a mental patient.

"There can be no doubt, however, that the use of voluntary admission procedures is much to be encouraged—and the more so as the nation hopefully rallies behind a renewed effort to turn the public mental hospital into a genuine treatment center. Clearly, voluntary admissions encourage early treatment and a cooperative attitude towards the hosptial by the patient. All of this is auspicious for more effective treatment and early recovery.

"Here again, there is a lack of legal clarity about the status of a voluntary patient—with regard to his exercise of various civil rights, for example—which serves to discourage voluntary admissions. These confusions need clarification.

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"It is clearly of the greatest importance that in protecting the rights of the patient who is hospitalized without his consent, that some system of periodic re-examination of his case be instituted. Obviously, if a patient is well enough to be discharged but no one examines him to determine the fact, then he is being deprived of his freedom illegally.

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"It must be clearly understood that the establishment of a mental illness does not, *ipso facto,* warrant a finding of incompetency. Throughout the legal history of mental illness there has been considerable confusion about the two concepts, and in many states commitment can act as an automatic determination of incompetency. From a medical point of view there is not, necessarily, any connection between the two. In general, phychiatrists are much concerned that any mental patient within a hospital should exercise as many of his ordinary civil rights as he has the capacity to exercise, such capacity being determined by medical judgment.

We have in mind such rights as signing checks, selling property, retaining an automobile license, making purchases, executing contracts, voting, making a will, and the like. He must also retain the right to communicate by sealed mail, to receive visitors, to the confidentiality of his case records, to habeas corpus, and the right to protest further hospitalization.

"The confusion between determination of mental illness and competency, for example, is reflected in an Ohio law which provides that except for voluntary patients: 'No patient in a hospital . . . shall be competent to execute a contract, deed, or other instrument unless it has been approved and allowed by the court committing him. . . .' From a medical point of view, such provisions can only frustrate the patient and hamper the course of treatment.

"This matter of being able to exercise civil rights is also of the greatest importance in rehabilitating the patient. After a patient has been medically adjudged as sufficiently recovered for return to society, one can imagine the effect upon him when he is not allowed to drive an automobile, or sign checks, make a contract, etc.

"In general, all laws governing mental illness should recognize that many hospital patients are perfectly capable of handling their own affairs and that any automatic tie-up of incompetency and commitment is harmful."[6]

LEGISLATIVE HISTORY OF INSTITUTIONAL CARE OF THE INSANE

The historical trends with respect to the treatment of the insane, lunatic, or other person who is so far disordered in his senses that he may be dangerous if permitted to go abroad have been well documented.[7] Such histories trace society's treatment of the mentally disabled person from the earliest times when the law concerned itself mainly with the administration of his property, and the care and custody of such a person was left for the family to provide. If the person had no property and was insane, he formed a part of the general problem of pauperism. However, if he were considered too dangerous to be permitted to roam the countryside, the answer of society was to lock him up and keep him in custody. The concept of a community-maintained asylum as a method for providing for the custody of such persons was slow in emerging, but ultimate assumption of such responsibility was based upon the conviction that society demanded such protection. The attitude is reflected in an early judicial opinion which stated:

> The right to restrain an insane person of his libery is found in that great law of humanity, which makes it necessary to confine those who's going at large would be dangerous to themselves or others . . . and the necessity which creates the law, creates the limitation of the law. The question must then arise in each

6. Testimony presented to the U.S. Senate Subcommittee on Constitutional Rights on March 28, 1961, as distributed by Central Office, American Psychiatric Association.
7. See The Mentally Disabled and the Law, ch. 1 and citations thereto.

> particular case, whether a patient's own safety, or that of others, requires that he should be restrained for a certain time, and whether restraint is necessary for his restoration, or will be conducive thereto. The restraint can continue as long as the necessity continues. This is the limitation, and the proper limitation.[8]

The community assuming responsibility for providing an asylum in Wyoming is the state itself. The territorial law concept of the insane asylum was continued in 1891 when provision was made that the county commissioners of the counties should cause all persons judged to be insane to be sent at once as patients to the insane asylum at Evanston, there to be kept and cared for at the expense of the state. The act provided for a special tax which was to be paid to the state treasurer and known as the "fund for the insane."[9] The foregoing act was solely concerned with designating a single institution for the keeping of the insane and providing for the financial means of supporting it. In 1897, legislation named the asylums as "The Wyoming State Hosptial for the Insane" and imposed a duty upon the state to pay all expenses of returning recovered patients and patients found not to be insane to their respective homes. The latter act even appropriated the sum of $200.00 for its purpose.[10]

As a part of the probate procedure enacted as Chapter 70 of the Session Laws of 1891, sub-chapter 22 thereof dealt with guardians of insane and incompetent persons. Although this act was primarily concerned with the appointment of guardians of property, it did provide a formal means of determining insanity. In providing for a petition to the court and a jury trial as in civil actions to determine the fact of insanity, the act was typical of the times in that emphasis was placed upon judicial formality as contrasted with earlier procedures which permitted assignment of persons into asylums solely upon the request of a husband or relative.[11] For purposes of the chapter, an "insane person" was defined as an idiot, or a lunatic, or a person of unsound mind and incapable of managing his own affairs, which is a definition which still exists in current statutes.[12] In addition to finding upon the question of sanity or insanity of a person, the jury also had to find the value of his estate or whether he was a pauper. If he had an estate a guardian must be appointed and his estate was to pay the costs of the proceedings and the cost of his support if he were admitted to the insane asylum as a patient. If adjudged a pauper, the county had to pay the cost of the proceedings and he would be supported by the state in the insane asylum. Further concern with the question of financial responsibility was expressed by providing that a private person making complaint of alleged insanity would have to bear the expense of proceedings if the alleged insane person were found to be sane. Of

8. Matter of Josiah Oakes, 8 Law Reporter 123 (1945-46) as cited in The Mentally Disabled and the Law 12.
9. Wyo. Sess. Laws 1891, ch. 93.
19. Wyo. Sess. Laws 1897, ch. 65.
11. The Mentally Disabled and the Law 13.
12. Wyo. Stat. § 25-2 (1957).

interest in this early law is the reference to "insane or incompetent person." While the act specifically defined "insane person," no definition of "incompetent person" was given other than use of the phrase "from any cause mentally incompetent to manage his property" as an alternate to a representation in the petition to the court that the person was insane. It is at this point in the history of Wyoming law that the determination of competency to manage property and insanity were blended, and the two have never been separated.

