968.465 **(3)** (title) ~~WARRANT UPON ORAL~~ TELEPHONE AND OTHER REMOTE TESTIMONY; DUPLICATE WARRANT PROCEDURE.

SECTION 473. 968.12 (3) (b) of the statutes is renumbered 968.465 (3) (a) and amended to read:

968.465 **(3)** (a) ~~*Application.* The person who is requesting the warrant~~ When the applicant for a search warrant is testifying outside the presence of the judge, the judge shall place the applicant under oath or affirmation and arrange for all testimony to be recorded. The applicant shall prepare a duplicate ~~original~~ warrant and read the duplicate ~~original~~ warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the ~~original~~ warrant. ~~The~~ Thereafter, but before signing the original warrant, the judge may direct that the warrant be modified.

SECTION 474. 968.12 (3) (c) and (f) of the statutes are consolidated, renumbered 968.465 (3) (b) and amended to read:

968.465 **(3)** (b) ~~*Issuance.*~~ If the judge determines that there is probable cause for the warrant, the judge shall ~~order the issuance of a~~ issue the warrant by ~~directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. In addition, the person shall sign his or her own name on the duplicate original warrant. The judge shall immediately sign~~ signing the original warrant and enter on the face of the original warrant the exact time when the warrant was ~~ordered to be~~ issued. ~~The finding of probable cause for a warrant upon oral testimony shall be based on the same kind of evidence as is sufficient for a warrant upon affidavit. (f) *Entry of time of execution.*~~ The judge shall direct the applicant to sign the judge's name on the duplicate warrant. In addition the applicant shall sign his or her own name on the duplicate warrant. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate ~~original~~ warrant.

1 **SECTION 475.** 968.12 (3) (e) of the statutes is repealed.

2 **SECTION 476.** 968.12 (4) of the statutes is renumbered 968.465 (7).

3 **SECTION 477.** 968.13 (title) of the statutes is renumbered 968.475 (title) and
4 amended to read:

5 **968.475** (title) ~~**Search warrant; property**~~ **Property subject to seizure.**

6 **SECTION 478.** 968.13 (1) (intro.) of the statutes is renumbered 968.475 (2)
7 (intro.) and amended to read:

8 968.475 **(2)** (intro.) A search warrant may authorize the seizure of any of the
9 following:

10 **SECTION 479.** 968.13 (1) (a) of the statutes is renumbered 968.475 (1) (a) and
11 amended to read:

12 968.475 **(1)** (a) "Contraband~~, which~~" includes ~~without limitation because of~~
13 ~~enumeration~~, but is not limited to, lottery tickets, gambling machines, or other
14 gambling devices~~,~~; lewd, obscene, or indecent written matter, pictures, sound
15 recordings, or motion picture films~~,~~; forged money or written instruments and the
16 tools, dies, machines, or materials for making them~~,~~; and controlled substances, as
17 defined in s. 961.01 (4), and controlled substance analogs, as defined in s. 961.01
18 (4m), and the implements for smoking or injecting them. ~~Gambling~~ "Contraband"
19 does not include machines or other gambling devices possessed by a shipbuilding
20 business that complies with s. 945.095 ~~are not subject to this section~~.

21 **SECTION 480.** 968.13 (1) (b), (c) and (d) of the statutes are renumbered 968.475
22 (2) (b), (c) and (d).

23 **SECTION 481.** 968.13 (2) of the statutes is renumbered 968.475 (1) (intro.) and
24 amended to read:

25 968.475 **(1)** (intro.) In this section~~, "documents"~~:

(b) "Documents" includes, but is not limited to, books, papers, records, recordings, tapes, photographs, films, or computer or electronic data.

SECTION 482. 968.135 (title) of the statutes is renumbered 968.705 (title).

SECTION 483. 968.135 of the statutes is renumbered 968.705 (2) and amended to read:

968.705 **(2)** Upon the request of the attorney general or a district attorney and upon a showing of probable cause under s. ~~968.12~~ 968.465, a court shall issue a subpoena requiring the production of documents~~, as specified in s. 968.13 (2)~~. The documents shall be returnable to the court which issued the subpoena~~. Motions to the court, including, but not limited to, motions~~ or to the officer serving the subpoena when the subpoena directs. Any person filing a motion regarding a subpoena issued under this subsection, including a motion to quash or limit the subpoena, shall ~~be addressed to~~ file it with the court which issued the subpoena. Any person who unlawfully refuses to produce the documents under this subsection may be compelled to do so ~~as provided in~~ under ch. 785. This section does not limit or affect any other subpoena authority provided by law.

SECTION 484. 968.14 of the statutes is renumbered 968.485 (2) and amended to read:

968.485 **(2)** USE OF FORCE. All necessary force may be used to execute a search warrant or to ~~effect any entry into~~ enter any building or property or part thereof to execute a search warrant.

SECTION 485. 968.15 of the statutes is renumbered 968.495, and 968.495 (1), as renumbered, is amended to read:

968.495 **(1)** A search warrant ~~must~~ may not be executed ~~and returned not~~ more than 5 days after the date of issuance.

1 **SECTION 486.** Subchapter III (title) of chapter 968 [precedes 968.155] of the
2 statutes is created to read:

3 **CHAPTER 968**

4 SUBCHAPTER III

5 GRAND JURIES

6 **SECTION 487.** 968.16 of the statutes is renumbered 968.485 (3) and amended
7 to read:

8 968.485 **(3)** DETENTION AND SEARCH OF PERSONS ~~ON PREMISES~~ PRESENT. ~~The person~~
9 While executing the search warrant, a law enforcement officer may reasonably
10 detain any occupant of the premises and may reasonably detain and search any
11 person on the premises ~~at the time~~ to protect ~~himself or herself~~ the law enforcement
12 officer from attack or to prevent the disposal or concealment of any item particularly
13 described in the search warrant.

14 **SECTION 488.** 968.17 of the statutes is renumbered 968.506.

15 **SECTION 489.** 968.18 of the statutes is renumbered 968.605.

16 **SECTION 490.** 968.19 of the statutes is renumbered 968.615 and amended to
17 read:

18 **968.615 Custody of property seized.** ~~Property~~ A law enforcement officer
19 shall safely keep property seized under a search warrant or validly seized without
20 a warrant ~~shall be safely kept by the officer, who~~ and may leave it in the custody of
21 the sheriff and take a receipt ~~therefor,~~ for it. The property shall be kept so long as
22 necessary for the purpose of being produced as evidence on any trial.

23 **SECTION 491.** 968.20 (title) of the statutes is renumbered 968.625 (title).

