1 **SECTION 936.** 971.315 of the statutes is renumbered 970.10 (2) and amended
2 to read:

3 970.10 **(2)** ~~INQUIRY UPON DISMISSAL.~~ Before a court dismisses a criminal charge
4 ~~against a person~~ under sub. (1), the court shall inquire of the district attorney
5 whether he or she has complied with s. 971.095 (2).

6 **SECTION 937.** 971.32 of the statutes is renumbered 970.21.

7 **SECTION 938.** 971.34 of the statutes is renumbered 970.22.

8 **SECTION 939.** 971.36 of the statutes is renumbered 970.23.

9 **SECTION 940.** 971.365 of the statutes is renumbered 970.24.

10 **SECTION 941.** 971.38 (1) of the statutes is amended to read:

11 971.38 **(1)** Except as provided in s. ~~967.055~~ 970.25 (3), the district attorney may
12 require as a condition of any deferred prosecution program for any crime that the
13 defendant perform community service work for a public agency or a nonprofit
14 charitable organization. The number of hours of work required may not exceed what
15 would be reasonable considering the seriousness of the alleged offense. An order may
16 only apply if agreed to by the defendant and the organization or agency. The district
17 attorney shall ensure that the defendant is provided a written statement of the terms
18 of the community service order and that the community service order is monitored.

19 **SECTION 942.** 971.39 (1) (intro.) of the statutes is amended to read:

20 971.39 **(1)** (intro.) Except as provided in s. ~~967.055~~ 970.25 (3), in counties
21 having a population of less than 100,000, if a defendant is charged with a crime, the
22 district attorney, the department and a defendant may all enter into a deferred
23 prosecution agreement which includes, but is not limited to, the following conditions:

24 **SECTION 943.** Subchapter IV (title) of chapter 971 [precedes 971.42] of the
25 statutes is created to read:

1 **CHAPTER 971**

2 SUBCHAPTER IV

3 DISCOVERY

4 **SECTION 944.** 971.42 of the statutes is created to read:

5 **971.42 Purposes.** Discovery under this subchapter and s. 971.035 is intended,
6 consistent with the constitutional rights of the defendant, to do all of the following:

7 **(1)** Promote fair and expeditious disposition of criminal charges, whether by
8 deferred or suspended prosecution, plea, or trial.

9 **(2)** Provide the defendant with sufficient information to make an informed
10 plea.

11 **(3)** Permit thorough preparation for and minimize surprise at trial.

12 **(4)** Reduce interruptions and complications during trial and avoid unnecessary
13 and repetitious trials by identifying and resolving any procedural, collateral, or
14 constitutional issues before trial.

15 **(5)** Minimize inequities among similarly situated defendants.

16 **(6)** Effect economies in time, money, judicial resources, and professional skills
17 by minimizing paperwork, avoiding repetitious assertion of issues, and reducing the
18 number of separate hearings.

19 **(7)** Minimize the burden upon victims and witnesses.

20 **SECTION 945.** 971.43 (title) and (1) of the statutes are created to read:

21 **971.43** (title) **Disclosure by district attorney. (1)** TIME OF DISCLOSURE.
22 Except as provided in subs. (5) and (8), the district attorney shall make all disclosures
23 under this section within a reasonable time before the pretrial conference or at a time
24 set in the scheduling order.

25 **SECTION 946.** 971.43 (2) (b) of the statutes is created to read:

971.43 **(2)** (b) Any written or recorded statement concerning the alleged crime made by a codefendant, including the testimony of the codefendant at an inquest, in a John Doe proceeding under s. 968.105, or before a grand jury, and the names of witnesses to the codefendant's written statements.

SECTION 947. 971.43 (2) (br) of the statutes is created to read:

971.43 **(2)** (br) Any record or testimony taken from a John Doe proceeding under s. 968.105 that the district attorney intends to use at trial and the names of witnesses to the defendant's written statements.

SECTION 948. 971.43 (2) (e) of the statutes is created to read:

971.43 **(2)** (e) Any written or recorded statement of a person whom the district attorney intends to call as a trial witness that concerns the subject matter of the witness's intended testimony, that has been electronically recorded or reduced to writing and signed or otherwise approved or adopted by the witness, and that is within the possession or control of the state.

SECTION 949. 971.43 (2) (f) of the statutes is created to read:

971.43 **(2)** (f) Any audiovisual recording of an oral statement of a child under s. 908.08.

SECTION 950. 971.43 (2) (h) of the statutes is created to read:

971.43 **(2)** (h) After the defendant has obtained or waived legal representation, copies of all law enforcement investigative reports relating to the case.