While the foregoing acts helped to describe the type of person who was eligible for care in the insane asylum, it was not until 1909 that a specific act was passed providing for the commitment of the insane to the asylum.[13] This law prescribed the form of affidavit to be filed in connection with a petition charging "insanity or mental incompetency" which is still a part of our law.[14] The complainant must swear that he verily believes that the person is insane and a fit subject for care and treatment in the State Hospital for the Insane. In addition, this law required the completion of a lunacy statement by a reputable physician which consists of answers to specific questions concerning the patient, and which is still a part of our law.[15]

In 1923 a specific act was passed solely to change the name of the hospital by providing that "the official name of the insane asylum shall be 'The Wyoming State Hospital.' "[16] Other amendments and laws were passed with respect to the insane, but it was not until 1929 that a substantial revision took place with respect to the admittance of patients to the State Hosptial. Chapter 155 of the Session Laws of 1929 is entitled "Commitment of Insane Persons" and repealed much of the law of 1891 dealing with guardians of insane and incompetent persons. Under the terms of this act, which remains basically intact today, all insane persons residents of Wyoming, not feeble minded or epileptic, are *entitled* to admission to the Wyoming State Hospital.[17] For purposes of the act, the term insane person is defined as "any person, who, by reason of unsoundness of mind is incapable of managing his own estate or is dangerous to himself or others if permitted to go at large, or is in such condition of mind and body as to be a fit subject for care and treatment in a hospital for the insane."[18] The commitment procedures provided are judicial in nature in that requirements are made for filing a petition with the court, notice, findings by a lunacy commission and determination of insanity by a jury if requested.[19] The lunacy commission was a new feature introduced into Wyoming law by this act, and is in effect a recognition that the question of insanity for purposes of admission to the State Hospital

13. Wyo. Sess. Laws, 1909, ch. 157.
14. Wyo. Stat. § 25-5 (1957).
15. Wyo. Stat. § 25-13 (1957).
16. Wyo. Stat. § 25-33 (1957).
17. Wyo. Stat. § 25-37 (1957).
18. Wyo. Stat. § 25-1 (1957).
19. Wyo. Stat. §§ 25-4, 6, 7, 8, 9, 11, 12 (1957).

is a medical question, as evidenced by the fact that the lunacy commission should include two qualified physicians. Another new concept introduced by the act is that all insane persons need not be committed to the State Hospital.[20] The court must enter an order committing the person to the proper institution if it appears that the person is so insane or disturbed of mind as to endanger his own person and property, or the person and property of another or others, if allowed to go at large. However, if it appears that the "person is not dangerously insane, nor mentally defective, but that he is by reason of old age, disease, weakness of mind, feebleness of mind, or from any other cause incapable unassisted to properly manage and take care of himself or his property, the court may order the person so found mentally incompetent, to be placed in the custory of some friends or relatives who will assume his custody and care and maintenance without expense to the state or county."

Chapter 155 of the 1929 laws in effect re-enacted parts of the old guardian law by requiring findings as to whether the insane person has an estate, and if so, a guardian must be appointed. Provisions similar to those in earlier law with respect to payment of costs by the state or the person's estate were enacted.[21]

Apparently for the first time, provision was made in Chapter 155 for the court entering an order restoring the patient to all his rights as a citizen when the court is notified that a patient is discharged as recovered or not insane.[22] Such an order would undoubtedly have the effect of eliminating any presumptions or inferences which might have been drawn from hospitalization in a mental institution. However, it is of interest to note that no single statute defines the rights or powers which a person loses as a result of being found insane or incompetent through the formal judicial procedure. Nor is there any indication that the restoration order is appropriate in cases in which the patient may have entered the hospital for voluntary treatment. Since the restoration order is part of an act basically dealing with involuntary commitment of insane persons, it was probably intended to apply only to persons so committed.

Although the preceding discussion has highlighted developments with respect to the manner in which a person may be involuntarily hospitalized because of mental disability, it has always been provided by statute that a paying patient shall be admitted to the insane asylum.[23] Such admission is not preceded by any judicial procedure but is strictly a voluntary entrance into the hospital in accordance with terms directed by the state board.

In 1941 another major addition to the law affecting admissions to the Wyoming State Hospital was enacted under the title "Wyoming State Hospital—Procedure for Admission."[24] This act provides that "any person

20. Wyo. Stat. § 25-18 (1957).
21. Wyo. Stat. § 25-14 (1957).
22. Wyo. Stat. § 25-25 (1957).
23. Wyo. Stat. § 25-36 (1957).
24. Wyo. Stat. §§ 25-38 to 43 (1957).

alleged to be insane to a degree which warrants institutional care may be admitted to and confined in the Wyoming State Hospital at Evanston, Wyoming, by compliance with any one of the following admission procedures: (a) On voluntary application. (b) On certificate of health officer. (c) On certificate of one physician. (d) On court commitment." The power of the district courts or lunacy commission to commit insane persons is expressly left intact by this law, so that the foregoing procedures are merely additions to then existing statutes.

Two significant additions to the methods of entrance into the State Hospital can be found in the foregoing act. Previously it was possible for a paying patient to voluntarily enter the hospital, and involuntary hospitalizations were effected only pursuant to the judicial procedure. By providing for admission of patients upon the basis of a certificate by a health officer or one physician, the patient can be received without his expressing a willingness and without a judicial hearing. However, the patient cannot be detained in the hospital for more than thirty days unless he signs a request to remain as a voluntary patient or if further proceedings be undertaken. Such further proceedings in the case of a person admitted pursuant to certificate of a health officer, require that the patient be examined by two qualified examiners and if he is found insane the superintendent is to cause the patient to be admitted under Section 4 (Wyo. § 25-14 (1957) of the act. The latter section authorizes the superintendent to determine that detention of a patient originally admitted on certificate is necessary and to so certify to a judge of a court of competent jurisdiction who may, in his discretion, forthwith issue an order committing such person to the hospital for care, custody and treatment. This act makes no reference to determining the question of commitment by a jury. Although the patient's original non-protested admission can be subsequently turned into an involuntary commitment by judicial order, there appears to be no way in which a protesting patient can be initially removed to the hospital under the act since there is no authorization whatsoever for exercising any form of lawful custody of force prior to the patient's entering the hospital.