24 **SECTION 492.** 968.20 (1) of the statutes is renumbered 968.625 (1), and 968.625
25 (1) (intro.) and (a), as renumbered, are amended to read:

968.625 **(1)** (intro.) Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the ~~circuit~~ court for the county in which the property was seized or where the search warrant was returned. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband or property covered under sub. (1m) or (1r) or s. 173.12 (1m), 173.21 ~~(4)~~ (1), or ~~968.205~~ 968.645, returned if any of the following applies:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence~~; or~~.

SECTION 493. 968.20 (1m) of the statutes is renumbered 968.625 (1m), and 968.625 (1m) (b), as renumbered, is amended to read:

968.625 **(1m)** (b) If the seized property is a dangerous weapon or ammunition, the property shall not be returned to any person who committed a crime involving the use of the dangerous weapon or the ammunition. The property may be returned to the rightful owner under this section if the owner had no prior knowledge of and gave no consent to the commission of the crime. Property which may not be returned to an owner under this subsection shall be disposed of under ~~subs. (3) and (4)~~ s. 175.27.

SECTION 494. 968.20 (1r) of the statutes is renumbered 968.625 (1r).

SECTION 495. 968.20 (2) of the statutes is renumbered 968.625 (2) and amended to read:

968.625 **(2)** Property not required for evidence or use in further investigation, unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 (1m), 173.21 (1), or ~~968.205~~ 968.645, may be returned by the officer to the person from whom it was seized without the requirement of a hearing.

SECTION 496. 968.20 (3) and (4) of the statutes are renumbered 175.27 (1) and (2) and amended to read:

175.27 **(1)** (a) ~~First~~ Unless the dangerous weapons or ammunition may be returned to the owner under s. 968.625 (1m) (b), first class cities shall dispose of dangerous weapons or ammunition seized 12 months after taking possession of them ~~if the owner, authorized under sub. (1m), has not requested their return and~~ if the dangerous weapon or ammunition is not required for evidence or use in further investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding. Disposition procedures shall be established by ordinance or resolution and may include provisions authorizing an attempt to return to the rightful owner any dangerous weapons or ammunition which appear to be stolen or are reported stolen. If enacted, any such provision shall include a presumption that, if the dangerous weapons or ammunition appear to be or are reported stolen, an attempt will be made to return the dangerous weapons or ammunition to the authorized rightful owner. If the return of a seized dangerous weapon other than a firearm is not requested by its rightful owner under ~~sub.~~ s. 968.625 (1) and is not returned by the officer under ~~sub.~~ s. 968.625 (2), the city shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement agency to retain and use the motor vehicle. If the return of a seized firearm or ammunition is not requested by

its authorized rightful owner under ~~sub.~~ s. 968.625 (1) and is not returned by the officer under ~~sub.~~ s. 968.625 (2), the seized firearm or ammunition shall be shipped to and become property of the state crime laboratories. A person designated by the department of justice may destroy any material for which the laboratory has no use or arrange for the exchange of material with other public agencies. In lieu of destruction, shoulder weapons for which the laboratories have no use shall be turned over to the department of natural resources for sale and distribution of proceeds under s. 29.934 or for use under s. 29.938.

(b) Except as provided in par. (a) ~~or~~, sub. ~~(1m)~~ (2), or ~~(4)~~ s. 968.625 (1m), a city, village, town, or county or other custodian of a seized dangerous weapon or ammunition, if the dangerous weapon or ammunition is not required for evidence or use in further investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding, shall make reasonable efforts to notify all persons who have or may have an authorized rightful interest in the dangerous weapon or ammunition of the application requirements under ~~sub.~~ s. 968.625 (1). If, within 30 days after the notice, an application under ~~sub.~~ s. 968.625 (1) is not made and the seized dangerous weapon or ammunition is not returned by the officer under ~~sub.~~ s. 968.625 (2), the city, village, town, or county or other custodian may retain the dangerous weapon or ammunition and authorize its use by a law enforcement agency, except that a dangerous weapon used in the commission of a homicide or a handgun, as defined in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm is not so retained, the city, village, town, or county or other custodian shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure under s. 973.075 (4). If a firearm or ammunition is

not so retained, the city, village, town, or county or other custodian shall ship it to the state crime laboratories and it is then the property of the laboratories. A person designated by the department of justice may destroy any material for which the laboratories have no use or arrange for the exchange of material with other public agencies. In lieu of destruction, shoulder weapons for which the laboratory has no use shall be turned over to the department of natural resources for sale and distribution of proceeds under s. 29.934 or for use under s. 29.938.

(2) Any property seized, other than property covered under s. ~~968.205~~ 968.645, that poses a danger to life or other property in storage, transportation, or use and that is not required for evidence or further investigation shall be safely disposed of upon command of the person in whose custody they are committed. The city, village, town, or county shall by ordinance or resolution establish disposal procedures. Procedures may include provisions authorizing an attempt to return to the rightful owner substances which have a commercial value in normal business usage and do not pose an immediate threat to life or property. If enacted, any such provision shall include a presumption that if the substance appears to be or is reported stolen an attempt will be made to return the substance to the rightful owner.

SECTION 497. 968.205 of the statutes is renumbered 968.645, and 968.645 (1) (a) and (b), (2) and (3) (b) 2., as renumbered, are amended to read:

968.645 **(1)** (a) "Custody" means actual custody of a person under a sentence of imprisonment, custody of a probationer, parolee, or person on extended supervision by the department of corrections, actual or constructive custody of a person pursuant to a dispositional order under ch. 938, supervision of a person, whether in institutional care or on conditional release, pursuant to a commitment order under ~~s. 971.17~~ subch. III of ch. 975, and supervision of a person under ch. 980,

whether in detention before trial or while in institutional care or on supervised release pursuant to a commitment order.

(b) "Discharge date" means the date on which a person is released or discharged from custody that resulted from a criminal action, a delinquency proceeding under ch. 938, or a commitment proceeding under ~~s. 971.17~~ subch. III of ch. 975 or ch. 980 or, if the person is serving consecutive sentences of imprisonment, the date on which the person is released or discharged from custody under all of the sentences.

(2) Except as provided in sub. (3), if physical evidence that is in the possession of a law enforcement agency includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication, or commitment under ~~s. 971.17~~ subch. III of ch. 975 or s. 980.06 ~~and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense~~, the law enforcement agency shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

(3) (b) 2. Submits a written request for retention of the evidence to the law enforcement agency or district attorney.

SECTION 498. 968.21 of the statutes is renumbered 968.465 (4).

SECTION 499. 968.22 of the statutes is renumbered 968.515.

SECTION 500. 968.23 of the statutes is renumbered 968.525.

SECTION 501. 968.24 of the statutes is renumbered 968.555.

