

1 b. The defendant was a victim of abusive conduct, including interspousal
2 battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in
3 s. 49.165 (1) (a), 813.12 (1) (am), or ~~968.075~~ 969.27 (1) (a), harassment, as defined in
4 s. 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault
5 under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under
6 ss. 948.02 to 948.11, and he or she was charged under s. 946.41 based on information
7 he or she omitted or false information he or she provided during the course of an
8 investigation into the crime committed against him or her.

9 **SECTION 1078.** 973.06 (1) (h) of the statutes is amended to read:

10 973.06 (1) (h) The cost of performance of a test under s. ~~968.38~~ 968.725, if
11 ordered by the court.

12 **SECTION 1079.** 973.076 (2) (a) of the statutes is amended to read:

13 973.076 (2) (a) The district attorney of the county within which the property
14 was seized or in which the defendant is convicted shall commence the forfeiture
15 action within 30 days after the seizure of the property or the date of conviction,
16 whichever is earlier, except that the defendant may request that the forfeiture
17 proceedings be adjourned until after adjudication of any charge concerning a crime
18 which was the basis for the seizure of the property. The request shall be granted.
19 The forfeiture action shall be commenced by filing a summons, complaint and
20 affidavit of the person who seized the property with the clerk of ~~circuit court~~,
21 provided service of authenticated copies of those papers is made in accordance with
22 ch. 801 within 90 days after filing upon the person from whom the property was
23 seized and upon any person known to have a bona fide perfected security interest in
24 the property.

25 **SECTION 1080.** 973.08 (5) of the statutes is amended to read:

1 973.08 (5) The clerk ~~of court~~ shall file or deliver a transcript under sub. (2), (3)
2 or (4).

3 **SECTION 1081.** 973.09 (2) (a) 1. b. of the statutes is amended to read:

4 973.09 (2) (a) 1. b. A misdemeanor that was an act of domestic abuse, as defined
5 in s. ~~968.075~~ 969.27 (1) (a).

6 **SECTION 1082.** 973.09 (3) (b) of the statutes is amended to read:

7 973.09 (3) (b) The department shall notify the sentencing court, any person to
8 whom unpaid restitution is owed and the district attorney of the status of the ordered
9 restitution payments unpaid at least 90 days before the probation expiration date.
10 If payment as ordered has not been made, the court shall hold a probation review
11 hearing prior to the expiration date, unless the hearing is voluntarily waived by the
12 probationer with the knowledge that waiver may result in an extension of the
13 probation period or in a revocation of probation. If the court does not extend
14 probation, it shall issue a judgment for the unpaid restitution and direct the clerk
15 ~~of circuit court~~ to file and enter the judgment in the judgment and lien docket,
16 without fee, unless it finds that the victim has already recovered a judgment against
17 the probationer for the damages covered by the restitution order. If the court issues
18 a judgment for the unpaid restitution, the court shall send to the person at his or her
19 last-known address written notification that a civil judgment has been issued for the
20 unpaid restitution. The judgment has the same force and effect as judgments
21 entered under s. 806.10.

22 **SECTION 1083.** 973.09 (3) (bm) 4. of the statutes is amended to read:

23 973.09 (3) (bm) 4. If the court does not extend or modify the terms of probation
24 under subd. 3., it shall issue a judgment for the unpaid fees and direct the clerk of
25 ~~circuit court~~ to file and enter the judgment in the judgment and lien docket, without

1 fee. If the court issues a judgment for the unpaid fees, the court shall send to the
2 department a written notification that a civil judgment has been issued for the
3 unpaid fees. The judgment has the same force and effect as judgments entered under
4 s. 806.10.

5 **SECTION 1084.** 973.09 (7m) (a) of the statutes is amended to read:

6 973.09 (7m) (a) Except as provided in s. 943.017 (3), the court may require as
7 a condition of probation that the probationer perform community service work for a
8 public agency or a nonprofit charitable organization. The number of hours of work
9 required may not exceed what would be reasonable considering the seriousness of the
10 offense and any ~~other offense which is read into the record at the time of conviction~~
11 read-in crimes. An order may only apply if agreed to by the probationer and the
12 organization or agency. The court shall ensure that the probationer is provided a
13 written statement of the terms of the community service order and that the
14 community service order is monitored. If the court requires the conditions provided
15 in this subsection and sub. (4), the probationer reduces the period of confinement
16 under sub. (4) at a rate of one day for each 3 days of work performed. A day of work
17 equals 8 hours of work performed.

18 **SECTION 1085.** 973.10 (2m) of the statutes is amended to read:

19 973.10 (2m) In any administrative hearing under sub. (2), the hearing
20 examiner may order that a deposition be taken by audiovisual means and allow the
21 use of a recorded deposition under s. ~~967.04 (7) to (10)~~ 967.22.

22 **SECTION 1086.** 973.135 (3) of the statutes is amended to read:

23 973.135 (3) If a conviction under sub. (2) is reversed, set aside or vacated, the
24 clerk ~~of the court~~ shall promptly forward to the state superintendent a certificate
25 stating that the conviction has been reversed, set aside or vacated.

1 **SECTION 1087.** 973.18 (title) of the statutes is renumbered 973.25 (title).

2 **SECTION 1088.** 973.18 (1) of the statutes is renumbered 973.25 (1) and amended
3 to read:

4 973.25 (1) In this section, “postconviction relief” and “sentencing” have the
5 meanings ascribed in s. 809.30 (1) means an appeal or a motion for postconviction
6 relief in a criminal case, other than an appeal, motion, or petition under s. 302.113
7 (7m), 302.1135, 973.195, 974.03, 974.06, or 974.07 (2).

8 **SECTION 1089.** 973.18 (2), (3) and (4) of the statutes are renumbered 973.25 (2),
9 (3) and (4) and amended to read:

10 973.25 (2) ~~The trial judge~~ At the time of sentencing, the court shall personally
11 inform the defendant at the time of sentencing, orally or in writing, of the defendant’s
12 right to seek pursue postconviction relief and, if the defendant is indigent, of the
13 defendant’s right to the assistance of the state public defender.

14 (3) Before adjourning ~~concluding~~ the sentencing proceeding, the judge court
15 shall direct the defendant and defendant’s trial counsel to sign a form to be entered
16 in the record, indicating that the lawyer trial counsel has counseled the defendant
17 regarding the decision to seek pursue postconviction relief, and that the defendant
18 understands that a notice of intent to pursue postconviction relief must be filed in
19 the trial court within 20 days after sentencing for ~~that~~ the right to pursue
20 postconviction relief to be preserved. The court shall give the defendant a copy of the
21 form.

22 (4) The judge ~~shall direct~~ court shall make appropriate orders to allow the
23 defendant’s counsel defendant to confer with the defendant before signing the form,
24 ~~during the proceeding or as soon thereafter as practicable, and may make~~

1 ~~appropriate orders to allow the defendant to confer with~~ counsel before being
2 transferred to the state prison. ~~The defendant shall be given a copy of the form.~~

3 **SECTION 1090.** 973.18 (5) of the statutes is renumbered 973.25 (5).

4 **SECTION 1091.** 973.19 (title) of the statutes is renumbered 974.03 (title).

5 **SECTION 1092.** 973.19 (1) (a) of the statutes is renumbered 974.03 (1) (a) and
6 amended to read:

7 974.03 (1) (a) A ~~person~~ defendant sentenced to imprisonment or the intensive
8 sanctions program or ordered to pay a fine who has not requested the preparation
9 of transcripts under s. 809.30 (2) may, within 90 days after the sentence or order or
10 fine is entered imposed, move the circuit court to modify the sentence or the amount
11 of the fine.

12 **SECTION 1093.** 973.19 (1) (b) of the statutes is renumbered 974.03 (2) and
13 amended to read:

14 974.03 (2) A ~~person~~ defendant who has requested transcripts under s. 809.30
15 (2) may move for modification of a sentence or fine under s. 809.30 (2) (h).

16 **SECTION 1094.** 973.19 (2), (3), (4) and (5) of the statutes are renumbered 974.03
17 (1) (b), (c), (d) and (e) and amended to read:

18 974.03 (1) (b) Within 90 days after a motion under ~~sub. (1) par.~~ (a) is filed, the
19 circuit court shall enter an order either determining the motion or, for cause,
20 extending the time for doing so by not more than 90 days ~~for cause~~.

21 (c) If an order determining a motion under ~~sub. (1) par.~~ (a) is not entered timely
22 under ~~sub. (2) par.~~ (b), the motion shall be considered denied and the clerk ~~of the court~~
23 shall immediately enter an order denying the motion.

1 (d) ~~An~~ The rules governing civil appeals govern an appeal from an order
2 determining a motion under ~~sub. (1) par. (a) is governed by the procedure for civil~~
3 ~~appeals.~~

4 (e) By filing a motion under ~~sub. (1) par. (a)~~ the defendant waives his or her
5 right to file an appeal or postconviction motion under s. 809.30 (2).