Another feature of the Act of 1941 which differs from the commitment law of 1929 is with respect to the responsibility for payment of costs. The 1941 act does not require any findings as to whether the patient is to be classified as a pay or non-pay patient, but simply provides that "all costs, expenses, compensation and examiners or medical fees, together with the fees of the health officer incurred under the foregoing sections shall be paid by the immediate family or the guardian of the person and estate of the patient."[25] No definition of "immediate family" is given. Under the 1929 law, only the estate of the patient is liable for costs of care and treatment.[26] Another existing statute which was originally enacted in

25. Wyo. Stat. § 25-43 (1957).
26. Wyo. Stat. § 25-14 (1957).

1891 places the burden of all costs incurred by a county for support and maintenance or confinement of insane persons upon "any person, who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same."[27] Suffice it is to say that there does not appear to be a single approach to identifying those who bear the financial responsibility for the care of a patient with the exception of those adjudged to be non-pay patients in which case the state does assume the responsibility.

Related to the general problem of community responsibility for the care of the mentally disabled is the act entitled "Community Mental Health Services" which was passed in 1961.[28] While this act does not use the words insane or lunatic, it is concerned basically with the prevention, diagnosis, treatment, and elleviation of mental illness afflicting person in the state. Under the act, a State Mental Authority is created to promote the development of mental health services in the state. Every county, city, town, village, school board, or any combination thereof, is authorized to establish a community mental health board to provide community mental health services in accordance with the act. This act does reflect a philosophy directed towards making assistance for the mentally ill available through local communities rather than soley through the State Hospital. In fact, several communities have managed to organize clinics providing limited services in the area of mental health. At the present time a mental health center is being organized in Cheyenne which will provide extensive mental health service including out-patient as well as in-patient care of the mentally ill. This development is largely financed at the present time by a research grant from federal funds with the expectation and hope that local governmental units in the southeastern part of the state will be able to assume the financial responsibility for its continuance.

Insofar as laws passed by the state legislature constitute a reflection of the degree to which the politically organized community has acknowledged the responsibility for the care and treatment of its afflicted citizens, several observations may be made with respect to existing public institutions and the care of the mentally disabled. At a time when close custodial care was deemed the most appropriate disposition of "idiots" and persons of "unsound mind," the state assumed the responsibility for such care when the person's estate was non-existent. This legislative responsibility has continued, and different state institutions have been designated for the acceptance of patients with different types of mental disabilities. The original concept of a state asylum has statutorily changed to embrace the concept of a state hospital intended to provide diagnosis and treatment of the patient. However, the latter concept can be carried into practice only if the community, as represented by its members in the legislature, truly appreciates the distinction between bare custody or treatment, and fulfills

27. Wyo. Stat. § 25-30 (1957).
28. Wyo. Stat. §§ 35-82.1 to 82.9 (1961 Supp.).

its responsibility in terms of providing the necessary facilities and personnel necessary for treatment of the diagnosed illness when possible. If the community is to deprive the individual of his freedom because of what can be demonstrated to be a mental illness susceptible of diagnosis and treatment, it owes him the obligation of providing the facilities and personnel necessary to determine whether his isolation from society need be permanent. It is to be remembered that a person involuntarily committed to an institution has not committed a crime for which society exacts revenge, but rather, he has been found or suspected of being unable to meet some statutory standard with respect to his ability to control his physical conduct.

The historical background of the state's assumption of maintenance of an asylum or hospital for such persons has also had another effect. It has resulted in the State Hospital being the only facility offering in-patient care for those who seek currently authorized voluntary treatment in the state. All persons who could fit the present statutory definition of "insane," which includes "persons suitable for treatment" in the State Hospital, obviously include many who are able to pay for treatment and whose families desire to obtain early competent treatment. Until very recently, local treatment has been virtually nil. At most, there are only three private practitioners in the field of psychiatry in Wyoming. The only other professional psychiatrists are found in the Wyoming State Hosptial and the Veteran's Hospital at Sheridan. This situation is to be contrasted with the manner in which the community has responded with regard to the need for hospitals to care for physical illness. Of course, such a need was recognized long before there was any progress in the field of psychiatry. Instead of the state becoming involved in providing general hospitals, it was the county or special hospital district which undertook an expressed community responsibility for providing such facilities. The recent creation of local clinics and the establishment of the mental health facility in Cheyenne indicates an acknowledged need for treatment facilities in the local community. Such a need is primarily based upon advanced knowledge with respect to treatment of mental illness and increased flexibility in continuing supervision of the mentally ill in their own community. The point to be made is that there is a need for a reevaluation of the future of mental health treatment facilities with respect to the manner in which community responsibility is organized, and with specific attention given to existing statutory limitations upon county and city revenues.

Another observation to be made is with respect to the historic insistence upon the judicial determination that the person be committed as a pay or non-pay patient in the State Hospital as a part of the involuntary commitment procedure. Such an approach as this indicates that the insane pauper was considered a permanent social liability to be maintained in an asylum, and that any property of an insane person should be used to defray the burden thrust upon the tsate. A decision at the time of com-

mitment may have been deemed desirable so that the patient's status would be clearly fixed, although no real reason dictates that such a decision must be made incident to the hearing upon the person's sanity. In determining whether the patient should be committed as a pay patient, the court is to take into consideration whether the patient's estate is needed for the support of dependents.[29] The latter provision is obviously a recognition of the futility of substituting one public burden for another. The present statutes do permit the state to collect the expense incurred in caring for the patient if it is subsequently discovered he has acquired an estate. However, the only statute clearly designed to place responsibility for checking on estates of insane persons places a duty on county attorneys to maek a report semi-annually to the attorney general as to the value of all estates owned and held by persons committed to the Wyoming State Hosptial from such counties.[30]