SECTION 951. 971.43 (3) of the statutes is created to read:

971.43 **(3)** CHARACTER, REPUTATION, OR OTHER ACTS EVIDENCE. If the district attorney intends to use evidence of character or reputation or evidence of other crimes or acts under s. 904.04 (2), he or she shall notify the defense of that intention and of the substance of the evidence to be used.

1 **SECTION 952.** 971.43 (4) of the statutes is created to read:

2 971.43 **(4)** ELECTRONIC SURVEILLANCE. If the defendant's conversations or
3 premises have been subjected to electronic surveillance, including wiretapping, in
4 connection with the investigation or prosecution of the case, the district attorney
5 shall inform the defense of that fact.

6 **SECTION 953.** 971.43 (6) of the statutes is created to read:

7 971.43 **(6)** MATERIAL POSSESSED BY INVESTIGATIVE PERSONNEL. The district
8 attorney shall make reasonable efforts to ensure that investigative personnel
9 provide material and information relevant to the crime charged to the district
10 attorney's office.

11 **SECTION 954.** 971.43 (7) of the statutes is created to read:

12 971.43 **(7)** MATERIAL POSSESSED BY OTHER AGENCIES. If the district attorney
13 knows that material and information that would be discoverable if in his or her
14 possession is in the possession or control of a government agency not reporting
15 directly to the district attorney, the district attorney shall disclose the fact of the
16 existence of such material or information to the defense.

17 **SECTION 955.** 971.43 (8) of the statutes is created to read:

18 971.43 **(8)** NOTICE OF INTENT TO USE CODEFENDANT'S STATEMENT. If the district
19 attorney intends to use the statement of a codefendant to implicate the defendant in
20 the crime charged, he or she shall inform the defendant before trial.

21 **SECTION 956.** 971.44 (title) and (1) of the statutes are created to read:

22 **971.44** (title) **Defense disclosure. (1)** TIME OF DISCLOSURE. The defense shall
23 make all disclosures under this section within a reasonable time before the pretrial
24 conference or at a time set in the scheduling order.

25 **SECTION 957.** 971.44 (2) (a) of the statutes is created to read:

971.44 **(2)** (a) Any written or recorded statement of a person whom the defense intends to call as a trial witness that concerns the subject matter of the witness's intended testimony, that has been electronically recorded or reduced to writing and signed or otherwise approved or adopted by the witness, and that is within the possession or control of the defense.

SECTION 958. 971.44 (3) of the statutes is created to read:

971.44 **(3)** CHARACTER, REPUTATION, OR OTHER ACTS EVIDENCE. If the defense intends to use evidence of character or reputation or evidence of other crimes or acts under s. 904.04 (2) not relating to the defendant, the defense shall notify the district attorney of that intention and of the substance of the evidence to be used.

SECTION 959. 971.46 (intro.) and (1) of the statutes are created to read:

971.46 Expert witnesses. (intro.) Any party who intends to call an expert witness at trial shall, not less than 15 days before the trial or at another time set by the court, do all of the following:

(1) Notify the other party in writing of the expert witness's name, address, and qualifications.

SECTION 960. 971.48 (title) of the statutes is created to read:

971.48 (title) **Scientific testing; preservation of evidence.**

SECTION 961. 971.48 (2) of the statutes is created to read:

971.48 **(2)** If before trial either party intends to destroy or permanently transfer out of its possession any material discoverable under this subchapter, the party shall give the other party advance notice sufficient to afford that party an opportunity to object or take other appropriate action.

SECTION 962. 971.49 of the statutes is created to read:

1 **971.49 Motion to obtain evidence before trial. (1)** Notwithstanding s.
2 908.03 (6m) (c), before trial and upon motion by either party, the court may issue a
3 subpoena to require the production of documents and other tangible objects if it finds
4 that the evidence sought may be material to the determination of issues in the case.
5 **(2)** A motion and subpoena under sub. (1) shall specify who shall produce the
6 material, whether certified copies of documents may be submitted in lieu of
7 appearance, and other conditions under which the evidence shall be produced.
8 **(3)** Any party, or any person subpoenaed under this section, may move to quash
9 the subpoena if the movant under sub. (1) has not shown grounds for the subpoena
10 or if compliance would subject the person subpoenaed to an undue burden, require
11 the disclosure of information that is privileged or otherwise protected from
12 disclosure, or otherwise be unreasonable.
13 **SECTION 963.** 971.51 (title) and (1) of the statutes are created to read:
14 **971.51** (title) **Manner of performing disclosure. (1)** Disclosure may be
15 accomplished in any manner mutually agreeable to the parties. Absent agreement,
16 the party having the duty to disclose shall do one of the following:
17 (a) Provide a copy of the material to be disclosed.
18 (b) Notify the other party that the material may be inspected, copied, or
19 photographed during specified reasonable times and make the material available to
20 the other party at the time specified. The party having the duty to disclose shall,
21 unless it provides copies, make available suitable machinery for making copies.
22 **SECTION 964.** 971.52 (3) of the statutes is created to read:
23 971.52 **(3)** If anything is deleted from discoverable material under a claim of
24 privilege or other exemption, the party to whom the discovery is made shall be
25 notified and may move the court for an order requiring its disclosure. The court may