6 **SECTION 1095.** 973.195 (1r) (e) of the statutes is amended to read:

7 973.195 (1r) (e) Notwithstanding the confidentiality of victim address
8 information obtained under s. ~~302.1135 (7) (e)~~ 302.113 (9g) (g) 3., a district attorney
9 who is required to send notice to a victim under par. (d) may obtain from the clerk
10 ~~of the circuit court~~ victim address information that the victim provided to the clerk
11 under s. ~~302.1135 (7) (e)~~. 302.113 (9g) (g) 3.

12 **SECTION 1096.** 973.20 (1g) of the statutes is repealed.

13 **SECTION 1097.** 973.20 (1r) of the statutes is amended to read:

14 973.20 (1r) When imposing sentence or ordering probation for any crime, other
15 than a crime involving conduct that constitutes domestic abuse under s. 813.12 (1)
16 (am) or ~~968.075~~ 969.27 (1) (a), for which the defendant was convicted, the court, in
17 addition to any other penalty authorized by law, shall order the defendant to make
18 full or partial restitution under this section to any victim of a crime considered at
19 sentencing or, if the victim is deceased, to his or her estate, unless the court finds
20 substantial reason not to do so and states the reason on the record. When imposing
21 sentence or ordering probation for a crime involving conduct that constitutes
22 domestic abuse under s. 813.12 (1) (am) or ~~968.075~~ 969.27 (1) (a) for which the
23 defendant was convicted or that was considered at sentencing, the court, in addition
24 to any other penalty authorized by law, shall order the defendant to make full or
25 partial restitution under this section to any victim of a crime or, if the victim is

1 deceased, to his or her estate, unless the court finds that imposing full or partial
2 restitution will create an undue hardship on the defendant or victim and describes
3 the undue hardship on the record. Restitution ordered under this section is a
4 condition of probation, extended supervision, or parole served by the defendant for
5 a crime for which the defendant was convicted. After the termination of probation,
6 extended supervision, or parole, or if the defendant is not placed on probation,
7 extended supervision, or parole, restitution ordered under this section is enforceable
8 in the same manner as a judgment in a civil action by the victim named in the order
9 to receive restitution or enforced under ch. 785.

10 **SECTION 1098.** 973.20 (9m) of the statutes is amended to read:

11 973.20 (9m) When restitution is ordered, the court shall inquire to see if
12 recompense has been made under s. ~~969.13 (5) (a)~~ 969.42. If recompense has been
13 made and the restitution ordered is less than or equal to the recompense, the
14 restitution shall be applied to the payment of costs and, if any restitution remains
15 after the payment of costs, to the payment of the judgment. If recompense has been
16 made and the restitution ordered is greater than the recompense, the victim shall
17 receive an amount equal to the amount of restitution less the amount of recompense
18 and the balance shall be applied to the payment of costs and, if any restitution
19 remains after the payment of costs, to the payment of the judgment. This subsection
20 applies without regard to whether the person who paid the recompense is the person
21 who is convicted of the crime.

22 **SECTION 1099.** 973.20 (11) (a) of the statutes is amended to read:

23 973.20 (11) (a) Except as otherwise provided in this paragraph, the restitution
24 order shall require the defendant to deliver the amount of money or property due as
25 restitution to the department for transfer to the victim or other person to be

1 compensated by a restitution order under this section. If the defendant is not placed
2 on probation or sentenced to prison, the court may order that restitution be paid to
3 the clerk of court for transfer to the appropriate person. The court shall impose on
4 the defendant a restitution surcharge under ch. 814 equal to 5% of the total amount
5 of any restitution, costs, attorney fees, court fees, fines, and surcharges ordered
6 under s. 973.05 (1) and imposed under ch. 814, which shall be paid to the department
7 or the clerk of court for administrative expenses under this section.

8 **SECTION 1100.** 973.20 (12) (c) of the statutes is amended to read:

9 973.20 (12) (c) If a defendant is subject to more than one order under this
10 section and the financial obligations under any order total \$50 or less, the
11 department or the clerk of court, whichever is applicable under sub. (11) (a), may pay
12 these obligations first.

13 **SECTION 1101.** 974.02 of the statutes is amended to read:

14 **974.02 Appeals and postconviction relief in criminal cases Direct**
15 **appeals.** (1) ~~A motion for postconviction relief other than under s. 974.06 or 974.07~~
16 ~~(2) by the defendant in a criminal case shall be made in the time and manner~~
17 ~~provided in s. 809.30. An appeal by the~~ The defendant in a criminal case may appeal
18 from a judgment of conviction or from an order denying a postconviction motion or
19 from both. A direct appeal from a judgment of conviction shall be taken in the time
20 and manner provided in ss. 808.04 (3) and 809.30. An appeal of an order or judgment
21 on habeas corpus remanding to custody a prisoner committed for trial under s. 970.03
22 shall be taken under ss. 808.03 (2) and 809.50, with notice to the attorney general
23 and the district attorney and opportunity for them to be heard to 809.32.

1 (2) An appellant is not required to file a postconviction motion in the trial
2 circuit court prior to an appeal if the grounds are sufficiency of the evidence or issues
3 previously raised.

4 **SECTION 1102.** 974.02 (3) of the statutes is created to read:

5 974.02 (3) Motions for postconviction relief made after the time for direct
6 appeal has expired are governed by ss. 974.06 and 974.07.

7 **SECTION 1103.** 974.05 (1) (intro.) of the statutes is amended to read:

8 974.05 (1) (intro.) Within the time period specified by s. 808.04 (4) and in the
9 manner provided for civil appeals under chs. 808 and 809, ~~an appeal may be taken~~
10 ~~by the state from~~ may appeal any of the following:

11 **SECTION 1104.** 974.05 (1) (a), (b), (c) and (d) (intro.), 1. and 2. of the statutes are
12 amended to read:

13 974.05 (1) (a) ~~Final~~ A final order or judgment adverse to the state, whether
14 following a trial or a plea of guilty or no contest, if the appeal would not be prohibited
15 by constitutional protections against double jeopardy.

16 (b) ~~Order~~ An order granting postconviction relief under s. 974.02, 974.03,
17 974.06, or 974.07.

18 (c) ~~Judgment~~ A judgment and sentence or order of probation not authorized by
19 law.

20 (d) (intro.) ~~Order~~ An order or judgment the substantive effect of which results
21 in any of the following:

- 22 1. Quashing an arrest warrant;.
- 23 2. Suppressing evidence; ~~or.~~

24 **SECTION 1105.** 974.05 (2) of the statutes is amended to read:

1 974.05 (2) If the defendant appeals or prosecutes a writ of error, the state may
2 ~~move to review rulings of which it complains~~ cross–appeal any order, judgment, or
3 sentence described in sub. (1) (a) to (d), as provided by in s. 809.10 (2) (b).

4 **SECTION 1106.** 974.05 (3) of the statutes is repealed.

5 **SECTION 1107.** 974.06 (title), (1), (2) and (3) (intro.), (a), (b) and (d) of the
6 statutes are amended to read:

7 **974.06 (title) ~~Postconviction~~ Collateral postconviction procedure.** (1)
8 ~~After~~ At any time after the time for direct appeal or postconviction remedy provided
9 in s. 974.02 has expired, a prisoner who is in custody under sentence of a court ~~or a~~
10 ~~person convicted and placed with a volunteers in probation program under s. 973.11~~
11 ~~claiming~~ and who claims the right to be released upon the ground that the sentence
12 was imposed in violation of the U.S. constitution or the constitution or laws of this
13 state, that the court ~~was without~~ lacked jurisdiction to impose ~~such~~ the sentence, or
14 that the sentence ~~was in excess of~~ exceeded the maximum authorized by law or is
15 otherwise subject to collateral ~~attack~~ review, may move the court which imposed the
16 sentence to vacate, set aside, or correct the sentence.

17 (2) ~~A copy of the motion for such relief is a part of the original criminal action,~~
18 ~~is not a separate proceeding and may be made at any time~~ under sub. (1) must be
19 served on the district attorney.

20 **(2m)** A motion under sub. (1) is part of the original criminal action, is not a
21 separate proceeding, and may be made at any time. The supreme court may
22 prescribe the form of the motion.

23 (3) (intro.) Unless the motion under sub. (1) and the files and records of the
24 action conclusively show that the ~~person~~ prisoner is entitled to no relief, the court
25 shall do all of the following:

1 (a) ~~Cause a copy of the notice to be served upon~~ Order the district attorney who
2 shall to file a written response within the time prescribed by the court.

3 (b) If it appears that counsel is necessary and if the ~~defendant~~ prisoner claims
4 or appears to be indigent, refer the ~~person~~ prisoner to the appellate division of the
5 state public defender for an indigency determination and appointment of counsel
6 under ch. 977. The court shall forward a copy of the motion and any response of the
7 district attorney to the state public defender.