In contrast to the foregoing emphasis upon determining the estate of the patient, the commitment law of 1941 makes the immediate family of the patient also liable for all costs if he is hospitalized pursaunt to one of the certification proceedings.[31] Hypothetically, it seems strange to place a parent in the position of having to choose between filing a judicial petition alleging that a minor child of his is insane and without an estate, or utilizing a medical certificate proceeding to get the child into the hospital and thereby incur full liability for all costs. By statutory definition the child's mental condition could be such as to make either proceeding applicable, but one differenec in result is to make the choice a determination of whether the state supports the child or the family continues to do so. In such a situation when the family may not be affluent, a perfectly legal procedure through judicial involuntary commitment is available which will ease their financial burden. In the absence of detailed study of costs, types of admissions, etc., it is difficult to evaluate the results of such a distinction with regard to the public burden. However, such a distinction is obviously one of form and without validity from the standpoint of providing care and treatment for those in need. It certainly will not result in lessening the public burden, but it could well lead to increasing the burden to the extent that persons would be inclined to take advantage of the judicial procedure whenever possible to present the patient as being without an estate at the time of commitment.

It should be recognized in this day and age, that all persons entering the State Hosptial are not going to remain there for the rest of their lives; that all patients do not require nor receive the same type of treatment; that costs incurred will vary from patient to patient; and that all patients are not paupers. Further, if the court cannot know the duration of hospitalization, it would seem impossible to determine whether the estate of the patient is needed for the support of his dependents so that he

29. Wyo. Stat. § 25-14 (1957).
30. Wyo. Stat. § 25-16 (1957).
31. Wyo. Stat. § 25-43 (1957).

should be committed as a non-pay patient. In this day and age when local and state governmental bodies are hard pressed to financially support their many services, no fault can be found with the idea that there should be some statutory guide intended to place financial responsibility upon the patient, or some well defined family relations, for costs of care. However, present statute makes the matter one to be decided at the initial time of commitment upon the basis of representations as to the patient's existing estate, and costs are assessed upon a per diem basis rather than services or care provided. A recent study reviews methods utilized in various states to determine and enforce private responsibility for the care of the mentally ill, and highlights the many problems involved in a major revision of a state reimbursement program.[32] To be considered are such problems as: (1) Definition of the persons who are liable for institutional care of the patient. (2) The amount responsible persons should pay and the manner of computing such amounts. (3) Establishment of criteria for the ability to pay to take care of situations in which obligors would simply be unable to remiburse the state for full maintenance costs. (4) The type of administrative machinery necessary to enforce any policy of financial responsibility as a procedure separate from determining the need for hospitalization.

EXISTING COMMITMENT STATUTES AND POSSIBLE CHANGES

Although there may be many areas within the general problem of mental health that may need legislative action, the recent effort to amend existing laws for the determination of insanity and commitment indicates this area as the one most in need of attention. One conference consisting of Wyoming residents has already made specific recommendations for changes in the law, which changes are in accord with the pattern of recommended and approved legislation in other states. The changes involved are primarily concerned with two areas of legal impact: (1) involuntary deprivation of the liberty of a person for the benefit of the community through procedures which assure due process of law; and (2) the effect upon the civil and contractual rights of a person resulting from hospitalization in a hosptial devoted to care and treatment of mental illness.

The recommendation that archaic terminology and terminology connoting criminal procedure be eliminated from hospitalization laws appears relatively simple and not to involve substantive change. However, the matter of terminology is perhaps the most difficult problem involved in the eyes of many lawyers in effecting any change. The recommendation is aimed at the use of the words "insane, lunatic, etc.," which are not meaningful medical descriptions, and such words as "prosecute, parole, etc." which give a connotation of a criminal proceeding. Perhaps the most troublesome word to eliminate is "insane," along with the statutory definition of an "insane person." Fear has been expressed that repeal of the

32. Mernitz, *Private Responsibility for the Costs of Care in Public Mental Institutions*, 36 Ind. L.J. 443 (1961).

definition would make difficult the application of other statutes which affect insane persons. The validity of such a fear is questionable if the legal profession would appreciate the fact that the present definition of "insane person" contained in Sections 25-1 and 25-2 (Wyo. Stat. 1957) was restricted to the purposes of the specific acts of the legislature in which they were cotnained, and that these acts were concerned with the methods by which a person would be declared insane and committed to the State Hospital and a guardian appointed for his property. Constitutional provision and other statutes do make reference to insane persons, but it is also true that other words such as non compos mentis, incompetent persons, person under disability, unsound mind, mentally incompetent, etc. are used in various statutes which are cited in the footnote hereto.[33] With the exception of the Code of Civil Procedure[34] none of