1 require the deleted information to be furnished to the court under seal for
2 determination of its discoverability. If the court determines that the material is
3 exempt from disclosure, an appropriate sealed copy of the material shall be kept in
4 the court record.

5 **SECTION 965.** 971.56 of the statutes is created to read:

6 **971.56 Obtaining nontestimonial information from defendant. (1)** IN
7 GENERAL. Upon motion by the district attorney, the court may order a defendant
8 charged with a crime to participate in a procedure to obtain nontestimonial evidence
9 relevant to whether the defendant committed the crime if the procedure is
10 reasonable and does not involve an unreasonable intrusion into the body or an
11 unreasonable detention of the defendant. An order under this subsection may direct
12 the defendant to do any of the following:

13 (a) Appear, move, or speak for identification in a lineup or, if a lineup is not
14 practicable, through some other reasonable procedure.

15 (b) Try on clothing and other articles.

16 (c) Provide handwriting and voice exemplars.

17 (d) Permit the taking of his or her photograph.

18 (e) Permit the taking of fingerprints, palm prints, footprints, and other body
19 impression.

20 (f) Permit the taking of samples of blood, urine, saliva, semen, skin, breath,
21 hair, or nails or materials under the nails.

22 (g) Submit to body measurements and other reasonable body surface
23 examinations.

24 (h) Submit to reasonable physical and medical inspection, including X–rays,
25 of the body.

1 (i) Participate in other procedures that comply with the requirements of sub.
2 (1) (intro.).
3 **(2)** CONTENTS OF ORDER. An order under this section shall specify with
4 particularity the authorized procedure; the scope of the defendant's participation in
5 the procedure; the time, duration, and place of the procedure and other conditions
6 under which it is to be conducted; and who may conduct the procedure. It may also
7 direct the defendant not to alter substantially any identifying physical
8 characteristics to be examined or destroy any evidence sought. The order shall
9 specify that the defendant may not be subjected to investigative interrogation while
10 participating in or present for the procedure and that the defendant may be held in
11 contempt of court if he or she fails to appear and participate in the procedure as
12 directed.
13 **(3)** SERVICE. The order shall be served by mailing or delivering a copy to the
14 defendant's counsel and by delivering a copy of the order to the defendant personally.
15 **(4)** IMPLEMENTATION. (a) Counsel may accompany the defendant at a procedure
16 ordered under this section, but the court may bar other individuals from attending.
17 (b) If the procedure involves an intrusion into the body, it shall be conducted
18 by a qualified health care professional. Upon timely request by the defendant and
19 approval by the court, a qualified health care professional designated by the
20 defendant may observe any procedure involving intrusion of the body.
21 (c) The defendant may not be subjected to investigative interrogation at the
22 procedure. No statement of the defendant made at the procedure is admissible
23 against the defendant if made in the absence of the defendant's counsel.
24 **SECTION 966.** 971.57 of the statutes is created to read:

1 **971.57 Nontestimonial discovery from 3rd parties. (1)** Upon motion of
2 a defendant, the court may issue a subpoena requiring an individual to participate
3 in a procedure to obtain nontestimonial evidence under s. 971.56 (1) if an affidavit
4 or testimony shows probable cause to believe that the individual to be subpoenaed
5 committed the crime with which the defendant is charged and that the evidence
6 sought is necessary to an adequate defense and cannot practicably be obtained from
7 other sources.

8 **(2)** A motion and order under sub. (1) shall specify with particularity the
9 following information if appropriate:

10 (a) The authorized procedure.

11 (b) The scope of the 3rd party's participation.

12 (c) The time, duration, and place of the procedure and other conditions under
13 which it is to be conducted.

14 (d) The name or job title of the person who is to conduct the procedure.

15 **(3)** Any party or any person subpoenaed under this section may move to quash
16 the subpoena if the defendant has not shown grounds for the subpoena or if
17 compliance would subject the person subpoenaed to an undue burden, require the
18 disclosure of information that is privileged or otherwise protected from disclosure,
19 or otherwise be unreasonable.