8 (d) Determine the issues and make findings of fact and conclusions of law. If
9 the court finds that it rendered the judgment ~~was rendered~~ without jurisdiction, or
10 that the sentence imposed was not authorized by law or is otherwise open to
11 collateral ~~attaek~~ review, or that there has been such a denial or infringement of the
12 constitutional rights of the ~~person~~ prisoner as to render the judgment vulnerable to
13 collateral ~~attaek~~ review, the court shall vacate and set aside the judgment ~~aside~~ and
14 shall discharge the ~~person~~ prisoner or resentence ~~him or her or the prisoner~~, grant
15 the prisoner a new trial, or correct the sentence as may appear appropriate.

16 **SECTION 1108.** 974.06 (4) of the statutes is amended to read:

17 974.06 (4) All grounds for relief available to a ~~person~~ prisoner under this
18 section must be raised in his or her original, supplemental, or amended motion. Any
19 ground finally adjudicated or not so raised, or knowingly, voluntarily, and
20 intelligently waived in the proceeding that resulted in the conviction or sentence or
21 in any other proceeding the ~~person~~ prisoner has taken to secure relief may not be the
22 basis for a subsequent motion, unless the court finds a ground for relief asserted
23 ~~which that~~, for sufficient reason, was not asserted or was inadequately raised in the
24 original, supplemental, or amended motion.

25 **SECTION 1109.** 974.06 (5), (6), (7) and (8) of the statutes are amended to read:

Subject to s. 974.08, a

1

974.06 (5) ~~A~~ court may entertain and determine such a motion under sub. (1)

2 without requiring the production of the prisoner at the hearing. The court may hear
3 the motion may be heard by telephone or live audiovisual means under s. 807.13.

4 (6) Proceedings under this section shall be considered civil in nature, and the
5 burden of proof shall be upon the ~~person~~ prisoner.

6 (7) ~~An A prisoner may appeal may be taken from the an~~ order entered on the
7 motion under sub. (1) as ~~from~~ if the order were a final judgment.

8 (8) A court may not entertain a petition for a writ of habeas corpus or an action
9 seeking that remedy ~~in on~~ behalf of a ~~person~~ prisoner who is authorized to apply for
10 relief by motion under ~~this section shall not be entertained~~ sub. (1) if it appears that
11 the ~~applicant~~ prisoner has failed to ~~apply for relief, by~~ file a motion, to under sub. (1)
12 with the court which sentenced the ~~person~~ prisoner, or that the court has denied the
13 ~~person relief~~ motion, unless it also appears that the remedy by motion is inadequate
14 or ineffective to test the legality of ~~his or her~~ the prisoner's detention.

15 SECTION 1110. 974.07 (4) (b) of the statutes is amended to read:

16 974.07 (4) (b) Notwithstanding the limitation on the disclosure of mailing
17 addresses from completed information cards submitted by victims under ss. 51.37
18 (10) (dx), 301.046 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f),
19 304.063 (4), 938.51 (2), ~~971.17 (6m) (d)~~ 975.62 (4), and 980.11 (4), the department of
20 corrections, the parole commission, and the department of health services shall,
21 upon request, assist clerks of court in obtaining information regarding the mailing
22 address of victims for the purpose of sending copies of motions and notices of hearings
23 under par. (a).

24 SECTION 1111. 974.07 (7) (b) 1. of the statutes is amended to read:

1 974.07 (7) (b) 1. It is reasonably probable that the outcome of the proceedings
2 that resulted in the conviction, the finding of not guilty by reason of mental disease
3 or defect, or the delinquency adjudication for the offense at issue in the motion under
4 sub. (2), or the terms of the sentence, the commitment under ~~s. 971.17~~ subch. III of
5 ch. 975, or the disposition under ch. 938, would have been more favorable to the
6 movant if the results of deoxyribonucleic acid testing had been available before he
7 or she was prosecuted, convicted, found not guilty by reason of mental disease or
8 defect, or adjudicated delinquent for the offense.

9 **SECTION 1112.** 974.07 (9) (a) of the statutes is amended to read:

10 974.07 (9) (a) If a person other than the movant is in custody, as defined in s.
11 ~~968.205~~ 968.645 (1) (a), the evidence is relevant to the criminal, delinquency, or
12 commitment proceeding that resulted in the person being in custody, the person has
13 not been denied deoxyribonucleic acid testing or postconviction relief under this
14 section, and the person has not waived his or her right to preserve the evidence under
15 s. 165.81 (3), 757.54 (2), ~~968.205~~ 968.645, or 978.08, the court shall order the evidence
16 preserved until all persons entitled to have the evidence preserved are released from
17 custody, and the court shall designate who shall preserve the evidence.

18 **SECTION 1113.** 974.07 (10) (a) 4. of the statutes is amended to read:

19 974.07 (10) (a) 4. An order discharging the movant from custody, as defined in
20 s. ~~968.205~~ 968.645 (1) (a), if the movant is in custody.

21 **SECTION 1114.** 974.08 (title) of the statutes is created to read:

22 **974.08 (title) Defendant's presence at postconviction proceedings.**

23 **SECTION 1115.** 974.08 (1) of the statutes is created to read:

24 974.08 (1) A defendant has the right to be present at a postconviction
25 proceeding when the hearing will address substantial issues of fact as to events in

1 which the defendant participated and those issues are supported by more than mere
2 allegations.

3 **SECTION 1116.** 974.08 (2) and (3) of the statutes are created to read:

4 974.08 (2) A defendant need not be present at the pronouncement or entry of
5 an order granting or denying relief under s. 974.02, 974.03, 974.06, or 974.07. If the
6 defendant is not present, the time for appealing the order shall commence after a
7 copy has been served upon the defendant's counsel or, if he or she appeared without
8 counsel, upon the defendant, except as provided in sub. (3). Service of such an order
9 shall be complete upon mailing.

10 (3) A defendant appearing without counsel shall supply the court with his or
11 her current mailing address. If the defendant fails to supply the court with a current
12 and accurate mailing address, the defendant's failure to receive a copy of the order
13 granting or denying relief shall not be a ground for tolling the time in which an appeal
14 must be taken.

15 **SECTION 1117.** 974.09 (title) of the statutes is created to read:

16 **974.09 (title) Release pending appeal.**

17 **SECTION 1118.** Chapter 975 (title) of the statutes is repealed and recreated to
18 read:

19 **CHAPTER 975**

20 **MENTAL ISSUES IN CRIMINAL**

21 **PROCEEDINGS: COMPETENCY AND**

22 **RESPONSIBILITY**

23 **SECTION 1119.** 975.001 of the statutes is repealed.

24 **SECTION 1120.** 975.01 of the statutes is repealed.

25 **SECTION 1121.** 975.06 of the statutes is repealed.

1 (b) The person is substantially incapable of applying an understanding of the
2 advantages, disadvantages, and alternatives to his or her mental illness,
3 developmental disability, alcoholism, or drug dependence in order to make an
4 informed choice as to whether to accept or refuse medication or treatment.

5 (3) “Physician” has the meaning given in s. 448.01 (5).

6 (4) “Psychologist” means a person holding a valid license under s. 455.04.

7 **SECTION 1134.** Subchapter II (title) of chapter 975 [precedes 975.30] of the
8 statutes is created to read:

9 **CHAPTER 975**

10 **SUBCHAPTER II**

11 **COMPETENCY**

12 **SECTION 1135.** 975.31 (title) of the statutes is created to read:

13 **975.31 (title) Raising the issue of competency.**

14 **SECTION 1136.** 975.31 (2) of the statutes is created to read:

15 975.31 (2) (a) If reason to doubt a defendant’s competency to proceed arises
16 before judgment, the court shall not order an examination into competency until it
17 has found that it is probable that the defendant committed the offense charged.

18 (b) The finding under par. (a) may be based upon the complaint and material
19 providing the factual basis for the complaint, or, if the defendant submits an affidavit
20 alleging with particularity that the averments of the complaint are materially false,
21 upon the complaint and the evidence presented at a hearing ordered by the court.
22 The defendant may call and cross-examine witnesses at a probable cause hearing
23 under this section. If the court finds that it is probable that the defendant committed
24 the offense charged, the court shall order an examination of the defendant under s.
25 975.32.

1 (c) If the court does not find that it is probable that the defendant committed
2 the offense charged, the court shall dismiss the charge without prejudice and release
3 the defendant.

4 **SECTION 1137.** 975.32 (title) of the statutes is created to read:

5 **975.32 (title) Competency examination.**

6 **SECTION 1138.** 975.32 (2) of the statutes is created to read:

7 975.32 (2) Notwithstanding sub. (1), if the parties agree that a previously
8 conducted mental examination provides a sufficient basis for the court to make the
9 determination under s. 975.34 and the court concurs, a new examination need not
10 be ordered.

11 **SECTION 1139.** 975.32 (4) of the statutes is created to read:

12 975.32 (4) If the defendant is in custody, the court may order an inpatient or
13 outpatient examination and all of the following apply:

14 (a) Any outpatient examination for a defendant in custody shall be conducted
15 in a jail or locked unit of a facility.