33. All refernces are to Wyo. Stat. (1957) unless otherwise indicated. Wyo. Const. Art. VI, § 61 (all idots and insane persons are excluded from the elective franchise); § 1-1 (in the interpretation of the Code of Civil Procedure, insane and lunatics include every species of mental deficiency or derangement); § 1-22 (saving of cause of action if person is insane); § 1-333 (exempts a person of unsound mind from limitation upon vacation of judgment); § 1-337 (exempts insane persons from limitation upon revival of judgment); § 1-138 (disqualifies persons of unsound mind as competent witnesses); § 1-140 (bars certain testimony where the adverse party is guardian of an insane person); § 1-717 (requires consent of guardian of insane parent to adoption of child); § 1-726 (if adult person is non compos mentis his guardian must consent to his adoption); §§ 1-930 to 934 (pertains to release of homestead when wife is insane); §§ 1-951 and 952 (authorizes guardian of insane person to act in cases of partitioning); § 1-1054 (extends Uniform Declaratory Judgment Act to a guardian of a lunatic); § 2-47 (person of sound mind may dispose of property by will); § 2-194 (excepts persons under legal disability from final settlement of estate); § 2-197 (refers to one of several executors becoming lunatic); § 3-2 (provides for appointment of guardians for the person and estates of incompetents or insane persons); § 3-13 (provides that nothing in the article impairs the power of the court to appoint a guardian to defend the interests of an incompetent or insane person); § 3-14 (a guardian who becomes insane may be removed); § 3-15 (discharge of the guardian of an insane person); § 3-61 (administrator under Uniform Veterans Guardianship Act shall be a party to appointment or removal of guardian of an incompetent or insane person in certain cases); § 3-63 (appointment of a guardian for a mentally incompetent ward who has been rated incompetent on examination by the Veteran's Administration); §-65 (makes appointment of a guardian for a mentally incompetent ward a condition precedent to the payment of money due from the Veteran's Administration); § 3-74 (authorizes commitment of insane persons to an agency of the United States government); § 5-71 (authority of court commissioner to make orders in cases of insanity and mental incompetence); §§ 7-239 to 7-243 (proceedings on plea of not guilty by reason of insanity); § 7-388 (inquiry if condemned prisoner appears insane); § 9-407 (transfer of inmates of Wyoming Industrial Institute who become insane to the state hospital); § 9-442 (excludes from admission to the Wyoming State Training School a person who is insane or of unsound mind); § 12-33 (crime to sell alchololic beverages to incompetent persons); § 13-29 (authorizes bank to pay checks drawn by a person under disability); § 14-77 (action under Uniform Illegtimacy Act does abate if mother becomes insane); § 15-352 (insane persons exempt from statutory bar of certain claims with respect to town sites); § 20-32 (marriage void if either party is insane); §§ 20-39 and 40 (divorce if spouse becomes incurably insane); §§ 20-44 and 45 (petition for annulment brought by next friend of lunatic); § 20-68 (effect of divorce for insanity upon legitimacy of children); § 22-18 (elective office becomes vacant upon encumbent becoming insane, becoming non compos mentis, or otherwise mentally incapable of holding office); §§ 25-1 to 25-32 (definitions of insane persons and provisions for commitment and appointment of guardian); §§ 25-33 to 25-43 (state hospital for the insane); §§ 25-44 to 25-48 (insane prisoners); § 27-92 (workmen's compensation payment on account of children to include children mentally incapacitated from earning); § 30-128 (revocation of certificate issued by coal mining examining board upon charges of mental disabilities); § 31-275 (driver's license may be revoked if

the foregoing terms are defined in the statute in which used, but are apparently left to judicial interpretation pursuant to the intent of the specific law.

None of the statutory provisions using the term "insane person," other than in Title 25, explicitly require a determination of insanity as provided in Title 25 with the possible exception of the granting of a divorce when a spouse is insane. The statute permits a divorce if "either husband or wife has become incurably insane . . . (and) shall have been duly and regularly confined in an insane asylum . . . for at least two years . . . (and) it shall appear to the court that such insanity is incurable. . . ."[35] The original law in this area was enacted in 1921 and subsequent amendments have not been significant other than to reduce the time of confinement in the asylum from five years to two years. In 1921 the statutory scheme was such that all insane persons were required to be in the State Hosptial, but in 1929 statute authorized the placing of the "not dangerously insane" in the custody of a friend.[36] Apparnetly a divorce would not be possible in the latter case. Another question with regard to the coverage of this law arises with respect to the voluntary patient in the State Hospital unless the phrase "duly and regularly confined" were construed to include any patient properly admitted to the hosptial. A literal construction would require use of the judicial involuntary commitment procedure so that the spouse would be "confined." The point to be made is that this existing grounds for divorce does not refect any recognition of the advances made in psychiatry but is based instead upon old concepts of hopelessly insane persons that must be kept confined. It would seem to make little difference from the standpoint of a public policy prescribing the grounds for divorce whether the spouse is confined in an insane asylum or whether the spouse has been subjected to observation and treatment for at least two years before a prognosis of incurability is made. At this point an evaluation should be made as to whether the diagnosis indicates that the condition of the spouse is such that the matrimonial status should be terminated. Seemingly, such a determination should be made upon considerations reflecting the spouse's ability to comprehend the continuing obligations of marriage as well as the ability to fulfill them, instead of hearing evidence with respect to the present statutory definition of insanity. However, it must be concluded that any repeal of the existing definition of insanity and other provisions of Title 25 should be accompanied with an amendment of the divorce law to provide certainty in the latter's application.

driver is incompetent); §§ 39-1 and 39-56 (refer to tax revenues for the support of the poor and lunatic § 39-132 (lunatic may redeem property sold for taxes within one year after disability is removed); § 40A-4-405 (relates to effect of incompetence of bank customer and necessity of knowledge of an adjudication of incomptence); §41-15 (welfare department may appoint custodian of assistance granted to an incompetent person); §§ 42-26, 42-31, and 42-34 (exclude inmates in any institution for mental diseases or who have been diagnosed as having psychosis from entitlements for old age assistance, the blind and the permanently and totally disabled.

34. Wyo. Stat. § 1-1 (1957).
35. Wyo. Stat. § 20-39 (1957).
36. Wyo. Stat. § 25-18 (1957).

The Wyoming Constitution provides that "all idiots, insane persons, and persons convicted of infamous crimes, unless restored to civil rights, are excluded from the elective franchise."[37] What the term "insane" means in this context is not established by statute or by case law.[38] It is not at all certain that a person must have been found insane pursuant to procedures contained in Title 25 to prevent his voting, and statutes defining qualified electors give no assistance other than to indicate that insanity would be the basis for the challenge of a voter.[39] Inclusion in the constitution of this limitation upon the elective franchise was probably intended to limit the voting privilege to those persons mentally capable of exercising a reasoned discretion. It would appear questionable that a person "suitable for treatment" in the State Hospital should be automatically considered as barred from voting, but such is the effect of a literal application of the current statutory definition of insanity if it is applied.

Another illustration of the use of the term insanity is found in the criminal procedure statutes in which a plea of insanity may be entered. The definition of insanity contained in Title 25 has no application to such a plea as judicial decisions in the area of criminal law have long applied other definitions. However, other provsions relating to criminal procedure require a determination of sanity prior to execution of a death sentence if it appears the convict is insane.[40] No definition of insanity is presented for use in this context although the manner of making the determination is prescribed. Presumably such a convict who develops manifestations of "insanity" would have his status determined pursuant to the criminal law concept of insanity. However, another law now codified in Title 25 provides for the transfer to the State Hospital of a person convicted of any crime found to be of "unsound mind or insane," and requires that such determination be made in the same manner in cases of inquiry into the sanity of other persons of unsound mind.[41] Obviously these two laws are directed towards serving different purposes. One is concerned with stopping the execution of a condemned prisoner who has become insane, and the other is concerned with obtaining the transfer of a prisoner when it is found that he has become a suitable person for treatment in the State Hospital because of unsoundness of mind.