20 **SECTION 967.** 971.58 (title) of the statutes is created to read:

21 **971.58** (title) **Compelling certain examinations prohibited.**

22 **SECTION 968.** Subchapter V (title) of chapter 971 [precedes 971.65] of the
23 statutes is created to read:

24 **CHAPTER 971**

25 SUBCHAPTER V

MOTIONS

SECTION 969. 971.65 (title) of the statutes is created to read:

971.65 (title) **Pretrial motions.**

SECTION 970. 971.65 (2) of the statutes is created to read:

971.65 **(2)** TIME FOR FILING. A motion under this section shall be filed within the time set in the scheduling order. If there is no scheduling order, the motion shall be filed not later than 15 days before trial, unless otherwise permitted by the court.

SECTION 971. 971.66 of the statutes is created to read:

971.66 Motions to dismiss asserting that a statute is unconstitutional. If a defendant moves to dismiss a criminal prosecution by asserting that the statute under which he or she is charged violates the United States or Wisconsin Constitution, the defendant must serve a copy of the motion on the attorney general under s. 806.04 (11) as well as on the district attorney.

SECTION 972. 971.68 (title), (1) and (3) of the statutes are created to read:

971.68 (title) **Joinder and severance motions. (1)** IN GENERAL. Either party may move for joinder or relief from misjoinder or prejudicial joinder under s. 970.13.

(3) CODEFENDANT'S STATEMENTS. If a defendant moves for severance because a codefendant's out–of–court statement refers to, but is not admissible against, the movant, the court shall determine whether the state intends to offer the statement in evidence as part of its case in chief. If so, the court shall require the district attorney to elect one of the following:

(a) A joint trial at which the statement is not received in evidence.

(b) A joint trial at which the statement is received in evidence only after all references to the movant have been deleted, if admission of the statement with the deletions made will not prejudice the movant.

1 (c) A separate trial for the movant.

2 (d) With the approval of the court, a separate jury for each defendant sitting
3 in a single trial.

4 **SECTION 973.** 971.69 of the statutes is created to read:

5 **971.69 Pretrial dismissal of complaint. (1)** A defendant may move for
6 pretrial dismissal of the complaint or of any count in the complaint. The defendant
7 may provide one or more affidavits in support of the motion. The motion shall state
8 with particularity the grounds upon which it is based and shall specify all of the
9 following:

10 (a) The elements of the crime charged or other facts the state is required to
11 prove at trial that the defendant believes the state cannot prove because there is no
12 genuine issue as to any material fact.

13 (b) The evidence or absence of evidence, including any statement of a witness,
14 that the defendant believes is uncontroverted and that establishes the grounds
15 stated in the motion.

16 (c) If applicable, any crime included within the crime charged, as provided in
17 s. 939.66, that the defendant also believes, for the grounds specified, the state cannot
18 prove at trial because there is no genuine issue as to any material fact.

19 **(2)** If the grounds stated in the motion, if true, would not justify granting the
20 dismissal motion, or if the allegations in the complaint demonstrate that there is a
21 genuine issue of material fact as to those grounds, the court shall deny the motion.

22 **(3)** If the grounds stated in the motion, if true, would justify granting the
23 dismissal motion and the allegations in the complaint do not demonstrate that there
24 is a genuine issue of material fact as to those grounds, the court shall allow the
25 district attorney to file a written response presenting any facts or expert opinions

that the district attorney believes establish the elements or other facts that the state is required to prove at trial. The court may request that the district attorney and defense counsel present arguments and may allow testimony where it would resolve the questions whether a genuine issue of material fact exists.

(4) Unless the court denies the motion under sub. (2), the court shall rule on the motion based on the complaint, the material submitted by the defendant in support of the motion, and material, testimony, or argument presented under sub. (3). The court shall rule on the motion as to the crime charged and any included crime specified in the motion. If the court concludes, for the reasons specified in the motion, that there is no genuine issue as to any material fact, the court shall do one of the following:

(a) Grant the motion.

(b) Allow the district attorney to amend the complaint.

(5) A complaint or charge dismissed under this section may not be reissued unless the district attorney has or discovers additional evidence supporting the complaint or charge.

(6) The defendant shall raise all grounds that can be raised under this section in a single motion, unless good cause is shown.

SECTION 974. Subchapter VI (title) of chapter 971 [precedes 971.75] of the statutes is created to read:

CHAPTER 971

SUBCHAPTER VI

JUVENILES IN ADULT COURT

SECTION 975. 971.75 (title) of the statutes is created to read:

1 **971.75** (title) **Probable cause and retention hearings; juvenile under**
2 **original adult court jurisdiction.**

3 **SECTION 976.** 971.75 (2) of the statutes is created to read:

4 971.75 **(2)** TIME FOR PROBABLE CAUSE HEARING. The court shall conduct a
5 probable cause hearing that is required under sub. (1) within 10 days after the initial
6 appearance. On stipulation of the parties, or upon motion and for cause, the court
7 may extend that time.