16 (b) If an inpatient examination is determined by the court to be necessary for
17 a defendant in custody, the defendant may be committed to a suitable mental health
18 facility. If the examination is to be conducted by the department under par. (c), the
19 court shall order the individual to the facility designated by the department.

20 (c) If the court orders a defendant in custody to be examined by the department
21 or a department facility, the department shall determine where the examination will
22 be conducted, who will conduct the examination, and whether the examination will
23 be conducted on an inpatient or outpatient basis. If an outpatient examination is
24 begun by or through the department, and the department later determines that
25 inpatient examination is necessary, the sheriff shall transport the defendant to the

1 inpatient facility designated by the department. In any case under this paragraph
2 in which the department determines that an inpatient examination is necessary, the
3 15-day period under sub. (6) (a) begins upon the arrival of the defendant at the
4 inpatient facility.

5 **SECTION 1140.** 975.32 (7) of the statutes is created to read:

6 **975.32 (7)** Days spent in a mental health facility for an inpatient competency
7 examination ordered under this section count as days spent in custody under s.
8 973.155.

9 **SECTION 1141.** 975.32 (10) of the statutes is created to read:

10 **975.32 (10)** The court may order additional experts to examine the defendant
11 at any stage of the proceedings to determine the defendant's competency to proceed.

12 **SECTION 1142.** 975.33 (title) of the statutes is created to read:

13 **975.33 (title) Examination report.**

14 **SECTION 1143.** 975.33 (1) (f) of the statutes is created to read:

15 **975.33 (1) (f)** If the examiner reports that the defendant is not competent to
16 proceed and that the defendant is not likely to become competent within the
17 maximum period of commitment, as defined in s. 975.34 (6) (a), the examiner's
18 opinion on whether the defendant meets the criteria for commitment under ch. 51
19 or 55.

20 **SECTION 1144.** 975.34 of the statutes is created to read:

21 **975.34 Competency determination. (1) HEARING.** As soon as practicable
22 after receiving the examiner's report under s. 975.33, the court shall hold a hearing
23 on the defendant's competency to proceed and, if at issue, on the defendant's
24 competency to refuse medication or treatment.

1 (2) WAIVER OF HEARING. Notwithstanding sub. (1), if the parties agree that a
2 hearing is not necessary and the court concurs, the court may make a determination
3 on the defendant's competency to proceed and, if relevant, the defendant's
4 competency to refuse medication or treatment based on the court-ordered report and
5 other information adduced.

6 (3) BURDEN OF GOING FORWARD. If a hearing is held under this section, the
7 district attorney has the burden of going forward with the evidence.

8 (4) BURDEN OF PERSUASION. Regardless of who raised the issue of competency,
9 the court may find the defendant competent to proceed only if, after hearing evidence
10 or reviewing the reports submitted under s. 975.33, or both, the court finds by the
11 greater weight of the evidence that the defendant is competent to proceed.

12 (5) RESUMING PROCEEDINGS. If the court finds the defendant competent to
13 proceed, the court shall enter its finding on the record and shall resume the criminal
14 proceedings.

15 (6) SUSPENDING PROCEEDINGS; COMMITMENT FOR TREATMENT. (a) In this
16 subsection, "maximum period of commitment" means the greatest maximum
17 sentence length for any crime for which the defendant is charged, including
18 imprisonment authorized by any applicable penalty enhancement statutes, or 12
19 months, whichever is less.

20 (b) If the court does not find by the greater weight of the evidence that the
21 defendant is competent to proceed, the court shall find that the defendant is not
22 competent, shall enter its finding on the record, shall suspend the criminal
23 proceedings, and shall do one of the following:

1 1. If the court finds by the greater weight of the evidence that the defendant
2 is not likely to become competent within the maximum period of commitment, the
3 court shall order that the defendant be released, except as provided in s. 975.38.

4 2. If the court finds by the greater weight of the evidence that the defendant
5 is likely to become competent within the maximum period of commitment without
6 inpatient treatment, the court shall order that the defendant be released. The court
7 may require the defendant to participate in outpatient treatment, undergo periodic
8 reexaminations to determine whether the defendant has become competent to
9 proceed, or both, for a period that does not exceed the maximum period of
10 commitment.

11 3. If the court finds by clear and convincing evidence that the defendant is likely
12 to become competent within the maximum period of commitment if provided
13 appropriate inpatient treatment, proceed under sub. (7).

14 **(7) COMMITMENT FOR TREATMENT.**

15 **(8) COMPETENCY TO REFUSE MEDICATION OR TREATMENT.** If the defendant is
16 committed to the department under sub. (7) and the state proves by clear and
17 convincing evidence that the defendant is not competent to refuse medication or
18 treatment, the court shall find, without a jury, that the defendant is not competent
19 to refuse medication or treatment, and order that whoever administers medication
20 or treatment to the defendant shall observe appropriate medical standards.

21 **SECTION 1145.** 975.36 (title) of the statutes is created to read:

22 **975.36 (title) Reexamination of defendant's competency.**

23 **SECTION 1146.** 975.36 (2) of the statutes is created to read:

24 **975.36 (2) REPORTS AT OTHER TIMES.** The department shall furnish written
25 reports of examination to the court whenever it determines that the defendant has

1 become competent or that the defendant is not likely to become competent within the
2 remaining commitment period. The reports shall comply with the requirements of
3 sub. (1). The court shall schedule a review of a report under this subsection within
4 14 days after the court receives the report.

5 **SECTION 1147.** 975.36 (4) of the statutes is created to read:

6 **975.36 (4) FINAL REEXAMINATION.** Before or at the end of the commitment, the
7 court shall order the defendant discharged from the commitment and shall release
8 the defendant, except as provided in s. 975.38.

9 **SECTION 1148.** 975.37 of the statutes is created to read:

10 **975.37 Involuntary medication to restore competency at trial.** The
11 court may order involuntary medication to restore a defendant's competency to stand
12 trial only if the court finds that there is a need for that medication sufficiently
13 important to overcome the defendant's protected interest in refusing it. The court
14 shall consider the effectiveness and side effects of the medication, the possible
15 alternatives, and the medical appropriateness of the medication.

16 **SECTION 1149.** 975.38 (title) of the statutes is created to read:

17 **975.38 (title) Mental health commitment or protective placement.**

18 **SECTION 1150.** 975.39 of the statutes is created to read:

19 **975.39 Competency to pursue postconviction relief. (1) APPLICABILITY.**
20 The court shall proceed under this section whenever there is reason to doubt a
21 defendant's competency to seek postconviction relief under s. 809.30.

22 **(2) STANDARD.** A defendant lacks competency to pursue postconviction relief
23 under s. 809.30 if he or she is unable, with a reasonable degree of rational
24 understanding, to assist counsel or to make decisions committed by law to the
25 defendant.

1 **(3) DETERMINING COMPETENCY.** If the court determines that reason exists to
2 doubt a defendant's competency to pursue postconviction relief under s. 809.30, it
3 shall, as an exercise of its discretion, determine the method for evaluating a
4 defendant's competency. A court may rely upon the affidavits of counsel, a
5 stipulation, or the court's observation of the defendant. A court may order an
6 examination of the defendant by a person with specialized knowledge. A court may,
7 in its discretion, hold a hearing before determining a defendant's competency. Any
8 hearing conducted under this subsection shall be governed by s. 975.34 to the extent
9 practicable.

10 **(4) ALTERNATIVES PENDING A COMPETENCY DETERMINATION.** Pending a
11 determination of competency to pursue postconviction relief or after a finding that
12 the defendant lacks competency, the applicable court may do any of the following:

13 (a) The circuit court may allow the initiation or continuation of proceedings on
14 any issue raised by the defendant's attorney that rests on the records, does not
15 require the defendant to assist counsel or make a decision, and involves no risk to
16 the defendant.

17 (b) The court of appeals may grant the defendant a continuance or an
18 enlargement of time for filing necessary notices or motions for postconviction relief.

19 **(5) APPOINTING A GUARDIAN; ORDERING TREATMENT.** If the court finds that the
20 defendant lacks competency to pursue postconviction relief, the court may do any of
21 following:

22 (a) Appoint a guardian to make decisions that the law requires the defendant
23 to make.

24 (b) Order treatment to restore the defendant to competency to pursue
25 postconviction relief.

1 defect, the court shall first determine whether to accept the plea of guilty or no
2 contest. If the plea is accepted, the court shall proceed under sub. (3).

3 **SECTION 1155.** 975.52 (4) (title) of the statutes is created to read:

4 975.52 (4) (title) ENTERING JUDGMENT.