In considering possible effects resulting from a repeal of existing usages and definitions of "insane person" in Title 25 and the enactment of a new hospitalization law utilizing a medical approach, close scrutiny must be given to the existing provisions in Title 25 for the appointment of guardians of insane persons. Existing provisions reflect the primary concern of the last century with the property of the insane person. Much of Title 25 is derived from the original probate code dealing with appoint-

37. Wyo. Const. Art. VI, § 6.
38. See The Mentally Disabled and the Law 28.
39. Wyo. Stat. § 22-118.3 (1961 Supp.).
40. Wyo. Stat. § 7-388 (1957).
41. Wyo. Stat. §§ 25-46 and 25-47 (1957).

ment of guardians for insane persons, with additions from subsequent laws providing for commitment which retained provision for appointment of guardians. To a large extent both guardianship and hospitalization are currently dependent upon the same definition of an insane person. This situation has caused the observation that every case of commitment is treated as equivalent to legal incompetency.[42] A person may be committed to the hospital because he fits the definition of insanity that pertains to "a suitable subject for treatment and care" in the hospital. This does not necessarily mean that he is incapable of managing his own business or arranging to have it taken care of, but the law directs the appointment of a guardian of the person and estate of an insane person. The phrase "mentally incompetent" is used frequently as a synonym for "insane person,"[43] but in at least one instance a distinction is made between being "dangerously insane" and being "mentally incompetent."[44] The point to be made is that there should be a clear-cut distinction in Wyoming statutes between the incompetence of a person from the standpoint of his ability to understand the nature and consequences of acts having legal effects and the question of whether the person is in need of treatment or institutional custody because of some illness of the mind. Such a distinction is one that exists in fact and that has been judicially recognized. To illustrate the point, the Wyoming Supreme Court has observed that the requirements of mental soundness in a legal sense, so as to constitute testamentary capacity, are not as rigid as those in a medical sense and a mind legally sound may be medically unsound.[45] In another case the court recognized that an appointment of a guardian based upon a finding that the ward is in fact mentally incompetent, and went on to review the guardianship proceedings to determine that the guardian was appointed due to the ward's *physical* inability to manage and administer her property.[46] Another relevant summary with respect to the manner in which the courts measure legal competence with reference to contractual obligations is set forth in the following approved instruction to a jury: "On the other hand, when it appears that either party was in a situation as to his health, physical condition or as to his state of mind which makes it probable that he acted without deliberation, and without an undrestanding of the act with which he was charged, the instrument itself may be disregarded."[47]

The foregoing illustrates that courts do not accept a determination with regard to a person's mental competency in one context as determinative in all others. Such an approach is undoubtedly correct inasmuch as there are many standards by which a person's legal capacity are measured.

42. Address of Professor Henry Weihofen, Proceedings of Jackson Conference, supra note 2 at p. 23.
43. E.g., Wyo. Stat. § 25-14 (1957).
44. Wyo. Stat. § 25-18 (1957).
45. In re Johnstons' Estate, 53 Wyo. 332, 181 P.2d 611 (1947).
46. In re Merrill's Estate, 80 Wyo. 276, 341 P.2d 506 (1959).
47. Union Pacific Ry. Co. v. Sidney, 198 Fed. 784 at 789 (10th Cir. 1912).

In addition to the question of standards for determining when a guardian should be appointed or the person be admitted to a mental institution, there are standards for the execution of contracts and conveyances; the execution of wills; the right to sue and be sued and related questions of tolling the statute of limitations; the issuance and revocation of professional licenses; termination of an agency relationship when the principal becomes incompetent; revocation of licenses of incompetent drivers; requisite mental capacity to vote, hold public office or sit on jury; disabilities entitling veterans to Veterans Administration benefits and the need for local guardianship; and the mental capacity to enter into marriage or provide grounds for annulment or divorce.[48] Wyoming statutes specifying various degrees of mental capacity necessary for certain purposes have been previously noted. These statutes generally prohibit the exercise of certain rights by persons described as lunatics, idiots, the insane, non compos mentis, incompetent, etc. The conclusion of the American Bar Foundation's study is generally applicable to Wyoming when it states that this type of statute:

"1. not only neglects to say whether a person's rights are suspended upon entering a mental hospital and becoming a patient there, but also fails to differentiate voluntary from compulsory hospitalization;
2. fails to state whether a formal legal adjudication of mental disbility is required before personal and property rights are restricted;
3. does not say whether non-hospitalized mentally ill persons are prohibited from exercising particular rights;
4. is silent as to the rights of a person who, although adjudged incompetent, does not need hospitalization;
5. fails to indicate whether the prohibition applies to a person who is in fact incompetent but has not been so adjudicated;
6. neglects to spell out administrative procedures enforcing the suspension of rights;
7. is unclear about whether the denial of rights is based on the premise that any person who is in need of hospitalization is incapable of exercising them or whether it is based on the premise that a person who does not possess the ability to manage his own affairs is also unqualified to exercise other rights; and
8. fails to specify when or how reinstatement of any suspended rights occur."[49]

While it is of interest to note the foregoing problems at this time, they are not necessarily involved in a current decision with respect to a change in terminology applicable to the area of hospitalization procedures, but serve to emphasize that current commitment laws are not a part of a single comprehensive statutory scheme relating to the mentally disabled. A change in terminology in laws providing for the hospitalization of mentally ill persons could be very helpful in laying a proper foundation

48. See The Mentally Disabled and the Law, ch. 9.
49. Id. at 263.

for future legislation, or the application of existing law, by clearly defining the legal impact of hospitalization.

However, in addition to legislating a new description of the person who may be hospitalized because of mental illness, the current blending of commitment with guardianship proceedings would also necessitate legislation to provide standards for determining when a person is legally incompetent so as to require appointment of a guardian. Such legislation could go no further than to carefully pick out of existing parts of Title 25 those provisions which relate to incompetency and appointment of a guardian, or it could go further and attempt to remedy the uncertainty that currently exists with respect to all consequences of a finding of incompetency. Such a separation between the requisite mental condition warranting hospitalization and the condition amounting to legal incompetency would permit effectuating the recommendation that hospitalization by itself should not deprive a person of his civil rights and should not be necessarily related to appointment of a guardian for property.