8 **SECTION 977.** 971.75 (4) of the statutes is created to read:

9 971.75 **(4)** TIME FOR RETENTION HEARING. The court shall conduct any hearing
10 on retention of jurisdiction that is required under sub. (3) (b) within 20 days of the
11 probable cause finding under sub. (3) (b).

12 **SECTION 978.** 971.75 (6) (title) and (a) of the statutes are created to read:

13 971.75 **(6)** (title) WITNESSES AT PROBABLE CAUSE AND RETENTION HEARINGS. (a)
14 Both the district attorney and the juvenile may call and cross–examine witnesses at
15 any hearing under this section. All witnesses shall be sworn and their testimony
16 reported by a court reporter.

17 **SECTION 979.** 971.75 (7) (title) of the statutes is created to read:

18 971.75 **(7)** (title) ADMISSIBILITY OF REPORTS.

19 **SECTION 980.** 971.75 (9) (title) of the statutes is created to read:

20 971.75 **(9)** (title) CLOSURE ORDERS.

21 **SECTION 981.** 971.76 of the statutes is created to read:

22 **971.76 Pretrial dismissal of complaint against juvenile. (1)** WAIVER
23 CASES. If the court has jurisdiction over a juvenile as a result of a waiver under s.
24 938.18 (1) (a) or (b), the juvenile may move the court to dismiss the complaint on the
25 ground that the state cannot prove that he or she committed any of the offenses listed

in s. 938.18 (1) (a) or (b) on which the waiver was based. The motion shall comply with the requirements of s. 971.69 (1) and the court shall review the motion under the procedures set forth in s. 971.69 (2) to (4). If the court grants a motion to dismiss under this subsection, the court shall order that the juvenile be discharged, but proceedings may be brought regarding the juvenile under ch. 938.

(2) CASES INVOLVING ORIGINAL ADULT COURT JURISDICTION. A juvenile subject to the court's original jurisdiction under s. 938.183 (1) may move the court to dismiss the complaint on the ground that the state cannot prove that he or she committed any of the offenses charged under s. 938.183 (1) (a), (am), (b), or (c) under the circumstances described in those provisions. The motion shall comply with the requirements of s. 971.69 (1), and the court shall review the motion under the procedures set forth in s. 971.69 (2) to (4). If the court grants a motion to dismiss under this subsection, the court shall order that the juvenile be discharged, but proceedings may be brought regarding the juvenile under ch. 938.

SECTION 982. 971.77 (title) of the statutes is created to read:

971.77 (title) **Motion to transfer jurisdiction in misdemeanors.**

SECTION 983. 972.005 (title) of the statutes is created to read:

972.005 (title) **Right to jury; waiver.**

SECTION 984. 972.005 (2) of the statutes is created to read:

972.005 **(2)** PARTIAL JURY TRIAL WAIVER. The parties may agree, with the approval of the court, that the jury be instructed that an element of the crime is established. The court shall address the defendant personally to assure that the defendant understands his or her right to trial by jury as to that element and voluntarily waives that right.

SECTION 985. 972.01 of the statutes is amended to read:

972.01 Jury; civil rules applicable. ~~The~~ Except as otherwise provided in this chapter, the summoning ~~of jurors, the~~, selection, and qualifications of ~~the jury~~ jurors, the challenge of jurors for cause, and the duty of the court in charging the jury ~~and~~, giving instructions, and discharging the jury when it is unable to agree shall be the same in criminal as in civil actions~~, except that s. 805.08 (3) shall not apply~~.

SECTION 986. 972.02 (title) of the statutes is repealed.

SECTION 987. 972.02 (1) of the statutes is renumbered 972.005 (1) and amended to read:

972.005 **(1)** WAIVER. ~~Except as otherwise provided in this chapter, criminal~~ Criminal cases shall be tried by a jury ~~selected as prescribed in s. 805.08,~~ unless the defendant waives ~~a~~ his or her right to trial by jury ~~in writing or by statement in open court or under s. 967.08 (2) (b), on the record,~~ with the approval of the court and the consent of the state. Before approving a waiver of the right to trial by jury, the court shall address the defendant personally to assure that the defendant understands his or her right to trial by jury and that the defendant voluntarily waives that right.