5 **SECTION 1156.** 975.53 (title) of the statutes is created to read:

6 **975.53 Notice of restrictions.**

7 **SECTION 1157.** 975.54 (title) of the statutes is created to read:

8 **975.54 (title) Sexual assault; supervision, registration, and testing.**

9 **SECTION 1158.** 975.56 (title) of the statutes is created to read:

10 **975.56 (title) Precommitment examination.**

11 **SECTION 1159.** 975.57 (2) (e) of the statutes is created to read:

12 975.57 (2) (e) *Commitment credit.* A person committed under par. (a), (b), or
13 (d) shall be given credit for all days spent in custody in connection with the course
14 of conduct for which the commitment is imposed. The standards in s. 973.155 for
15 determining sentence credit for convicted persons apply to determining commitment
16 credit under this section.

17 **SECTION 1160.** 975.57 (3) of the statutes is created to read:

18 975.57 (3) INSTITUTIONALIZED CARE. If the court orders the person
19 institutionalized under this section, the department shall place the person in an
20 institution under s. 51.37 (3) that the department considers appropriate in light of
21 the rehabilitative services required by the person and the protection of public safety.

22 **SECTION 1161.** 975.57 (4) (title) of the statutes is created to read:

23 975.57 (4) (title) CONDITIONAL RELEASE.

24 **SECTION 1162.** 975.57 (4) (b) and (c) of the statutes are created to read:

1 975.57 (4) (b) An order for conditional release places the person in the custody
2 and control of the department. A conditionally released person is subject to the
3 conditions set by the court and to the rules of the department. The court, for cause
4 and by order, may modify the conditions of release.

5 (c) Before a person is conditionally released by the court under this subsection,
6 the court shall notify the municipal police department and county sheriff for the area
7 where the person will be residing. The notification requirement does not apply if a
8 municipal department or county sheriff submits to the court a written statement
9 waiving the right to be notified.

10 **SECTION 1163.** 975.57 (5) (title) of the statutes is created to read:

11 975.57 (5) (title) COMPETENCE TO REFUSE MEDICATION.

12 **SECTION 1164.** 975.59 (5) (title) of the statutes is created to read:

13 975.59 (5) (title) CONDITIONAL RELEASE.

14 **SECTION 1165.** 975.59 (5) (b) and (c) of the statutes are created to read:

15 975.59 (5) (b) An order for conditional release places the person in the custody
16 and control of the department. A conditionally released person is subject to the
17 conditions set by the court and to the rules of the department. The court, for cause
18 and by order, may modify the conditions of release.

19 (c) Before a person is conditionally released by the court under this subsection,
20 the court shall notify the municipal police department and county sheriff for the area
21 where the person will be residing. The notification requirement does not apply if a
22 municipal police department or county sheriff submits to the court a written
23 statement waiving the right to be notified.

24 **SECTION 1166.** 975.61 (1) (d) of the statutes is created to read:

1 975.61 (1) (d) The corporation counsel in the municipality and county in which
2 the commitment order was entered.

3 **SECTION 1167.** 975.62 (title) of the statutes is created to read:

4 **975.62 (title) Notice of change in status of committed person.**

5 **SECTION 1168.** 975.62 (1) (d) of the statutes is created to read:

6 975.62 (1) (d) “Victim’s representative” means the victim or, if the victim died
7 as a result of the crime, an adult member of the victim’s family, or, if the victim is
8 younger than 18 years old, the victim’s parent or legal guardian.

9 **SECTION 1169.** 975.62 (2), (3) and (4) of the statutes are created to read:

10 975.62 (2) If the court conditionally releases a person under s. 975.57 (4) or
11 975.59, the district attorney who prosecuted the crime for which the person was
12 committed shall notify the department of corrections and make a reasonable attempt
13 to notify the victim’s representative of the conditional release.

14 (3) If the court terminates a person’s commitment order under s. 975.60 or
15 discharges a person under s. 975.61, the department shall notify the department of
16 corrections and, if the victim’s representative has submitted a card under sub. (5),
17 the victim’s representative of the termination or discharge.

18 (4) Notice under sub. (2) or (3) shall include the name of the person who is
19 conditionally released or discharged or whose commitment order is terminated and
20 the date of conditional release, termination, or discharge, whichever is applicable.
21 The district attorney or the department, whichever is applicable, shall send the
22 notice, postmarked no later than 7 days after the court orders the conditional release,
23 termination, or discharge, to the department of corrections and to the last-known
24 address of the victim’s representative.

25 **SECTION 1170.** 975.63 (3) of the statutes is created to read:

1 975.63 (3) All hearings under ss. 975.55 to 975.61 shall be before a judge
2 without a jury.

3 **SECTION 1171.** 977.05 (4) (h) of the statutes is amended to read:

4 977.05 (4) (h) Accept requests for legal services from persons who are entitled
5 to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23 and from
6 indigent persons who are entitled to be represented by counsel under s. ~~967.06~~
7 971.013 or who are otherwise so entitled under the constitution or laws of the United
8 States or this state and provide such persons with legal services when, in the
9 discretion of the state public defender, such provision of legal services is appropriate.

10 **SECTION 1172.** 977.05 (4) (j) of the statutes is amended to read:

11 977.05 (4) (j) Subject to sub. (6) (e) and (f), at the request of any person
12 determined by the state public defender to be indigent or upon referral of any court,
13 prosecute a writ of error, appeal, action or proceeding for habeas corpus or other
14 postconviction or post-commitment remedy on behalf of the person before any court,
15 if the state public defender determines the case should be pursued. The state public
16 defender must pursue the case of any indigent person entitled to counsel under s.
17 ~~971.17 (7) (b) 1.~~ 975.63 (2) (a) or 980.03 (2) (a).

18 **SECTION 1173.** 977.05 (6) (b) 2. of the statutes is amended to read:

19 977.05 (6) (b) 2. The judge ~~or circuit court commissioner~~ before whom the
20 proceedings shall be held certifies to the state public defender that the person will
21 not be incarcerated if he or she is found in contempt of court.

22 **SECTION 1174.** 977.05 (6) (e) (intro.) and 2. of the statutes are amended to read:

23 977.05 (6) (e) (intro.) The state public defender may not provide legal services
24 or assign counsel for a person who files a motion to modify sentence under s. ~~973.19~~
25 974.03 (1) (a), or for a person who appeals, under s. ~~973.19 (4)~~ 974.03 (1) (d), the denial

1 of a motion to modify sentence filed under s. ~~973.19~~ 974.03 (1) (a), unless the person
2 does one of the following:

3 2. Files the motion to modify sentence under s. ~~973.19~~ 974.03 (1) (a) within 20
4 days after the sentence or order is entered.

5 **SECTION 1175.** 977.072 (title) of the statutes is created to read:

6 **977.072** (title) **Transcript or court record; costs.**

7 **SECTION 1176.** 978.045 (1r) (intro.) of the statutes is amended to read:

8 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
9 record stating the cause for it, may appoint an attorney as a special prosecutor to
10 perform, for the time being, or for the trial of the accused person, the duties of the
11 district attorney. An attorney appointed under this subsection shall have all of the
12 powers of the district attorney. The judge may appoint an attorney as a special
13 prosecutor at the request of a district attorney to assist the district attorney in the
14 prosecution of persons charged with a crime, in grand jury proceedings ~~or, in~~ John
15 Doe proceedings under s. ~~968.26~~ 968.105, in proceedings under ch. 980, or in
16 investigations. The judge may appoint an attorney as a special prosecutor if any of
17 the following conditions exists:

18 **SECTION 1177.** 978.045 (1r) (i) of the statutes is amended to read:

19 978.045 (1r) (i) A judge determines that a complaint received under s. ~~968.26~~
20 968.105 (2) (am) relates to the conduct of the district attorney to whom the judge
21 otherwise would refer the complaint.

22 **SECTION 1178.** 978.05 (3) of the statutes is amended to read:

23 978.05 (3) JOHN DOE PROCEEDINGS. Participate in investigatory proceedings
24 under s. ~~968.26~~ 968.105.

25 **SECTION 1179.** 978.05 (4) of the statutes is amended to read:

1 978.05 (4) GRAND JURY. When requested by a grand jury under s. ~~968.47~~
2 968.225, attend the grand jury for the purpose of examining witnesses in their
3 presence; give the grand jury advice in any legal matter; draw bills of indictment; and
4 issue subpoenas and other processes to compel the attendance of witnesses.

5 **SECTION 1180.** 978.05 (6) (a) of the statutes is amended to read:

6 978.05 (6) (a) Institute, commence, or appear in all civil actions or special
7 proceedings under and perform the duties set forth for the district attorney under ch.
8 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92
9 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a),
10 946.86, 946.87, 961.55 (5), ~~971.14~~ and 973.075 to 973.077 and subch. II of ch. 975,
11 perform any duties in connection with court proceedings in a court assigned to
12 exercise jurisdiction under chs. 48 and 938 as the judge may request and perform all
13 appropriate duties and appear if the district attorney is designated in specific
14 statutes, including matters within chs. 782, 976 and 979 and subch. I of ch. 968 and
15 ss. 51.81 to 51.85. Nothing in this paragraph limits the authority of the county board
16 to designate, under s. 48.09 (5), that the corporation counsel provide representation
17 as specified in s. 48.09 (5) or to designate, under s. 48.09 (6) or 938.09 (6), the district
18 attorney as an appropriate person to represent the interests of the public under s.
19 48.14 or 938.14.