SECTION 502. 968.25 of the statutes is renumbered 968.565 and amended to read:

968.565 Search during temporary questioning. When a law enforcement officer has stopped a person for temporary questioning ~~pursuant to~~ under s. ~~968.24~~ 968.555 and reasonably suspects that ~~he or she~~ the law enforcement officer or another individual is in danger of physical injury, the law enforcement officer may search ~~such~~ the person for weapons or any instrument ~~or~~, article, or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. If the law enforcement officer finds such a weapon or instrument, or any other property possession of which the law enforcement officer reasonably believes may constitute the commission of a crime, or which may constitute a threat to ~~his or her~~ the safety of the law enforcement officer, the law enforcement officer may take it and keep it until the completion of the questioning, at which time the law enforcement officer shall either return it, if lawfully possessed, or arrest the person so questioned.

SECTION 503. 968.255 (title) of the statutes is renumbered 968.585 (title).

SECTION 504. 968.255 (1) of the statutes is renumbered 968.585 (1), and 968.585 (1) (a) 3. and 4. and (b), as renumbered, are amended to read:

968.585 **(1)** (a) 3. Taken into custody under s. 938.19 and there are reasonable grounds to believe the juvenile has committed an act which if committed by an adult would be ~~covered~~ a misdemeanor under subd. ~~1. or~~ 2. or a felony.

4. Arrested for any misdemeanor not specified in subd. 2., any other violation of state law punishable by forfeiture, or any local ordinance, if there is probable cause to believe the person is concealing a weapon or a thing which may constitute evidence of the offense for which he or she is detained.

(b) "Strip search" means a search in which a detained person's genitals, pubic area, buttock, or anus, or a detained female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

SECTION 505. 968.255 (2) (intro.) of the statutes is renumbered 968.585 (2) (intro.) and amended to read:

968.585 **(2)** (intro.) No person may ~~be the~~ subject ~~of~~ another to a strip search unless ~~he or she is a detained person and if~~ all of the following apply:

SECTION 506. 968.255 (2) (a) of the statutes is renumbered 968.585 (2) (ar) and amended to read:

968.585 **(2)** (ar) The person conducting the search is of the same sex as the person detained, unless the search is a body cavity search ~~conducted~~ that is not prohibited under sub. (3)~~;~~.

SECTION 507. 968.255 (2) (b), (c), (d) and (e) of the statutes are renumbered 968.585 (2) (b), (c), (d) and (e) and amended to read:

968.585 **(2)** (b) The detained person is not exposed to the view of any person whose presence is not reasonably needed for conducting the search~~;~~.

(c) The search is not reproduced through a visual or sound recording~~;~~.

(d) A person conducting the search has obtained the prior written ~~permission~~ authorization of the chief~~,~~ or sheriff ~~or law enforcement administrator~~ of the jurisdiction where the person is detained, or his or her designee, unless there is probable cause to believe that the detained person is concealing a weapon~~; and~~.

(e) ~~A~~ The person conducting the search prepares a report identifying the person detained, all persons conducting the search, the time, date, and place of the search, and the written authorization required by par. (d), and provides a copy of the report to the person detained.

1 **SECTION 508.** 968.255 (3) of the statutes is renumbered 968.585 (3) and
2 amended to read:

3 968.585 **(3)** No person other than a physician, physician assistant, or
4 registered nurse licensed to practice in this state may conduct a body cavity search.

5 **SECTION 509.** 968.255 (4) of the statutes is renumbered 946.77 and amended
6 to read:

7 **946.77 Improper search of a detained person.** ~~A person who~~ Whoever
8 intentionally violates ~~this section may be fined not more than $1,000 or imprisoned~~
9 ~~not more than 90 days or both~~ s. 968.585 is guilty of a Class B misdemeanor.

10 **SECTION 510.** 968.255 (5) of the statutes is renumbered 968.585 (5).

11 **SECTION 511.** 968.255 (6) of the statutes is renumbered 968.585 (6) and
12 amended to read:

13 968.585 **(6)** A law enforcement agency, as defined in s. 165.83 (1) (b), may
14 promulgate rules concerning strip searches ~~which at least~~ that, at a minimum, meet
15 the ~~minimum~~ requirements of this section.

16 **SECTION 512.** 968.255 (7) of the statutes is renumbered 968.585 (7) and
17 amended to read:

18 968.585 **(7)** This section does not apply to a search of any person who meets any
19 of the following criteria:

20 (a) ~~Is~~ The person is serving a sentence, pursuant to a conviction, in a jail, ~~state~~
21 prison, or house of correction.

22 (b) ~~Is~~ The person is placed in or transferred to a juvenile correctional facility,
23 as defined in s. 938.02 (10p), or a secured residential care center for children and
24 youth, as defined in s. 938.02 (15g).

(c) ~~Is~~ The person is committed, transferred, or admitted under ch. 975, 2011 stats., or ch. 51, 971 or 975.

(d) ~~Is~~ The person is confined as a condition of probation under s. 973.09 (4).

SECTION 513. 968.256 of the statutes is renumbered 968.59 and amended to read:

968.59 Search of ~~physically disabled person~~ persons with a physical disability. (1) In this section, ~~"physically disabled~~ "person with a physical disability" means a person who requires an assistive device for mobility, including, but not limited to, a wheelchair, brace, crutch, or artificial limb.

(2) A search of a ~~physically disabled~~ person with a physical disability shall be conducted in a careful manner. If a search of a ~~physically disabled~~ person with a physical disability requires the removal of an assistive device or involves a person lacking sensation in some portion of his or her body, the search shall be conducted with extreme care by a person who has had training in handling ~~physically disabled~~ persons with a physical disability.

SECTION 514. 968.26 of the statutes is renumbered 968.105, and 968.105 (3), as renumbered, is amended to read:

968.105 **(3)** The extent to which the judge may proceed in an examination under sub. (1) or (2) is within the judge's discretion. The examination ~~may be adjourned and may~~ shall be secret unless the judge orders otherwise. Unless the judge orders the proceeding not to be secret, the record and the testimony taken is not open to public inspection. The record and testimony taken is open to inspection by the district attorney, and, if a criminal prosecution follows, it is subject to discovery under s. 971.43 (2) (br). Any witness examined under this section may have counsel present at the examination but the counsel shall not be allowed to

examine his or her client, cross–examine other witnesses, or argue before the judge. ~~Subject to s. 971.23, if the proceeding is secret, the record of the proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used.~~ A court, on the motion of a district attorney, may compel a person to testify or produce evidence under s. ~~972.08~~ 967.17 (1). The person is immune from prosecution as provided in s. ~~972.08~~ 967.17 (1), subject to the restrictions under s. ~~972.085~~ 967.18.

SECTION 515. 968.265 of the statutes is renumbered 968.595.