SECTION 988. 972.02 (2) of the statutes is renumbered 972.025 (2) and amended to read:

972.025 **(2)** JURY OF LESS THAN 12. At any time before the verdict is returned in a ~~felony~~ criminal case, the parties may ~~stipulate in writing or by statement in open court, on the record~~ agree, with the approval of the court, that the jury shall consist of ~~any number~~ less than 12 persons. If the ~~case is a misdemeanor case, the jury shall consist of 6 persons~~ parties agree to a jury of less than 12, the court shall address the defendant personally to assure that the defendant understands his or her right to a jury of 12 and that the defendant voluntarily waives that right.

SECTION 989. 972.02 (3) of the statutes is renumbered 972.27 and amended to read:

972.27 Findings in a trial to the court. In a case tried without a jury, the court shall make a general finding and may in addition find the facts specially. If the charge includes a provision that increases the maximum penalty for the charged crime, the court shall make a specific finding as to the proof of that provision.

SECTION 990. 972.02 (4) of the statutes is renumbered 972.04 (5) and amended to read:

972.04 **(5)** ~~No~~ A member of ~~the~~ a grand jury ~~which found the indictment shall~~ that indicted a defendant may not be a juror for the defendant's trial ~~of the indictment~~.

SECTION 991. 972.025 (title) and (1) of the statutes are created to read:

972.025 (title) **Jury size. (1)** TWELVE–PERSON JURY. A jury in a criminal case shall consists of 12 persons unless the parties agree to a lesser number as provided in sub. (2).

SECTION 992. 972.03 (title) of the statutes is amended to read:

972.03 (title) ~~**Peremptory**~~ **Number of peremptory challenges.**

SECTION 993. 972.03 of the statutes is renumbered 972.03 (1) and amended to read:

972.03 **(1)** GENERALLY. ~~Each~~ Except as provided in subs. (2), (3), (4), and (5), in a criminal case, each side is entitled to ~~only~~ 4 peremptory challenges ~~except as otherwise provided in this section. When~~.

(4) LIFE IMPRISONMENT. If the crime charged in a case is punishable by life imprisonment, ~~the state is~~ each side shall be entitled to 6 peremptory challenges ~~and the defendant is entitled to 6 peremptory challenges. If there is~~, except, if the case

involves 2 defendants, the defense shall be entitled to 12 peremptory challenges, and if the case involves more than 2 defendants, the defense shall be entitled to 18 peremptory challenges.

(3) DIVIDING CHALLENGES AMONG DEFENDANTS. In a criminal case involving more than one defendant, the court shall divide the peremptory challenges for the defense as equally as practicable among ~~them~~ the defendants; and if their defenses are adverse and the court is satisfied that the protection of their rights so requires, the court may allow the defendants additional peremptory challenges. If ~~the crime is punishable by life imprisonment, the total peremptory challenges allowed the defense shall not exceed 12 if there are only 2 defendants and 18 if there are more than 2 defendants; in other felony cases~~ the defendants are allowed additional peremptory challenges under this subsection, the courts may, if the interest of justice requires, allow the state additional peremptory challenges.

(2) MORE THAN ONE DEFENDANT. Except as provided in subs. (3) and (4), in a criminal case involving 2 defendants, the defense shall be entitled to 6 peremptory challenges ~~if there are only~~, and in a criminal case involving more than 2 defendants ~~and~~, the defense shall be entitled to 9 peremptory challenges ~~if there are more than 2. In misdemeanor cases, the state is entitled to 3 peremptory challenges and the defendant is entitled to 3 peremptory challenges, except that if there are 2 defendants, the court shall allow the defense 4 peremptory challenges, and if there are more than 2 defendants, the court shall allow the defense 6 peremptory challenges~~.

(5) ADDITIONAL CHALLENGES. Each side shall be allowed at least one additional peremptory challenge if the court orders that additional jurors ~~are to~~ be selected under s. 972.04 (1).

SECTION 994. 972.04 (title) of the statutes is repealed and recreated to read:

972.04 (title) **Jury selection.**

SECTION 995. 972.04 (1) of the statutes is amended to read:

972.04 **(1)** The number of jurors selected in a criminal case shall be ~~prescribed in s. 756.06 (2) (a) or (am), whichever is applicable,~~ 12 unless a lesser number has been ~~stipulated~~ agreed to and approved under s. ~~972.02~~ 972.025 (2) ~~or the~~. The court ~~orders~~ may order that additional jurors be selected~~. That number, plus the number of peremptory challenges available to all the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The~~ to assure that the required number of jurors will be available for deliberation.