20 **SECTION 1181.** 978.06 (4) of the statutes is amended to read:

21 978.06 (4) No person who acted as district attorney, deputy district attorney
22 or assistant district attorney, or special prosecutor under s. 978.045, for a county at
23 the time of an arrest, examination or indictment of any person charged with a crime
24 in that county may thereafter appear for, or defend that person against the crime
25 charged in the complaint, ~~information~~ or indictment.

1 **SECTION 1182.** 978.08 (1) (a) and (b) and (2) of the statutes are amended to read:

2 978.08 (1) (a) "Custody" has the meaning given in s. ~~968.205~~ 968.645 (1) (a).

3 (b) "Discharge date" has the meaning given in s. ~~968.205~~ 968.645 (1) (b).

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

13 **SECTION 1183.** 979.02 of the statutes is amended to read:

14 **979.02 Autopsies.** The coroner, medical examiner or district attorney may
15 order the conducting of an autopsy upon the body of a dead person any place within
16 the state in cases where an inquest might be had as provided in s. ~~979.04~~ 968.015
17 notwithstanding the fact that no such inquest is ordered or conducted. The autopsy
18 shall be conducted by a licensed physician who has specialized training in pathology.
19 The district attorney may move the ~~circuit~~ court for the county in which the body is
20 buried for an order disinterring the body for purposes of autopsy. The order shall be
21 granted by the ~~circuit~~ court upon a reasonable showing that any of the criteria
22 specified in s. ~~979.04~~ 968.015 exists. This section does not prevent additional
23 autopsies or examinations of the body if there are unanswered pathological
24 questions concerning the death and the causes of death.

25 **SECTION 1184.** 979.025 (1) of the statutes is amended to read:

1 979.025 (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual
2 dies while he or she is in the legal custody of the department and confined to a
3 correctional facility located in this state, the coroner or medical examiner of the
4 county where the death occurred shall perform an autopsy on the deceased
5 individual. If the coroner or medical examiner who performs the autopsy determines
6 that the individual's death may have been the result of any of the situations that
7 would permit the district attorney to order an inquest under s. ~~979.04~~ 968.015 (1),
8 the coroner or medical examiner shall follow the procedures under s. ~~979.04~~ 968.015
9 (2).

10 **SECTION 1185.** 979.025 (2) of the statutes is amended to read:

11 979.025 (2) INMATE CONFINED IN AN INSTITUTION IN ANOTHER STATE. If an
12 individual dies while he or she is in the legal custody of the department and confined
13 to a correctional facility in another state under a contract under s. 301.07, 301.21,
14 or 302.25, the department shall have an autopsy performed by an appropriate
15 authority in the other state or by the coroner or medical examiner of the county in
16 which the circuit court is located that sentenced the individual to the custody of the
17 department. If the coroner or medical examiner who performs the autopsy in this
18 state determines that the individual's death may have been the result of any of the
19 situations that would permit the district attorney to order an inquest under s. ~~979.04~~
20 968.015 (1), the coroner or medical examiner shall forward the results of the autopsy
21 to the appropriate authority in the other state.

22 **SECTION 1186.** 979.04 of the statutes is renumbered 968.015 and amended to
23 read:

24 **968.015 Inquests: when When inquests may be called.** (1) If the district
25 attorney has notice of the death of any person and there is reason to believe from the

1 circumstances surrounding the death that the person was a victim of felony murder,
2 first-degree or 2nd-degree intentional homicide, first-degree or 2nd-degree
3 reckless homicide, homicide by negligent handling of dangerous weapon, explosives,
4 or fire, homicide by negligent operation of vehicle, homicide resulting from negligent
5 control of a vicious animal ~~or~~, homicide by intoxicated user of a vehicle or firearm ~~may~~
6 ~~have been committed, or that death may have been due to suicide or the person died~~
7 under unexplained or suspicious circumstances, the district attorney may order that
8 an inquest be conducted for the purpose of inquiring how the person died. ~~The~~
9 ~~district attorney shall appear in any such inquest representing the state in~~
10 ~~presenting all evidence which may be relevant or material to the inquiry of the~~
11 ~~inquest. The inquest may be held in any county in this state in which venue would~~
12 ~~lie for the trial of any offense charged as the result of or involving the death.~~

13 (4) An inquest may ~~only~~ be ordered only by the district attorney acting under
14 ~~this subsection sub. (1)~~ or by the circuit judge under sub. (2).

15 (2) If the coroner or medical examiner ~~has knowledge of the death of any~~ knows
16 that a person has died in the manner or under the circumstances described under in
17 sub. (1), he or she shall ~~immediately notify the district attorney. The notification~~
18 ~~shall include information concerning the circumstances surrounding the death. The~~
19 ~~coroner or medical examiner~~ may request the district attorney to order an inquest
20 under sub. (1). If the district attorney refuses to order the inquest, ~~a~~ the coroner
21 or medical examiner may petition the ~~circuit~~ court to order an inquest. The court
22 may issue the order if it finds that the district attorney has abused his or her
23 discretion in not ordering an inquest.

24 (3) ~~Subsequent to receipt of~~ After receiving notice of the death, the district
25 attorney may request the coroner or medical examiner to conduct a preliminary

1 investigation and report back to the district attorney. The district attorney may
2 determine the scope of the preliminary investigation. This subsection does not limit
3 or prevent any other investigation into the death by any law enforcement agency
4 with jurisdiction over the investigation.

5 SECTION 1187. 979.05 (title) of the statutes is repealed.

6 SECTION 1188. 979.05 (1) of the statutes is renumbered 968.025 (1) and
7 amended to read:

8 968.025 (1) BY WHOM CONDUCTED. ~~An inquest shall be conducted by a circuit A~~
9 ~~judge or a circuit court commissioner shall conduct each inquest.~~

10 SECTION 1189. 979.05 (2) of the statutes is renumbered 968.025 (2) and
11 amended to read:

12 968.025 (2) BEFORE WHOM CONDUCTED. The inquest shall be conducted before
13 a jury unless the district attorney, coroner, or medical examiner requests that the
14 inquest be conducted before the judge ~~or circuit court commissioner~~ only.

15 (4) (a) If the inquest is to be conducted before a jury, the clerk shall select, in
16 the manner provided in s. 756.06 (1), a sufficient number of names of prospective
17 jurors ~~shall be selected~~ from the prospective juror list for the county in which the
18 inquest is to be held ~~by the clerk of circuit court in the manner provided in s. 756.06.~~
19 ~~The judge or circuit court commissioner conducting the inquest shall summon the~~
20 ~~prospective jurors to appear before the judge or circuit court commissioner at the~~
21 ~~time fixed in the summons. The summons may be served by mail, or by personal~~
22 ~~service if the judge, circuit court commissioner, or district attorney determines~~
23 ~~personal service to be appropriate. The summons shall be in the form used to~~
24 ~~summon petit jurors in the circuit courts of the county to ensure that the jury consists~~
25 of 6 members.

1 (b) Any person who fails to appear when summoned as an inquest juror is
2 subject to a forfeiture of ~~shall forfeit~~ not more than \$40. ~~The inquest jury shall consist~~
3 of 6 jurors. ~~If 6 jurors do not remain~~

4 (d) If, after all prospective jurors have been examined, fewer than 12 remain
5 from the number originally summoned ~~after establishment of qualifications~~, the
6 judge ~~or circuit court commissioner~~ conducting the inquest ~~may require~~ shall direct
7 the clerk ~~of the circuit court to select~~ to draw sufficient additional jurors' names.
8 ~~Those persons shall be summoned forthwith by the~~ The sheriff of the county shall
9 summon those persons immediately.

10 SECTION 1190. 979.05 (3) of the statutes is renumbered 968.025 (4) (c) and
11 amended to read:

12 968.025 (4) (c) The judge ~~or circuit court commissioner~~ shall examine on oath
13 or affirmation each person who is called as a juror to discover whether the juror is
14 related by blood, or marriage ~~or adoption~~ to the decedent, any member of the
15 decedent's family, the district attorney, any other attorney appearing in the case, or
16 any members of the office of the district attorney or of the office of any other attorney
17 appearing in the case, has expressed or formed any opinion regarding the matters
18 being inquired into in the inquest, or is aware of or has any bias or prejudice
19 concerning the matters being inquired into in the inquest. ~~If any prospective juror~~
20 ~~is found~~ The court shall excuse any prospective juror whom it finds to be not
21 indifferent or ~~is found~~ to have formed an opinion ~~which~~ that cannot be laid aside, ~~that~~
22 ~~juror shall be excused.~~ ~~The judge or circuit commissioner may select one or more~~
23 ~~alternate jurors if the inquest is likely to be protracted.~~ This subsection paragraph
24 does not limit the right of the district attorney to supplement the judge's ~~or circuit~~
25 ~~commissioner's~~ examination of any prospective jurors as to qualifications.