SECTION 516. 968.27 (intro.) of the statutes is renumbered 968.305 (intro.) and amended to read:

968.305 Definitions. (intro.) In ~~ss. 968.28 to 968.375~~ this subchapter:

SECTION 517. 968.27 (1) of the statutes is renumbered 968.305 (1) and amended to read:

968.305 **(1)** "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed.

SECTION 518. 968.27 (2) of the statutes is renumbered 968.305 (2).

SECTION 519. 968.27 (3) of the statutes is renumbered 968.305 (3) and amended to read:

968.305 **(3)** "Contents" when used with respect to any wire, electronic, or oral communication, includes any information concerning the substance, purport, or meaning of that communication.

SECTION 520. 968.27 (4) of the statutes is renumbered 968.305 (4), and 968.305 (4) (intro.), as renumbered, is amended to read:

968.305 **(4)** (intro.) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature wholly or partially transmitted by a wire, radio, electromagnetic, photoelectronic, or photooptical system. "Electronic communication" does not include any of the following:

SECTION 521. 968.27 (5) of the statutes is renumbered 968.305 (5).

SECTION 522. 968.27 (6) of the statutes is renumbered 968.305 (6) and amended to read:

968.305 **(6)** "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of those communications.

SECTION 523. 968.27 (7) of the statutes is renumbered 968.305 (7), and 968.305 (7) (intro.) and (a) (intro.) and 1., as renumbered, are amended to read:

968.305 **(7)** (intro.) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than one of the following:

(a) (intro.) Any telephone or telegraph instrument, equipment, or facilities, or any component ~~thereof, which is~~ of a telephone or telegraph instrument, equipment, or facilities, that is any of the following:

1. Furnished to the subscriber or user by a provider of electronic or wire communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business~~; or~~.

1 **SECTION 524.** 968.27 (8) of the statutes is renumbered 968.305 (8).

2 **SECTION 525.** 968.27 (9) of the statutes is renumbered 968.305 (9) and amended
3 to read:

4 968.305 **(9)** "Intercept" means the aural or other acquisition of the contents of
5 any wire, electronic, or oral communication through the use of any electronic,
6 mechanical, or other device.

7 **SECTION 526.** 968.27 (10) of the statutes is renumbered 968.305 (10) and
8 amended to read:

9 968.305 **(10)** "Investigative or law enforcement officer" means any officer of
10 this state or political subdivision thereof, who is empowered by the laws of this state
11 to conduct investigations of or to make arrests for offenses enumerated in ss. ~~968.28~~
12 968.315 to ~~968.37~~ 968.405, and any attorney authorized by law to prosecute or
13 participate in the prosecution of those offenses.

14 **SECTION 527.** 968.27 (11) of the statutes is renumbered 968.305 (11) and
15 amended to read:

16 968.305 **(11)** "Judge" means the judge sitting at the time an application is made
17 under s. ~~968.30~~ 968.335 or his or her successor.

18 **SECTION 528.** 968.27 (12) and (13) of the statutes are renumbered 968.305 (12)
19 and (13).

20 **SECTION 529.** 968.27 (14) of the statutes is renumbered 968.305 (14).

21 **SECTION 530.** 968.27 (14g) of the statutes is renumbered 968.305 (14g).

22 **SECTION 531.** 968.27 (15) of the statutes is renumbered 968.305 (15).

23 **SECTION 532.** 968.27 (16) (intro.), (a) and (b) of the statutes are consolidated,
24 renumbered 968.305 (16) and amended to read:

968.305 **(16)** "User" means any person ~~who or entity~~ that~~: (a) Uses~~ uses an electronic communication service~~;~~ and ~~(b) Is duly~~ is authorized by the provider of the service to engage in that use.

SECTION 533. 968.27 (17) of the statutes is renumbered 968.305 (17).

SECTION 534. 968.28 of the statutes is renumbered 968.315 and amended to read:

968.315 Application for court order to intercept communications. The attorney general together with the district attorney of any county may approve a request of an investigative or law enforcement officer to apply to the chief judge of the judicial administrative district for the county where the interception is to take place for an order authorizing or approving the interception of wire, electronic, or oral communications. The chief judge may under s. ~~968.30~~ 968.335 grant an order authorizing or approving the interception of wire, electronic, or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense for which the application is made. The authorization shall be permitted only if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, sexual exploitation of a child under s. 948.05, trafficking of a child under s. 948.051, child enticement under s. 948.07, use of a computer to facilitate a child sex crime under s. 948.075, or soliciting a child for prostitution under s. 948.08, or any conspiracy to commit any of the foregoing offenses.

SECTION 535. 968.29 of the statutes is renumbered 968.325 and amended to read:

968.325 Authorization for disclosure and use of intercepted wire, electronic, or oral communications. (1) Any investigative or law enforcement officer who, by any means authorized by ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520, has obtained knowledge of the contents of any wire, electronic, or oral communication, or evidence derived therefrom, may disclose the contents to another investigative or law enforcement officer only to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may use the contents only to the extent the use is appropriate to the proper performance of the officer's official duties.

(3) (a) Any person who has received, by any means authorized by ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520 or by a like statute of any other state, any information concerning a wire, electronic, or oral communication or evidence derived therefrom intercepted in accordance with ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405, may disclose the contents of that communication or that derivative evidence only while giving testimony under oath or affirmation in any proceeding in any court or before any magistrate or grand jury in this state, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.

(b) In addition to the disclosure provisions of par. (a), any person who has received, in the manner described under s. ~~968.31~~ 968.345 (2) (b), any information concerning a wire, electronic, or oral communication or evidence derived therefrom, may disclose the contents of that communication or that derivative evidence while

giving testimony under oath or affirmation in any proceeding described in par. (a) in which a person is accused of any act constituting a felony, and only if the party who consented to the interception is available to testify at the proceeding or if another witness is available to authenticate the recording.

(4) No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520, may lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subs. (1) and (2). The contents and any evidence derived therefrom may be used under sub. (3) when authorized or approved by the judge who acted on the original application where the judge finds on subsequent application, made as soon as practicable but no later than 48 hours, that the contents were otherwise intercepted in accordance with ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520 or by a like statute.