(6) After the jurors have been examined and the court has determined whether to excuse any juror for cause, the parties shall ~~thereupon~~ exercise ~~in their order~~ their peremptory challenges alternately, the state beginning~~, the peremptory challenges available to them, and if~~. If any party declines to exercise a peremptory challenge, the ~~challenge shall be made by the~~ clerk shall make the challenge by lot.

SECTION 996. 972.04 (2) of the statutes is repealed.

SECTION 997. 972.04 (3) of the statutes is created to read:

972.04 **(3)** The court shall call and maintain the number of jurors provided in sub. (1), plus the number of peremptory challenges available to the parties. If a juror is excused for cause, the court shall replace that juror with another.

SECTION 998. 972.06 of the statutes is amended to read:

972.06 ~~View~~ Jury view. The court may order ~~a view by~~ the jury to view a location or object whenever the court concludes that viewing the location or object

would assist the jury in understanding the evidence introduced in court or assist the jury in weighing and applying that evidence.

SECTION 999. 972.07 of the statutes is renumbered 967.12 and amended to read:

967.12 Jeopardy. Jeopardy attaches when one of the following occurs:

(1) In a trial to the court without a jury, when ~~a witness is sworn;~~ the first witness assents to the oath or affirmation or answers the first question if no oath or affirmation is administered.

(2) In a jury trial, when the selection of the jury has been completed and the jury sworn.

SECTION 1000. 972.075 of the statutes is created to read:

972.075 Questioning of witnesses by jurors. (1) After selection of a jury, the court may authorize the jurors to ask questions of witnesses.

(2) If the court authorizes juror questions, the court shall instruct the jury to propose only questions that tend to clarify information already presented and shall instruct the jury of the following procedure that shall be used for juror questions:

(a) After the parties have questioned a witness and before the witness leaves the stand, the court shall ask the jurors if they have any questions for the witness.

(b) If a juror has a question, he or she shall submit the question in writing to the judge.

(c) The judge shall show the question to the parties and allow the parties to object to the question without the knowledge of the jury.

(d) The judge shall review the question and any objections made by the parties and determine if the question is legally proper.

(e) If the question is legally proper, the judge may ask it of the witness.

(f) The court shall allow the parties to ask follow–up questions to any juror questions that are posed to a witness.

SECTION 1001. 972.08 of the statutes is renumbered 967.17, and 967.17 (1) and (2), as renumbered, are amended to read:

967.17 **(1)** (a) Whenever any person refuses to testify or to produce books, papers, or documents when required to do so before any grand jury, in a John Doe proceeding under s. ~~968.26~~ 968.105, at an inquest under s. 968.015, or at a ~~preliminary examination,~~ criminal hearing or trial for the reason that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a forfeiture or penalty, the person may nevertheless be compelled to testify or produce the evidence by order of the court on motion of the district attorney. No person who testifies or produces evidence in obedience to the command of the court in that case may be liable to any forfeiture or penalty for or on account of testifying or producing evidence, but no person may be exempted from prosecution and punishment for perjury or false swearing committed in so testifying.

(b) The immunity provided under par. (a) is subject to the restrictions under s. ~~972.085~~ 967.18.

(2) Whenever a witness attending in any court trial or appearing before any grand jury ~~or~~, John Doe ~~investigation~~ proceeding under s. ~~968.26~~ 968.105, or inquest under s. 968.015 fails or refuses without just cause to comply with an order of the court under this section to give testimony in response to a question or with respect to any matter, the court, upon such failure or refusal, or when such failure or refusal is duly brought to its attention, may summarily order the witness's confinement at a suitable place until such time as the witness is willing to give such testimony or until ~~such~~ the trial, grand jury term, ~~or~~ John Doe ~~investigation under s. 968.26~~

proceeding, or inquest is concluded but in no case exceeding one year. No person confined under this section shall be ~~admitted to bail~~ released on conditions pending the determination of an appeal taken by the person from the order of confinement.

SECTION 1002. 972.085 of the statutes is renumbered 967.18 and amended to read:

967.18 Immunity; use standard. Immunity from criminal or forfeiture prosecution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15, 139.20, 139.39 (5), 195.048, 196.48, 551.602 (5), 553.55 (3), 601.62 (5), 767.87 (4), 885.15, 885.24, 885.25 (2), 891.39 (2), ~~968.26, 972.08 (1)~~ 967.17 (1), and ~~979.07 (1)~~ 968.105 and ch. 769, provides immunity only from the use of the compelled testimony or evidence in subsequent criminal or forfeiture proceedings, as well as immunity from the use of evidence derived from that compelled testimony or evidence.

SECTION 1003. 972.09 of the statutes is repealed.

SECTION 1004. 972.10 (title) of the statutes is renumbered 972.16 (title).

SECTION 1005. 972.10 (1) (a) (intro.) of the statutes is repealed.