1 **SECTION 1191.** 979.05 (4) of the statutes is renumbered 968.025 (5) and
2 amended to read:

3 968.025 (5) OATH. ~~When~~ After the jurors have been selected, the judge or
4 ~~circuit court commissioner~~ shall administer to them an oath or affirmation which
5 shall be substantially in the following form:

6 You do solemnly swear (affirm) that you will diligently inquire and determine
7 on behalf of this state when, and in what manner and by what means, the person
8 known as ~~who is now dead~~ came to his or her death and that you will return
9 a true verdict thereon according to your knowledge, according to the evidence
10 presented, and according to the instructions given to you by the (judge) (circuit
11 court commissioner).

12 **SECTION 1192.** 979.05 (5), (6) and (7) of the statutes are renumbered 968.025
13 (6), (7) and (8) and amended to read:

14 968.025 (6) ROLE OF DISTRICT ATTORNEY. ~~Prior to the submission of evidence to~~
15 ~~the jury, the judge or circuit court commissioner may instruct the jury on its duties~~
16 ~~and on the substantive law regarding the issues which may be inquired into before~~
17 ~~the jury~~ The district attorney shall appear in each inquest, represent the state, and
18 present all evidence that may be relevant or material to the inquiry of the inquest.

19 The district attorney may, at any time during the course of the inquest, make
20 statements to the jury relating to procedural or evidentiary matters he or she and
21 the judge or circuit court commissioner deem appropriate. ~~Section 972.12 applies to~~
22 ~~the conduct of the inquest jury.~~

23 (7) SECURITY AND SEQUESTRATION. The judge or ~~circuit court commissioner~~
24 conducting the inquest may order that proceedings be secret if the district attorney
25 so requests or concurs and may sequester the inquest jury under s. 972.05.

1 (8) JUROR COMPENSATION. Inquest jurors shall receive the same compensation
2 as jurors under s. 756.25.

3 **SECTION 1193.** 979.06 (title), (1), (2) and (5) of the statutes are repealed.

4 **SECTION 1194.** 979.06 (3), (4) and (6) of the statutes are renumbered 968.035
5 (1), (2) and (3), and 968.035 (1) and (2), as renumbered, are amended to read:

6 968.035 (1) Any witness examined at an inquest may have counsel present
7 during the examination of that witness. The counsel may consult with a client during
8 the examination of that client. The counsel may not examine or cross-examine his
9 or her client, cross-examine or call other witnesses, or argue before the judge or
10 ~~circuit court commissioner~~ holding the inquest.

11 (2) The judge ~~or circuit court commissioner~~ shall administer an oath or
12 affirmation to each witness ~~which shall be substantially in the following form:~~

13 ~~You do solemnly swear (affirm) that the evidence and testimony you give to this~~
14 ~~inquest concerning the death of the person known as shall be the truth, the~~
15 ~~whole truth and nothing but the truth and shall cause the testimony given by all~~
16 ~~witnesses to be reduced to writing or recorded.~~

17 **SECTION 1195.** 979.07 of the statutes is repealed.

18 **SECTION 1196.** 979.08 (title) of the statutes is renumbered 968.055 (title).

19 **SECTION 1197.** 979.08 (1) of the statutes is renumbered 968.055 (1) and
20 amended to read:

21 968.055 (1) ~~When the~~ Before submitting evidence ~~is concluded and the~~
22 ~~testimony closed to the jury in an inquest,~~ the judge ~~or circuit court commissioner~~
23 shall may instruct the jury on its duties and on the substantive law regarding the
24 issues that may be inquired into before the jury. ~~The~~

1 (2) After all of the evidence is presented, the district attorney shall prepare a
2 written set of appropriate requested instructions and shall submit them to the judge
3 or circuit court commissioner who, together with the district attorney, a written set
4 of proposed instructions on the jury's duties and on the substantive law regarding
5 the issues inquired into before the jury. The judge shall compile the final set of
6 instructions which shall be given. The instructions shall include those instructions
7 for criminal offenses for which the judge or circuit court commissioner believes a
8 reasonable jury might return a verdict based upon a finding of probable cause. The
9 judge shall use the final instructions to instruct the jury and shall provide the jury
10 with one complete set of them.

11 **SECTION 1198.** 979.08 (2) of the statutes is repealed.

12 **SECTION 1199.** 979.08 (3) (intro.) and (4) of the statutes are consolidated,
13 renumbered 968.055 (3) (intro.) and amended to read:

14 968.055 (3) (intro.) The jury shall retire to consider its verdict after hearing all
15 of the testimony and evidence, making all necessary inquiries, and having been
16 instructed in the law. ~~The judge or circuit court commissioner shall provide the jury~~
17 ~~with one complete set of written instructions providing the substantive law to be~~
18 ~~applied to the issues to be decided. The verdict shall be in a form which permits the~~
19 ~~following findings: (4) The jury shall render its verdict shall be based upon a finding~~
20 ~~of probable cause, be unanimous, and be rendered in writing, signed by all of its~~
21 ~~members of the jury. The verdict shall set forth its the jury's findings from the~~
22 ~~evidence produced according to the instructions. The verdict shall be in a form that~~
23 ~~permits the following findings:~~

24 **SECTION 1200.** 979.08 (3) (a) of the statutes is renumbered 968.055 (3) (b) and
25 amended to read:

1 968.055 (3) (b) Whether the deceased ~~came to his or her death by criminal~~
2 ~~means~~ died as a result of a crime and, if so, the specific crimes committed and the
3 name of the person or persons, if known, ~~having~~ who committed the crimes.

4 **SECTION 1201.** 979.08 (3) (b) of the statutes is renumbered 968.055 (3) (a) and
5 amended to read:

6 968.055 (3) (a) Whether the deceased came to his or her death by natural
7 causes, accident, suicide, or an act privileged by law.

8 **SECTION 1202.** 979.08 (5) of the statutes is renumbered 968.055 (4) and
9 amended to read:

10 968.055 (4) The inquest jury's verdict ~~delivered by the inquest jury~~ is advisory
11 and does not preclude or require the issuance of any criminal charges by the district
12 attorney.

13 **SECTION 1203.** 979.08 (6) of the statutes is renumbered 968.055 (5) and
14 amended to read:

15 968.055 (5) Any verdict ~~so~~ rendered under sub. (4), after being validated and
16 signed by the judge ~~or circuit court commissioner~~, together with the record of the
17 inquest, shall be delivered to the district attorney for consideration. After
18 considering the verdict and record, the district attorney may deliver the entire
19 inquest record or any part ~~thereof~~ of the record to the coroner or medical examiner
20 for safekeeping.

21 **SECTION 1204.** 979.08 (7) of the statutes is renumbered 968.055 (6) and
22 amended to read:

23 968.055 (6) The Except as provided in s. 971.43, the record of a secret inquest
24 proceeding ~~shall~~ is not be open for inspection unless so ordered by the judge ~~or circuit~~
25 ~~court commissioner~~ conducting the inquest ~~upon petition by the district attorney.~~

1 **SECTION 1205.** 979.09 of the statutes is amended to read:

2 **979.09 Burial of body.** If any judge ~~or circuit court commissioner~~ conducts
3 an inquest as to the death of a stranger or of a person whose identity is unknown or
4 whose body is unclaimed or if the district attorney determines that no inquest into
5 the death of such a person is necessary and the ~~circuit~~ judge has not ordered an
6 inquest under s. ~~979.04~~ 968.015 (2), the coroner or medical examiner shall cause the
7 body to be decently buried or cremated and shall certify to all the charges incurred
8 in taking any inquest by him or her and to the expenses of burial or cremation of the
9 dead body. The charges and expenses shall be audited by the county board of the
10 proper county and paid out of the county treasury.

11 **SECTION 1206.** 979.10 (2) of the statutes is amended to read:

12 979.10 (2) If a corpse is to be cremated, the coroner or medical examiner shall
13 make a careful personal inquiry into the cause and manner of death, and conduct an
14 autopsy or order the conducting of an autopsy, if in his or her or the district attorney's
15 opinion it is necessary to determine the cause and manner of death. If the coroner
16 or medical examiner determines that no further examination or judicial inquiry is
17 necessary he or she shall certify that fact. Upon written request by the district
18 attorney the coroner or medical examiner shall obtain the concurrence of the district
19 attorney before issuing the certification. If the coroner or medical examiner
20 determines that further examination or judicial inquiry is necessary, he or she shall
21 notify the district attorney under s. ~~979.04~~ 968.015 (2).

22 **SECTION 1207.** 979.11 of the statutes is amended to read:

23 **979.11 Compensation of officers.** The sole compensation of the coroner and
24 deputy coroners for attendance at an inquest and for any preliminary investigation
25 under ~~this chapter~~ ch. 968 at the direction of the district attorney shall be a

1 reasonable sum set by the county board for each day actually and necessarily
2 required for the purpose, and a sum set by the county board for each mile actually
3 and necessarily traveled in performing the duty. Any coroner or deputy coroner may
4 be paid an annual salary and allowance for traveling expenses to be established by
5 the county board under s. 59.22 which shall be in lieu of all fees, per diem, and
6 compensation for services rendered.