Although hospitalization procedure for mentally ill persons should be designed so as to not aggravate a patient's condition and necessitate hearing matters concerning the extent of his estate rather than his mental condition, there is a danger that a patient's property rights might be seriously injured if left unattended by a person legally qualified to act in his behalf. In such situations it may be necessary to initiate guardianship proceedings in addition to a hospitalization proceeding.

Turning to legal questions that arise incident to the involuntary hosptialization procedure which deprives a person of his liberty, initial emphasis must be placed upon statutory definition of the conditions which warrant such action. By present defenition a person is insane if by reason of unsoundness of mind he is (1) incapable of managing his own estate, (2) or is dangerous to himself or others if permitted to go at large, (3) or is in such condition of mind and body as to be a fit subject for care and treatment in a hosptial for the insane.[50] A finding of insanity does entitle the patient to admission to the State Hospital, and if he is judicially found to be without an estate he is entitled to be supported by the state. However, the statute places a *duty* on the court to commit an insane person to the State Hosptial only if it appears that the person is "so insane or disturbed in mind, as to endanger his own person and property, or the person and property of another or others if allowed to go at large." If the person is not dangerously insane, the court may order "the said person so found mentally incompetent, to be placed in the custody of some friend or relative who will assume his custody and care and maintenance without expense to the state or county."[51] To petition the court for a hearing on a person's insanity uder existing law, the petitioner must aver that the person "is insane and a fit subject for care and treatment in the State

50. Wyo. Stat. § 25-1 (1957).
51. Wyo. Stat. § 25-18 (1957).

Hosiptal for the insane at Evanston,"[52] or there apparently may be an averment that the person is mentally incompetent to manage his affairs.[53] In either case a hearing on the person's insanity will be held. The statutory form of commitment order recites "having been so declared insane or incompetent, is hereby ordered to be committed to the Wyoming State Hospital."[54] While it is not clear, it appears that a person can be involuntarily deprived of his liberty upon his condition being shown to fit any one of the three qualifications for showing insanity.

If there is to be a change in the Wyoming law dealing with hospitalization of mentally ill persons which eliminates the use of the term insane person, it is essential that statute provide a clear definition of the degree of mental illness which justifies involuntary hospitalization for the guidance of courts, hospitals, physicians and the alleged mentally ill person. Present Wyoming law does not present any clear cut distinction between involuntary or voluntary admission with respect to the degree of mental illness. Further, it would appear very questionable that a person should be involuntarily hospitalized simply because he is incapable of managing his estate as a result of unsoundness of mind. Involuntary restraint is generally recognized as being justified when a danger to persons or property results from the person's freedom. In addition, many states recognize involuntary restraint as being justified when necessary for the patient's care and treatment,[55] which is a consideration currently appearing in the Wyoming statute under the description of a person who is a fit subject for care and treatment in the Wyoming State Hospital. Senate File 92 followed the lead of a recommended model draft act in providing the following definitions:

1. Mentally ill indivdiual. An individual having a psychiatric or other disease which substantially impairs his mental health.
2. For purposes of any type of involuntary hospitalization of the patient, it must be found that the proposed patient: (1) is mentally ill, and (2) because of his illness is likely to injure himself or others if not cared for in a hospital, or (3) is in need of care of treatment in hospital and, because of his illness, lacks sufficient capacity to make responsible decisions with respect to his hospitalization.

If it be agreed that present statutes do authorize the involuntary commitment of a patient who is in such condition of mind and body as to be a fit subject for care and treatment in a hospital for the insane, the foregoing proposed definitions do not reflect any major change in existing policy with respect to enlarging the class of persons who may be involuntarily restrained. The above cited definitions have been described as

52. Wyo. Stat. § 25-5 (1957).
53. Wyo. Stat. § 25-6 (1957).
54. Wyo. Stat. § 25-17 (1957).
55. See The Mentally Disabled and the Law, ch. 2.

precise as any of the existing statutes although the American Bar Foundation study does present some differences of opinion as to proper interpretation of the phrase "lacks sufficient capactiy to make responsible decisions with respect to his hospitalization."[56] Perhaps the most readily appreciated argument by the non-medical person in favor of some criteria in addition to that of the prospective patient constituting a danger to persons and property is that there must be authority for hospitalizing non-dangerous persons to prevent their condition from deteriorating to the point that they will constitute a danger.

Given a statutory statement of the criteria which will be used to determine when a person may be involuntarily hospitalized, the next question which presents itself is with regard to the proper agency to apply the criteria in any given case. Under current involuntary proceedings two different types of bodies may make the initial insanity determination, subject to approval of the court. Under one procedure, the district judge shall appoint a lunacy commission, consisting of two physicians when available, who are to examine the person and then sit as a jury in a hearing upon the petition alleging the person's insanity.[57] The alternative procedure is for the court to call a six man jury and conduct the hearing as in civil actions. The jury may be used when deemed advisable by the court, if the alleged insane person or a relative of friend so demands, if the prosecuting attorney so demands, or if the lunacy commission fails to make a finding. If the jury is used, testimony must be had from at least one physician who has examined the person.[58] In evaluating the foregoing procedure it is to be borne in mind that the determination of insanity results in two consequences: commitment and appointment of a guardian. To the extent that a jury is utilized to determine that a person's mental health is of such a nature as to warrant involuntary hospitalization the procedure has been subject to criticism on the grounds that it is comparable to calling in the neighbors to diagnose scarlet fever or meningitis; that a jury trial may aggravate a patient's condition; that the jury system has been used to embarrass and humiliate the family; and that the jury acts upon the advice of physicians who testified rather than any other basis.[59]

While it may be that the initial diagnosis of a prospective patient's state of mental health is properly a matter for the medical profession and that the resulting medical opinion will normally be controlling, the ultimate decision to involuntarily hospitalize a patient is a social decision which must balance the individual's liberty against the social policy of the state.[60] That a jury is not the only proper agency to decide whether the patient's illness is of such a nature that the statute requires his hospitaliza-