SECTION 536. 968.30 of the statutes is renumbered 968.335, and 968.335 (title), (1) (intro.), (b) (intro.), 1., 2. and 3. and (e), (3) (intro.), (a) and (d), (4) (intro.), (a), (b), (c) and (d), (5), (6), (7) (a) and (b), (8), (9) and (10), as renumbered, are amended to read:

968.335 (title) **Procedure for interception of wire, electronic, or oral communications.** **(1)** (intro.) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing upon oath or affirmation to the court and shall state the applicant's

1 authority to make the application and may be upon personal knowledge or
2 information and belief. Each application shall include the following information:
3 (b) (intro.) A full and complete statement of the facts and circumstances relied
4 upon by the applicant, to justify the applicant's belief that an order should be issued,
5 including all of the following:
6 1. Details of the particular offense that has been, is being, or is about to be
7 committed~~;~~.
8 2. A particular description of the nature and location of the facilities from which
9 or the place where the communication is to be intercepted~~;~~.
10 3. A particular description of the type of communications sought to be
11 intercepted~~; and~~.
12 (e) A full and complete statement of the facts concerning all previous
13 applications known to the individual authorizing and making the application, made
14 to any court for authorization to intercept, or for approval of interceptions of, wire,
15 electronic, or oral communications involving any of the same persons, facilities, or
16 places specified in the application, and the action taken by the court on each such
17 application~~; and~~.
18 **(3)** (intro.) Upon the application the court may enter an ex parte order, as
19 requested or as modified, authorizing or approving interception of wire, electronic,
20 or oral communications, if the court determines on the basis of the facts submitted
21 by the applicant that all of the following exist:
22 (a) There is probable cause for belief that an individual is committing, has
23 committed, or is about to commit a particular offense enumerated in s. ~~968.28~~
24 968.315.

(d) There is probable cause for belief that the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person.

(4) (intro.) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify all of the following:

(a) The identity of the person, if known, whose communications are to be intercepted~~;~~.

(b) The nature and location of the communications facilities which, or the place where authority to intercept is granted and the means by which such interceptions shall be made~~;~~.

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates~~;~~.

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application~~; and~~.

(5) No order entered under this section may authorize or approve the interception of any wire, electronic, or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. The 30–day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with sub. (1) and the court making the findings required by sub. (3). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event be for longer than 30 days. Every order and

extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in 30 days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception.

(6) Whenever an order authorizing interception is entered pursuant to ss. ~~968.28~~ 968.315 to ~~968.33~~ 968.365, the order may require reports to be made to the court which issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the court requires.

(7) (a) The contents of any wire, electronic, or oral communication intercepted by any means authorized by ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order or extensions thereof all such recordings and records of an intercepted wire, electronic, or oral communication shall be filed with the court issuing the order and the court shall order the same to be sealed. Custody of the recordings and records shall be wherever the judge handling the application shall order. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be properly kept and preserved for 10 years. Duplicate recordings and other records may be made for use

or disclosure pursuant to the provisions for investigations under s. ~~968.29~~ 968.325 (1) and (2). The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived therefrom under s. ~~968.29~~ 968.325 (3).

(b) Applications made and orders granted under ss. ~~968.28~~ 968.315 to ~~968.33~~ 968.365 together with all other papers and records in connection therewith shall be ordered sealed by the court. Custody of the applications, orders, and other papers and records shall be wherever the judge shall order. Such applications and orders shall be disclosed only upon a showing of good cause before the judge and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

(8) The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This 10–day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(9) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state, or a political subdivision thereof, may move before the trial court or the court granting the original warrant to suppress the contents of any intercepted wire,

electronic, or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted; the order of authorization or approval under which it was intercepted is insufficient on its face; or the interception was not made in conformity with the order of authorization or approval. The motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405. The judge may, upon the filing of the motion by the aggrieved person, make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

(b) In addition to any other right to appeal, the state shall have the right to appeal from any of the following:

1. ~~From an~~ An order granting a motion to suppress made under par. (a) if the attorney general or district attorney certifies to the judge or other official granting such motion that the appeal is not entered for purposes of delay and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court adopts~~; or~~.

2. ~~From an~~ An order denying an application for an order of authorization or approval, and such an appeal shall be ex parte and shall be in camera in preference to all other pending appeals in accordance with rules promulgated by the supreme court.

1 **(10)** Nothing in ss. ~~968.28~~ 968.315 to ~~968.375~~ 968.405 shall be construed to
2 allow the interception of any wire, electronic, or oral communication between an
3 attorney and a client.

4 **SECTION 537.** Subchapter IV (title) of chapter 968 [precedes 968.305] of the
5 statutes is created to read:

6 **CHAPTER 968**

7 SUBCHAPTER IV

8 INTERCEPTION OF ELECTRONIC

9 COMMUNICATION

10 **SECTION 538.** 968.31 of the statutes is renumbered 968.345, and 968.345 (title),
11 (1), (2) (intro.), (a), (b), (c), (e), (f), (i) and (j), (2m) (intro.), (a) and (b) and (3), as
12 renumbered, are amended to read:

13 **968.345** (title) **Interception and disclosure of wire, electronic, or oral**
14 **communications prohibited. (1)** Except as otherwise specifically provided in ss.
15 196.63 or ~~968.28~~ 968.315 to ~~968.30~~ 968.335, whoever commits any of the following
16 acts ~~enumerated in this section~~ is guilty of a Class H felony:

17 (a) Intentionally intercepts, attempts to intercept, or procures any other person
18 to intercept or attempt to intercept, any wire, electronic, or oral communication.

19 (b) Intentionally uses, attempts to use, or procures any other person to use or
20 attempt to use any electronic, mechanical, or other device to intercept any oral
21 communication.

22 (c) Discloses, or attempts to disclose, to any other person the contents of any
23 wire, electronic, or oral communication, knowing or having reason to know that the
24 information was obtained through the interception of a wire, electronic, or oral

communication in violation of this ~~section~~ subsection or under circumstances constituting violation of this ~~section~~ subsection.

(d) Uses, or attempts to use, the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this ~~section~~ subsection or under circumstances constituting violation of this ~~section~~ subsection.

(e) Intentionally discloses the contents of any oral, electronic, or wire communication obtained by authority of ss. ~~968.28, 968.29~~ 968.315, 968.325, and ~~968.30~~ 968.335, except as therein provided.

(f) Intentionally alters any wire, electronic, or oral communication intercepted on tape, wire, or other device.

(2) (intro.) It is not unlawful under ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405:

(a) For an operator of a switchboard, or an officer, employee, or agent of any provider of a wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of a wire or electronic communication service shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) For a person acting under color of law to intercept a wire, electronic, or oral communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

(c) For a person not acting under color of law to intercept a wire, electronic, or oral communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

(e) For any person to intercept any radio communication that is transmitted by any of the following:

1. ~~By any~~ Any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress~~;~~.

2. ~~By any~~ Any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public~~;~~.

3. ~~By a~~ A station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services~~; or~~.

4. ~~By any~~ Any marine or aeronautical communications system.

(f) For any person to engage in any conduct that is any of the following:

1. ~~Is prohibited~~ Prohibited by section 633 of the communications act of 1934~~; or~~.

2. ~~Is excepted~~ Excepted from the application of section 705 (a) of the communications act of 1934 by section 705 (b) of that act.