7 **SECTION 1208.** 979.22 of the statutes is amended to read:

8 **979.22 Autopsies and toxicological services by medical examiners.** A
9 medical examiner may perform autopsies and toxicological services not required
10 under this chapter or under subch. I of ch. 968 and may charge a fee established by
11 the county board for such autopsies and services. The fee may not exceed an amount
12 reasonably related to the actual and necessary cost of providing the service.

13 **SECTION 1209.** 980.015 (2) (c) of the statutes is amended to read:

14 980.015 (2) (c) The anticipated release of a person on conditional release under
15 s. ~~971.17~~ 975.57 (4) or 975.59, the anticipated termination of a commitment order
16 under ~~971.17~~ s. 975.60, or the anticipated discharge of a person from a commitment
17 order under s. ~~971.17~~ 975.61, if the person has been found not guilty of a sexually
18 violent offense by reason of mental disease or defect.

19 **SECTION 1210.** 980.015 (2) (d) of the statutes is amended to read:

20 980.015 (2) (d) The anticipated release on parole or discharge of a person
21 committed under ch. 975, 2011 stats., for a sexually violent offense.

22 **SECTION 1211.** 980.031 (4) of the statutes is amended to read:

23 980.031 (4) If a party retains or the court appoints a licensed physician,
24 licensed psychologist, or other mental health professional to conduct an examination
25 under this chapter of the person's mental condition, the examiner shall have

1 reasonable access to the person for the purpose of the examination, as well as to the
2 person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient
3 health care records as provided under s. 146.82 (2) (cm), past and present juvenile
4 records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)
5 (e), and the person's past and present correctional records, including presentence
6 investigation reports under s. ~~972.15~~ 973.004 (6).

7 **SECTION 1212.** 980.036 (2) (c) of the statutes is amended to read:

8 980.036 (2) (c) Evidence obtained in the manner described under s. ~~968.31~~
9 968.345 (2) (b), if the prosecuting attorney intends to use the evidence at the trial or
10 proceeding.

11 **SECTION 1213.** 980.036 (6) of the statutes is amended to read:

12 980.036 (6) PROTECTIVE ORDER. Upon motion of a party, the court may at any
13 time order that discovery, inspection, or the listing of witnesses required under this
14 section be denied, restricted, or deferred, or make other appropriate orders. If the
15 prosecuting attorney or the attorney for a person subject to this chapter certifies that
16 listing a witness under sub. (2) (e) or (3) (a) may subject the witness or others to
17 physical or economic harm or coercion, the court may order that the deposition of the
18 witness be taken under s. ~~967.04 (2) to (6)~~ 967.21. The name of the witness need not
19 be divulged prior to the taking of such deposition. If the witness becomes unavailable
20 or changes his or her testimony, the deposition shall be admissible at trial as
21 substantive evidence.

22 **SECTION 1214.** 990.01 (23) of the statutes is amended to read:

23 990.01 (23) NIGHTTIME. "Nighttime," used in any statute, ordinance,
24 indictment or ~~information~~ complaint, means the time between one hour after sunset
25 on one day and one hour before sunrise on the following day; and the time of sunset

1 and sunrise shall be ascertained according to the mean solar time of the ninetieth
2 meridian west from Greenwich, commonly known as central time, as given in any
3 almanac.

4 **SECTION 1215.** 995.50 (7) of the statutes is amended to read:

5 995.50 (7) No action for invasion of privacy may be maintained under this
6 section if the claim is based on an act which is permissible under ~~ss. s.~~ 196.63 or
7 968.27 to 968.37 under subch. IV of ch. 968.

8 **SECTION 1216. Initial applicability.**

9 (1) This act first applies to prosecutions commenced on the effective date of this
10 subsection.

11 (2) This act first applies to proceedings, commitments, and requirements
12 related to offenses committed on the effective date of this subsection.

13 **SECTION 1217. Effective dates.** This act takes effect on the day after
14 publication, except as follows:

15 (1) The treatment of section 969.02 (3) (e) of the statutes takes effect on January
16 1, 2014, or on the day after publication, whichever is later.

17 (2) The treatment of sections 165.76 (1) (g) (by SECTION 85), (1m) (by SECTION
18 87), and (4) (a), (b), and (c), 165.765 (1m) and (2) (a) 1., 165.77 (2) (b) (by SECTION 93),
19 (2m) (c) (by SECTION 95), and (3) (by SECTION 97), (4) (am) 1. and 2. (intro.), a., b. and
20 d., 970.02 (8), and 971.027 (7) (title) of the statutes takes effect on April 1, 2015, or
21 on the day after publication, whichever is later.

22 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0031/lins
PJH&CMH:cjs&kjf:ph

1 Analysis:

2 Insert ORG ✓

~~no~~ This analysis is organized in the ascending order of the chapters, as reorganized in the bill. X

3

4 ✓ Insert AUTH/967

X This bill also creates new authority for courts and codifies some current practices.

Under this bill, chapter 967 contains definitions of terms used throughout the criminal procedure code and general provisions that, under current law, appear throughout the criminal procedure code. The bill also adds definitions for "complaint," "district attorney," "felony," "misdemeanor," "motion," and "sentencing."

This bill moves to chapter 968 all current law provisions relating to investigative procedures such as inquests, John Doe proceedings, grand juries, wiretapping, and search and seizure provisions.

5

6 ✓ Insert 969

X Under this bill, chapter 969 contains provisions addressing arrest and release, identifies ways to secure the appearance of a defendant, and includes provisions intended to expedite the processing of misdemeanors. ✓

7

8 ✓ Insert 970

Under this bill, chapter 970 contains provisions relating to the commencement of prosecutions. X ✓

9

10 Insert 971.38 (2)

X makes generally applicable a provision in current law that

11

12 Insert PLEA

X Under this bill, chapter 971 addresses pretrial procedures and contains subchapters for commencement of proceedings, pleas, and provisions to expedite proceedings, discovery, motions, and juveniles in adult court. no P ✓

1

2 ✓ Insert UNCON MOTION

X Under current law, the procedure for asserting that a statute is unconstitutional is located in the civil procedure statutes. This bill adds a procedure to the criminal procedure code that

3

4 ✓ Insert 972

5 X Under this bill, chapter 972^v contains statutes relating to criminal trials. no #

6 ✓ Insert 975

X Under this bill, chapter 975^v address^{es} mental health issues affecting a criminal prosecution such as competency to stand trial and mental responsibility, commonly known as the "insanity defense."

Statutes:

7

8 ✓ Insert 303-11

9 X On stipulation of the parties, or upon motion and for cause, the court may
10 extend that time.

Parisi, Lori

From: April Southwick <amsouthwick@gmail.com>
Sent: Friday, September 13, 2013 12:07 PM
To: LRB.Legal
Subject: Draft Review: LRB -0031/1 Topic: Criminal procedure rewrite

Please Jacket LRB -0031/1 for the ASSEMBLY.

Sent from my iPhone

Barman, Mike

From: Hanaman, Cathlene
Sent: Tuesday, September 17, 2013 8:34 AM
To: Southwick, April - Judicial Council; Parisi, Lori; Barman, Mike; Rose, Stefanie; Basford, Sarah
Cc: Mueller, Virginia
Subject: RE: LRB 0031

Ginger:

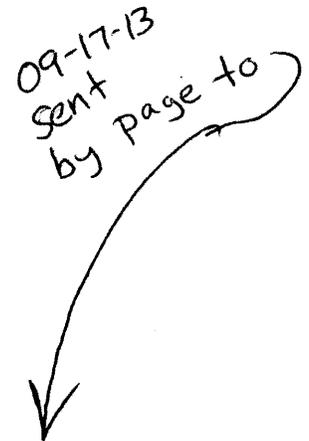
We'll call a page and get it to you.

Thanks,
Cathlene

-----Original Message-----

From: April Southwick [<mailto:April.Southwick@wicourts.gov>]
Sent: Monday, September 16, 2013 8:19 AM
To: Hanaman, Cathlene; Parisi, Lori
Cc: Mueller, Virginia
Subject: Re: LRB 0031

09-17-13
sent
by page to



Thank you, Lori. I'm out of the office today so could you please let Ginger Mueller from Rep. Ott's office pick it up?

Just let me know if you have any questions.

April

April M. Southwick, Attorney
Wisconsin Judicial Council
(608) 261-8290
>>> "Parisi, Lori" <Lori.Parisi@legis.wisconsin.gov> 09/13/13 12:55 PM
>>>
Hello,

Is Jacketed and ready for pickup at your convenience.

Thank you.

Lori Parisi
Program Assistant
Legislative Reference Bureau
(608)266-3561