56. Id. at 20.
57. Wyo. Stat. §§ 25-4, 25-7, 25-8 (1957).
58. Wyo. Stat. § 25-9 (1957).
59. The Mentally Disabled and the Law 27; Address of Governor J. J. Hickey, Proceedings of Jackson Conference, supra note 2 at 12.
60. See The Mentally Disabled and the Law 31.

tion is amply evidenced by laws of other states which have abandoned use of the jury. Only thirteen states authorize the use of jury to decide the question of hospitalization.[61] Senate File No. 92 omitted any provision for use of a jury and provided for an informal judicial hearing which is in accord with a recommended model draft act. Other states make use of a board composed of medical persons and at least one judge or attorney.[62]

Regardless of what may be considered a proper form of agency to make the decision as to involuntary hospitalization, due consideration must be given to existing constitutional provisions with respect to the right of trial by jury. Other state courts have not produced any single test as to whether an individual has a right to jury trial incident to involuntary hospitalization proceedings and any attempt to abolish the right to demand a jury trial in Wyoming might result in challenge based upon the state constitution.[63] The problem is one that can be completely resolved only by future judicial decision or constitutional amendment.

Inasmuch as involuntary hospitalization involves a deprivation of liberty, any procedure must meet the constitutional requirement that no person shall be deprived of life, liberty or property without due process of law.[64] In addition to the major questions of properly defining the conditions which will warrant involuntary hospitalization and the agency which finally determines their application, consideration should be given to provisions for notice, an opportunity to be heard, representation by counsel, and detention of the patient. The existing provisions for notice to an alleged insane person simply provide that he shall "have due notice," and also provide that he need not be present at the hearing if the court so determines upon the recommendation of a physician.[65] No provision is made for serving notice on any other person who could be expected to prepare and represent the interests of the alleged insane person, which makes the hearing a rather perfuctory matter *ex parte* in nature. Needless to say, all of the safeguards of due process involving notice and hearing are of no value unless the alleged mentally ill person is capable of understanding the nature of the proceedings. Only seventeen states provide for the appointment of counsel in all hospitalization cases in which the person alleged to be mentally ill has none.[66] Wyoming has no such provision in present commitment laws, but does provide for counsel in cases of divorce because of insanity. The law proposed in Senate File No. 92 did make provision for the court appointing counsel to be compensated out of court funds of the county.

Recommendations for non-judicial temporary hospitalization involve detention of the patient and present due process questions when the patient

61. Id. at 28.
62. Supra note 60.
63. Supra note 61.
64. Wyo. Const. Art. 1, § 6.
65. Wyo. Stat. § 25-8 (1957).
66. The Mentally Disabled and the Law 29.

expresses opposition to hospitalization. Many states have some form of temporary hospitalization law, as well as specific statute providing for emergency detention. Space limitations preclude description of such laws from other states, but it may be noted that present Wyoming statutes do authorize such detention of alleged insane persons. A revision of current hospitalization laws could do much to clarify whether the present medical certification hosptialization proceedings may be used when the patient objects to hospitalization.[67] The lack of specific authority in any public official to forcefully remove the patient to the hospital makes the present certification proceeding available only when the patient acquiesces. Existing authority for emergency detention consists of directing peace officers to take any insane person into custody and then file an affidavit which will start the involuntary commitment procedure in operation.[68] Seemingly, the objective of emergency detention should be to enable the quickest possible admittance to the State Hospital for treatment, but under existing law it appears to consist solely of removing a dangerous person from the community.

Another recent feature introduced in the laws of other states and recommended hospitalization laws is a form of bill of rights for the hosptialized mentally ill. No such statement of rights can be found in existing Wyoming laws other than a declaration that the insane poor are entitled to the same care and treatment as paying patients.[69] Senate File No. 92 included such rights as: (1) an obligation upon the head of a hospital to inform involuntary patients of their right to release and assist them in making and presenting requests for release; (2) the right to humane care and treatment in accordance with the highest standards of medical practice; (3) restrictions upon the use of mechanical restraints; (4) the right to communicate by sealed mail, to receive visitors, and have a medical review by the hospital staff upon written request (except as may be restricted as necessary for the welfare of the patient); (5) the right to have a review of all proceedings incident to hospitalization by way of habeas corpus or direct appeal as in civil actions; (6) the right to exercise all non-judicial civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and vote, unless he has been specifically adjudicated incompetent to exercise the same and has not been restored to legal capacity.

SUMMARY

A new era has arrived in the knowledge and methods of medical science applicable to the diagnosis and treatment of mental illness, and although the relevant stautory history of Wyoming reflects some recognition of such advances, members of the medical profession immediately concerned with caring for these currently designated by statute as "insane"

67. Address of Mr. Dudley Miles, Proceedings of Jackson Conference, note 2 at 39.
68. Wyo. Stat. § 25-6 (1957).
69. Wyo. Stat. § 25-36 (1957).

have actively provided information as to wherein current commitment procedures interfere with achievement of the best care and treatment of the patient. No real opposition has been voiced as to the desirability of effecting a change in the commitment laws, but there has been a divergence of views with respect to the scope of any change, as well as its effect upon areas of the law which are not immediately concerned with commitment procedures. Insofar as such objections pertain to matters of terminology, it appears that the dependence of other areas of law upon definitions of insanity found in Title 25 is not great. The intermingling in Title 25 of commitment procedures with the appointment of guardians for incompetents encompasses two entirely different problems which should be statutorily separated by the enactment of laws which will distinctly separate hosptialization procedures from determinations of legal competency. Such a separation would provide an understandable basis for future change or application of existing law with respect to questions of legal competency. While some possible conflicts may result with the law as it relates to incompetency in some contexts, the lack of judicial decisions and statutory clarity in such areas indicate that such conflicts are not immediate problems which should be posed as obstacles to the changes needed at the present time in the area of hosptializing the mentally ill. It can be anticipated that legislation will be introduced again in the next legislative session which will attempt to correct the legal objections upon which a veto of Senate File No. 92 was based. Any such effort will be deserving of careful consideration by the legal profession.