(i) To use a pen register or a trap and trace device as authorized under ss. ~~968.34~~ 968.376 to ~~968.37; or~~ 968.405.

(j) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the

provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of the service.

(2m) (intro.) Any person whose wire, electronic, or oral communication is intercepted, disclosed, or used in violation of ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use, the communication, and shall be entitled to recover from any such person all of the following:

(a) Actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher~~;~~.

(b) Punitive damages~~; and~~.

(3) Good faith reliance on a court order or on s. ~~968.30~~ 968.335 (7) shall constitute a complete defense to any civil or criminal action brought under ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405.

SECTION 539. 968.32 of the statutes is renumbered 968.355 and amended to read:

968.355 Forfeiture of contraband devices. Any electronic, mechanical, or other intercepting device used in violation of s. ~~968.31~~ 968.345 (1) may be seized as contraband by any peace officer and forfeited to this state in an action by the department of justice under ch. 778.

SECTION 540. 968.33 of the statutes is renumbered 968.365.

SECTION 541. 968.34 of the statutes is renumbered 968.376, and 968.376 (1) and (2), as renumbered, are amended to read:

968.376 **(1)** Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under s. ~~968.36~~ 968.395 or 18 USC 3123 or 50 USC 1801 to 1811.

(2) The prohibition of sub. (1) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service if any of the following applies:

(a) ~~Relating~~ The use relates to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service~~;~~.

(b) ~~To~~ The use is to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service~~; or~~.

(c) ~~Where the~~ The consent of the user of that service has been obtained.

SECTION 542. 968.35 of the statutes is renumbered 968.385, and 968.385 (1), as renumbered, is amended to read:

968.385 **(1)** The attorney general or a district attorney may make application for an order or an extension of an order under s. ~~968.36~~ 968.395 authorizing or approving the installation and use of a pen register or a trap and trace device, in writing under oath or equivalent affirmation, to a ~~circuit~~ court for the county where the device is to be located.

SECTION 543. 968.36 of the statutes is renumbered 968.395, and 968.395 (1), (2) (e), (4) and (5), as renumbered, are amended to read:

968.395 **(1)** Upon an application made under s. ~~968.35~~ 968.385, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the applicant has certified to the court that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

(2) (e) Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under s. ~~968.37~~ 968.405.

(4) Extensions of the order may be granted, but only upon an application for an order under s. ~~968.35~~ 968.385 and upon the judicial finding required by sub. (1). The period of extension shall be for a period not to exceed 60 days.

(5) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct ~~that~~ all of the following:

(a) ~~The~~ That the order be sealed until otherwise ordered by the court~~; and~~.

(b) ~~The~~ That the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

SECTION 544. 968.37 of the statutes is renumbered 968.405, and 968.405 (1), (2), (3), (4) and (5), as renumbered, are amended to read:

968.405 **(1)** Upon the request of the attorney general, a district attorney, or an officer of a law enforcement agency authorized to install and use a pen register under ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the investigative or law

enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the assistance is directed by a court order under s. ~~968.36~~ 968.395 (5) (b).

(2) Upon the request of the attorney general, a district attorney, or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install the device ~~forthwith~~ immediately on the appropriate line and shall furnish the investigative or law enforcement officer all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by a court order under s. ~~968.36~~ 968.395 (5) (b). Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated by the court, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance under this section shall be reasonably compensated for the reasonable expenses incurred in providing the facilities and assistance.

(4) No cause of action may lie in any court against any provider of a wire or electronic communication service, its officers, employees, or agents or other specified

persons for providing information, facilities, or assistance in accordance with the terms of a court order under s. ~~968.36~~ 968.395.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405.

SECTION 545. 968.38 of the statutes is renumbered 968.725, and 968.725 (2) (intro.), (2m) (intro.), (3) (d), (4) (intro.) and (5) (intro.), as renumbered, are amended to read:

968.725 **(2)** (intro.) In a criminal action under s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district attorney shall apply to the ~~circuit~~ court for his or her county to order the defendant to submit to an HIV test and to a test or a series of tests to detect the presence of a sexually transmitted disease, each of which tests shall be administered by a health care professional, and to disclose the results of the test or tests as specified in sub. (4) (a) to (c):

(2m) (intro.) In a criminal action under s. 946.43 (2m), the district attorney shall apply to the ~~circuit~~ court for his or her county for an order requiring the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

(3) (d) If the court has determined that the defendant is not competent to proceed under s. ~~971.14 (4)~~ 975.34 and suspended the criminal proceedings, at any time after the determination that the defendant is not competent to proceed.

(4) (intro.) The court shall set a time for a hearing on the matter under sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the defendant is

bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. ~~971.13~~ 975.30 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross–examine witnesses. If the court finds probable cause to believe that the victim or alleged victim has had contact with body fluid of the defendant that constitutes a significant exposure, the court shall order the defendant to submit to an HIV test and to a test or a series of tests to detect the presence of a sexually transmitted disease. The test shall be performed by a health care professional. The court shall require the health care professional who performs the test to disclose the test results to the defendant, to refrain from making the test results part of the defendant's permanent medical record, and to disclose the results of the test to any of the following:

(5) (intro.) The court shall set a time for a hearing on the matter under sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. ~~971.13~~ 975.30 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross–examine witnesses. If the court finds probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried

a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant, the court shall order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the defendant. The court shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following:

SECTION 546. 968.40 (title) of the statutes is renumbered 968.155 (title) and amended to read:

968.155 (title) ~~**Grand**~~ **Convening a grand jury; duration.**

SECTION 547. 968.40 (1) of the statutes is renumbered 968.155 (1) and amended to read:

968.155 **(1)** SELECTION OF PROSPECTIVE GRAND ~~JURY LIST~~ JURORS. Any judge may, in writing, order the clerk ~~of circuit court~~ to ~~select~~ compile a grand jury list within a specified reasonable time. The clerk shall select from the prospective juror list for the county the names of not fewer than ~~75~~ 35 nor more than 150 persons to constitute the prospective grand juror list. The list shall be kept secret.

SECTION 548. 968.40 (3) of the statutes is renumbered 968.155 (2) and amended to read:

968.155 **(2)** EXAMINATION OF PROSPECTIVE GRAND JURORS. ~~At the time set for~~ When the prospective grand jurors ~~to~~ appear, the judge shall and the district attorney ~~or other prosecuting officer~~ may examine ~~the prospective jurors~~ them under

oath or affirmation relative to their qualifications to serve as grand jurors ~~and the~~. The judge shall excuse those who are disqualified~~,~~ and may excuse others for any reason ~~which~~ that seems proper to the judge.

