

2011 DRAFTING REQUEST

Bill

Received: **09/12/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB: **-3840**

For: **Glenn Grothman (608) 266-7513**

By/Representing: **Jamie Julian**

May Contact:

Drafter: **phurley**

Subject: **Courts - evidence
Criminal Law - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Grothman@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Use of hearsay evidence in a preliminary hearing

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	phurley 09/19/2011	wjackson 09/26/2011	jfrantze 09/27/2011	_____	lparisi 09/27/2011		
/1	phurley 01/17/2012	jdyer 01/17/2012	phenry 01/17/2012	_____	sbasford 01/17/2012	sbasford 01/23/2012	

FE Sent For:

None

<END>

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1/17 JLD
[Handwritten signatures]
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/P1	phurley	/p/wlj 9/26		J 9/27			

FE Sent For:

<END>

Drafting Request

To: LRB Drafting
From: Sen. Glenn Grothman
Date: September 12, 2011
Re: Drafting Request – Changes to preliminary hearings

I would like to get a bill drafted which does the following:

- 1) **Changes 970.03 to say or mean “the finding of probable cause may be based upon hearsay evidence in whole or in part.”**
- 2) **908.07 – A statement which is hearsay....shall (not “may”) be allowed in a preliminary examination.**

Please contact my office at 266-7513 if you have any questions.

136

Hurley, Peggy

From: Julian, Jamie
Sent: Monday, September 12, 2011 2:18 PM
To: Hurley, Peggy
Subject: FW: Drafting Request_Prelim Hearsay.doc

Attachments: Drafting Request_Prelim Hearsay.doc

Sincerely,
Jamie Julian
Legislative Aide
Office of Senator Grothman

(800) 662-1227
(608) 266-7513

From: Julian, Jamie
Sent: Friday, September 09, 2011 3:20 PM
To: Hanaman, Cathlene
Subject: Drafting Request_Prelim Hearsay.doc



Drafting
quest_Prelim Hears

Jamie Julian
Legislative Aide, 20th Senate District
266-7513

Hurley, Peggy

From: Hurley, Peggy
Sent: Monday, September 12, 2011 3:21 PM
To: Julian, Jamie
Subject: RE: Drafting Request_Prelim Hearsay.doc

Hi Jamie,

I have a couple of questions regarding your intent for this draft.

First, I am not sure how to read the submitted language for s. 908.07, but now that I've had a chance to review the statutes in question, I'd recommend one of the following, if either reflects your intent:

A) Repealing s. 908.07 altogether. I think, after taking a look at s. 970.03, that I will be repealing s. 970.03 (11). To the extent that s. 908.07 set forth a hearsay exception for the purposes of s. 970.03 (11), 908.07 will no longer be necessary and I can put all references to hearsay being sufficient to prove probable cause in chapter 970. *yes.*

B) If you do not want to repeal s. 908.07, I would suggest, for the sake of consistency with other evidence statutes, amending it to read: "A statement that is hearsay is admissible in a preliminary examination" or "A statement that is hearsay is not excluded, in a preliminary examination, by the hearsay rule."

Second, do you want the provisions regarding hearsay in preliminary hearings to also apply to findings of probable cause in juvenile cases under s. 970.032 and 970.035? Please let me know. Thank you!

Peggy Hurley
Legislative Reference Bureau
608 266 8906

yes

all. d(u)(c)

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Jamie Julian
Legislative Aide, 20th Senate District
266-7513



Wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

9.19.11
by 10-4-11

Gen Cat

AN ACT ..., relating to: the admissibility of hearsay evidence at a preliminary examination hearing.

Analysis by the Legislative Reference Bureau

Under current law, if an adult is charged with a felony (or, under certain circumstances, if a juvenile is charged with a violation that would be a crime if committed by an adult), a preliminary examination is conducted to determine whether there is probable cause to believe that the person committed the crime as charged. In the case of a juvenile, the preliminary examination is also used to determine whether the juvenile should be tried in adult court or referred to juvenile court.

Under current law, hearsay evidence (a statement, other than one made by a person who is testifying in court, that is offered to prove the truth of the matter asserted) is generally inadmissible in court proceedings, including in a preliminary examination. Current law offers some exceptions to the rule that hearsay is inadmissible, which generally require some indication that the hearsay is reliable or trustworthy. Current law also includes an exception at a preliminary examination to establish property ownership, a victim's lack of consent to entry upon or destruction of private property, and certain elements of identify theft crimes.

STET
felony

identity

Under this bill, hearsay evidence is admissible at a preliminary examination. Under the bill, the court may rely on hearsay, in whole or in part, to determine whether there is probable cause that the defendant committed a crime.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 970.03 (11) of the statutes is repealed.

SECTION 2. 970.038 of the statutes is created to read:

970.038 Preliminary examination; hearsay exception. (1)

Notwithstanding s. 908.02, hearsay is admissible in a preliminary examination

* under ^{s.} 970.03, 970.032, and 970.035.

(2) A court may base its finding of probable cause under s. 970.03 (7) or (8), 970.032 (2), or 970.035 in whole or in part on hearsay admitted under sub. (1).

SECTION 3. 908.07 of the statutes is repealed.

(END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2870/P1
PJH:wj:jf

2011 BILL

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

today
no changes
set for 1/19 to 1/11

4

Regen

1 AN ACT *to repeal* 908.07 and 970.03 (11); and *to create* 970.038 of the statutes;
2 relating to: the admissibility of hearsay evidence at a preliminary
3 examination.

Analysis by the Legislative Reference Bureau

Under current law, if an adult is charged with a felony (or, under certain circumstances, if a juvenile is charged with a violation that would be a crime if committed by an adult), a preliminary examination is conducted to determine whether there is probable cause to believe that the person committed the crime as charged. In the case of a juvenile, the preliminary examination is also used to determine whether the juvenile should be tried in adult court or referred to juvenile court.

Under current law, hearsay evidence (a statement, other than one made by a person who is testifying in court, that is offered to prove the truth of the matter asserted) is generally inadmissible in court proceedings, including in a preliminary examination. Current law offers some exceptions to the rule that hearsay is inadmissible, which generally require some indication that the hearsay is reliable or trustworthy. Current law also includes an exception at a preliminary examination to establish property ownership, a victim's lack of consent to entry upon or destruction of private property, and certain elements of identity theft crimes.

Parisi, Lori

From: Julian, Jamie
Sent: Monday, January 23, 2012 11:13 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-2870/1 Topic: Use of hearsay evidence in a preliminary hearing

Please Jacket LRB 11-2870/1 for the SENATE.