SECTION 549. 968.40 (4) of the statutes is renumbered 968.155 (3) and amended to read:

968.155 **(3)** ADDITIONAL GRAND JURORS. If, after ~~such~~ the examination described in sub. (2), fewer than 17 grand jurors remain, additional prospective grand jurors shall be selected, summoned and examined until there are at least 17 qualified grand jurors on the grand jury.

SECTION 550. 968.40 (6), (7) and (8) of the statutes are renumbered 968.155 (4), (5) and (6) and amended to read:

968.155 **(4)** TIME GRAND JURORS TO SERVE. ~~Grand~~ The judge may discharge the grand jury at any time. Otherwise, grand jurors shall serve for a period of 31 consecutive days unless more days are necessary to complete service in a particular proceeding. ~~The judge may discharge the grand jury at any time.~~

(5) ORDERS FILED WITH CLERK. All orders ~~mentioned in~~ under this section shall be filed with the clerk ~~of court~~.

(6) INTERCOUNTY RACKETEERING AND CRIME. When a grand jury is convened ~~pursuant to~~ under this section to investigate unlawful activity under s. 165.70, and ~~such~~ the activity involves more than one county, including the county where the petition for such grand jury is filed, then if the attorney general approves, all expenses of such proceeding shall be charged to the appropriation under s. 20.455 (1) (d).

SECTION 551. 968.41 of the statutes is renumbered 968.165 and amended to read:

968.165 Oath or affirmation of grand jurors. Grand jurors shall, before they begin ~~performance of~~ their duties, solemnly swear or affirm that they will diligently inquire as to all matters and things ~~which~~ that come before the grand jury; that they will keep all matters ~~which~~ that come before the grand jury secret; that they will indict no person for envy, hatred, or malice; that they will not leave any person unindicted for love, fear, favor, affection, or hope of reward; and that they will indict truly, according to the best of their understanding.

SECTION 552. 968.42 of the statutes is renumbered 968.175 and amended to read:

968.175 Presiding juror and clerk. The grand jury shall select from their number a presiding juror and a clerk. The clerk of the grand jury shall preserve the minutes of the proceedings before ~~them~~ the grand jury and all exhibits.

SECTION 553. 968.43 of the statutes is renumbered 968.185 and amended to read:

968.185 Reporter; oath; salary; assistant. (1) Every grand jury shall, when ordered by the judge ordering ~~such~~ the grand jury, employ one or more reporters to attend ~~their~~ its sessions and to ~~make~~ record and transcribe ~~a~~ verbatim ~~record of~~ all proceedings had before ~~them~~ it.

(2) Before assuming the duties under this section, each reporter shall make and file an oath or affirmation ~~faithfully~~ to record and transcribe faithfully all of the proceedings before the grand jury and to keep secret the matters ~~relative~~ related to the proceedings. Each reporter shall be paid out of the county treasury of the county in which the service is rendered ~~such~~ a sum for compensation and expenses ~~as shall be~~ audited and allowed as reasonable by the court ordering the grand jury. Each reporter may employ on his or her own account a person to transcribe the testimony

and proceedings of the grand jury, but before entering upon the duties under this subsection, the person shall be required to make and file an oath or affirmation similar to that required of each reporter.

(3) ~~Any~~ Except as provided in s. 968.295, any person who violates an oath or affirmation required by sub. (2) is guilty of a Class H felony.

SECTION 554. 968.44 of the statutes is renumbered 968.195 and amended to read:

968.195 ~~**Witnesses**~~ **Oaths to witnesses.** The presiding juror of every grand jury and the district attorney ~~or other prosecuting officer~~ who is before the grand jury may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the grand jury for the purpose of testifying in any matter of which the witnesses have cognizance. At the request of the court, the presiding juror shall return to the court a list, under his or her hand, of all witnesses who are sworn before the grand jury. That list shall be filed by the clerk of ~~circuit~~ court.

SECTION 555. 968.45 (title) of the statutes is renumbered 968.203 (title) and amended to read:

968.203 (title) ~~**Witness rights**~~ **Counsel for witnesses; transcripts.**

SECTION 556. 968.45 (1) of the statutes is renumbered 968.203 (1) (a) and amended to read:

968.203 **(1)** (a) Any witness appearing before a grand jury may have counsel present, but the counsel shall not be allowed to examine his or her client, cross–examine other witnesses, or argue before the judge. Counsel may consult with his or her client while before a grand jury. ~~If the prosecuting officer,~~

(b) A district attorney, an attorney for a witness, or a grand juror who believes that a conflict of interest exists for an attorney ~~or attorneys~~ to represent more than one witness before a grand jury~~, the person so believing~~ may make a motion before the presiding judge to disqualify the attorney from representing more than one witness before the grand jury. ~~A~~ The court shall hold a hearing ~~shall be held~~ upon notice with the burden ~~upon~~ on the moving party to establish the conflict.

SECTION 557. 968.45 (2) of the statutes is renumbered 968.203 (2) and amended to read:

968.203 **(2)** No grand jury transcript may be made public until the trial of ~~anyone~~ a person indicted by the grand jury, and then only that portion of the transcript that is relevant and material to the case at hand may be made public. This subsection does not limit the defendant's rights to discovery under s. ~~971.23~~ 971.43 (2) (a).

SECTION 558. Subchapter V (title) of chapter 968 [precedes 968.455] of the statutes is created to read:

CHAPTER 968

SUBCHAPTER V

SEARCH AND SEIZURE

SECTION 559. 968.46 of the statutes is renumbered 968.215 and amended to read:

968.215 Secrecy of motions. Notwithstanding s. 757.14, all motions, including but not limited to those for immunity or a privilege, brought by a ~~prosecuting officer~~ district attorney or witness appearing before a grand jury shall be made, heard, and decided in complete secrecy and not in open court if the

~~prosecuting officer or witness~~ person bringing the motion or exercising the immunity or privilege so requests.

SECTION 560. Subchapter VI (title) of chapter 968 [precedes 968.465] of the statutes is created to read:

CHAPTER 968

SUBCHAPTER VI

SEARCH WARRANTS

SECTION 561. 968.465 (5) and (6) of the statutes are created to read:

968.465 **(5)** SEALED WARRANT. A judge may order that a search warrant and supporting documents be held under seal for a specified period and may extend or reduce the period for good cause shown. The judge shall make the decision in his or her discretion, after balancing the reasons for secrecy against the defendant's and the public's right of access.

(6) PERMITTING EXECUTION WITHOUT ANNOUNCEMENT. A search warrant may authorize the executing officer to enter the premises designated in the warrant without announcement and delay under s. 968.485 (1) when the applicant shows that there is a reasonable suspicion that, in the particular circumstances, announcement and delay would be dangerous or futile or would inhibit the effective investigation of the crime by any means including but not limited to the destruction of evidence.

SECTION 562. 968.47 of the statutes is renumbered 968.225 and amended to read:

968.225 ~~District~~ Duties of district attorney~~, when to attend~~. Whenever required by the grand jury ~~it shall be the duty of~~, the district attorney of the county ~~to~~ shall attend ~~them~~ grand jury proceedings for the purpose of examining witnesses in ~~their~~ the presence ~~or of giving them~~ of the grand jury, give the grand jury advice

upon any legal matter, and ~~to~~ issue subpoenas and other process to bring ~~up~~ witnesses before the grand jury.

SECTION 563. 968.475 (2) (a) of the statutes is created to read:

968.475 **(2)** (a) Contraband.

SECTION 564. 968.475 (2) (e) of the statutes is created to read:

968.475 **(2)** (e) A designated person.

SECTION 565. 968.475 (3) of the statutes is created to read:

968.475 **(3)** Section 968.705 applies to documents to be subpoenaed if the documents are under the control of a person not reasonably suspected to be concerned in the commission of a crime.

SECTION 566. 968.48 of the statutes is renumbered 968.235 and amended to read:

968.235 ~~Attendance; absence; excuse~~ Grand jury attendance; number required for ~~grand jury~~ session; ~~number required to concur in~~ and indictment. Each grand juror shall attend every session of the grand jury unless excused by the presiding juror. The presiding juror may excuse a grand juror from attending a grand jury session only for a reason which appears to the presiding juror in his or her discretion as good and sufficient cause for the ~~excuse~~ juror's absence. No business may be transacted at any session of the grand jury ~~at which less~~ if fewer than 14 members of the grand jury are in attendance, and no ~~indictment may be found by any~~ grand jury may indict unless at least 12 ~~of their number shall~~ grand jurors concur in the indictment.

SECTION 567. 968.485 (title) and (1) of the statutes are created to read:

968.485 (title) **Execution of a search warrant. (1)** KNOCK AND ANNOUNCE REQUIREMENT AND EXCEPTIONS. When seeking to enter a dwelling to execute a search

warrant, a law enforcement officer shall first announce the purpose and authority to enter and allow a reasonable time for the door to be opened, unless one of the following applies:

(a) The search warrant authorizes the entry of the premises without announcement and delay and the reasonable suspicion under s. 968.465 (6) justifying the authorizing provision continues to exist at the time the warrant is executed.

(b) Under the particular circumstances that the warrant is executed, the law enforcement officer has reasonable suspicion, that was not, or reasonably could not have been, known when the warrant was requested, that announcement and delay would be dangerous or futile or would inhibit the effective investigation of the crime by any means including but not limited to the destruction of evidence.

SECTION 568. 968.49 of the statutes is renumbered 968.245 and amended to read:

968.245 Fine for nonattendance. Any person lawfully summoned to attend as a grand juror who fails to attend without ~~any~~ sufficient excuse shall ~~pay a fine not exceeding~~ <u>be fined not more than</u> $40, which ~~shall be imposed by~~ the court to which the person was summoned <u>shall impose</u> and <u>which</u> shall be paid into the county treasury.

SECTION 569. 968.50 of the statutes is renumbered 968.252 and amended to read:

968.252 Report progress and return indictments. A grand jury may report progress and return indictments to the court from time to time during its session ~~and until discharged~~.

SECTION 570. 968.505 (title) of the statutes is renumbered 968.262 (title).

1 **SECTION 571.** 968.505 of the statutes is renumbered 968.262 (1) and amended
2 to read:

3 968.262 **(1)** When the grand jury is discharged, the clerk of the grand jury shall
4 collect all transcripts of testimony, minutes of proceedings, exhibits, and other
5 records of the grand jury~~,~~ and, except as provided in sub. (2), shall deliver them as
6 the jury directs either to the attorney general or to the district attorney~~, or upon~~.

7 **(2)** Upon approval of the court, the grand jury may direct its clerk to deliver
8 ~~them~~ grand jury materials collected under sub. (1) to the clerk of the court, who shall
9 impound them subject to ~~the~~ further ~~order or~~ orders of the court.

10 **SECTION 572.** 968.51 of the statutes is renumbered 968.275 and amended to
11 read:

12 **968.275 Indictment not to be disclosed.** ~~No grand juror or officer of the~~
13 ~~court, if~~ If the court ~~shall~~ so ~~order, shall~~ orders, no grand juror or officer of the court
14 may disclose ~~the fact that any indictment for a felony has been found against~~ that
15 the grand jury has indicted any person not in custody or under recognizance,
16 otherwise than by issuing or executing process on such indictment, until ~~such~~ the
17 person has been arrested.

18 **SECTION 573.** 968.52 of the statutes is renumbered 968.285 and amended to
19 read:

20 **968.285 Votes not to be disclosed.** No grand juror may ~~be allowed to state~~
21 ~~or testify~~ disclose in any court ~~in what manner~~ how he or she or any other ~~member~~
22 ~~of the jury~~ grand juror voted or what opinion any grand juror expressed on any
23 question before ~~them, or what opinion was expressed by any juror in relation to the~~
24 ~~question~~ the grand jury.

SECTION 574. 968.53 of the statutes is renumbered 968.295 and amended to read:

968.295 When testimony may be disclosed. ~~Members of the grand jury and any grand jury reporter may be required by any court~~ Notwithstanding any oath or affirmation required under s. 968.165 or 968.185 (2), any court may require grand jurors and grand jury reporters to testify whether the testimony of a witness examined before the jury is consistent with or different from the evidence given by the witness before the court~~; and they~~. Notwithstanding any oath or affirmation required under s. 968.165 or 968.185 (2), the court may ~~also be required~~ require grand jurors and grand jury reporters also to disclose the testimony given before the grand jury by any person upon a complaint against the person for perjury~~,~~ or upon trial for the offense. ~~Any~~ If the court receives in evidence any transcript of testimony taken before the grand jury ~~and certified by a~~, the grand jury ~~reporter to have~~ reporter's certification that the transcript has been carefully compared by the reporter with his or her minutes of testimony ~~so taken~~ and ~~to be~~ is a true and correct transcript of all or a specified portion of the transcript~~, may be received in evidence with~~ shall have the same effect as the oral testimony of the reporter to the facts so certified, but the reporter may be cross–examined by any party as to the matter.

SECTION 575. 968.585 (2) (ag) of the statutes is created to read:

968.585 **(2)** (ag) The subject of the strip search is a detained person.

SECTION 576. 968.585 (4m) of the statutes is created to read:

968.585 **(4m)** Any evidence obtained by a strip search in violation of sub. (2) or (3) is not admissible as evidence at trial.

SECTION 577. 968.585 (7) (cm) of the statutes is created to read:

968.585 **(7)** (cm) The person is committed under ch. 980.