SECTION 1006. 972.10 (1) (a) 1. of the statutes is renumbered 972.065 and amended to read:

972.065 Note–taking by jurors. The court may authorize note–taking by jurors. If the court authorizes note–taking, the court shall instruct the jurors that they may make written notes of any portion of the proceedings~~,~~ except the opening statements and closing arguments, ~~if they so desire~~ and that the court will provide materials for ~~that purpose if they so request~~ note–taking. The court shall ~~stress the confidentiality of the notes to~~ inform the jurors that the notes are confidential. The jurors may refer to their notes during the proceedings and ~~deliberation~~ their deliberations. The notes may not be the basis for or the object of any motion by any

party. After the jury has ~~rendered~~ returned its verdict, the court shall ensure that the notes are promptly collected and destroyed.

SECTION 1007. 972.10 (1) (a) 2. of the statutes is repealed.

SECTION 1008. 972.10 (1) (b) of the statutes is renumbered 972.095 and amended to read:

972.095 Preliminary jury instructions. The court may give ~~additional~~ preliminary instructions to assist the jury in understanding its duty and the evidence it will hear. ~~The preliminary instructions may include, without limitation, the elements of any offense charged, what constitutes evidence and what does not, guidance regarding the burden of proof and the credibility of witnesses, and directions not to discuss the case until deliberations begin. The additional instructions shall be disclosed to the parties before they are given and either party may object to any specific instruction or propose instructions of its own to be given prior to trial~~ The court shall advise the parties of the content of the instructions to be given. The parties may propose instructions of their own. All objections shall be on the record and shall specify with particularity how the instruction is insufficient or does not correctly state the law.

SECTION 1009. 972.10 (2) of the statutes is repealed.

SECTION 1010. 972.10 (3) of the statutes is repealed.

SECTION 1011. 972.10 (4) of the statutes is repealed.

SECTION 1012. 972.10 (5) of the statutes is renumbered 972.22 (1) and amended to read:

972.22 **(1)** ~~When the evidence is concluded and the testimony closed, if either party desires special instructions to be given to the jury, the instructions shall be reduced to writing, signed by the party or his or her attorney and filed with the clerk,~~

~~unless the court otherwise directs. Counsel for the parties, or the defendant if he or she is without counsel, shall be allowed~~ The court shall allow the parties reasonable opportunity to request final jury instructions, to examine ~~the~~ any instructions requested by any other party, and to present and argue to the court objections to the adoption or rejection of any instructions requested by ~~counsel~~ the parties.

(2) The court shall advise the parties of the content of the instructions ~~to be given. No instruction regarding the failure to call a witness at the trial shall be made or given if the sole basis for such instruction is the fact the name of the witness appears upon a list furnished pursuant to s. 971.23. Counsel, or the defendant if he or she is not represented by counsel, shall specify and state the particular ground on which the instruction is objected to, and it shall not be sufficient to object generally that the instruction does not state the law, or is against the law, but the objection shall specify with particularity how the instruction is insufficient or does not state the law or to what particular language there is an objection. All objections~~ before giving the instructions to the jury. If a party objects to the adoption or rejection of an instruction, the objection shall be made with particularity and shall be on the record.

(3) The court shall provide the jury with one or more complete ~~set~~ sets of written instructions ~~providing~~ defining the burden of proof and the substantive law ~~to be applied to the case to be decided~~.

SECTION 1013. 972.10 (6) of the statutes is repealed.

SECTION 1014. 972.10 (7) of the statutes is renumbered 972.23 (1) and amended to read:

972.23 **(1)** If the court required selection of additional jurors ~~have been selected~~ under s. 972.04 (1) so that alternates may be available, and, at the time the case is

submitted to the jury for deliberation, the number of jurors remains ~~more~~ greater than the number of jurors required ~~at final submission of the cause~~ for deliberation, the court shall determine by lot which jurors shall not participate in deliberations ~~and discharge them~~. For good cause, the court may discharge additional jurors other than by lot.

SECTION 1015. 972.11 (title) of the statutes is renumbered 967.24 (title).

SECTION 1016. 972.11 (1) of the statutes is renumbered 967.24 and amended to read:

967.24 ~~Except as provided in subs. (2) to (4), the~~ The rules of evidence and practice in civil actions, except the rules under ss. 804.02 to 804.07, shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construction. No guardian ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895 and 995, except ss. ~~804.02 to 804.07 and~~ 887.23 to 887.26, shall apply in all criminal proceedings.

SECTION 1017. 972.11 (2) of the statutes is renumbered 904.045, and 904.045 (1), (2) (intro.), (3) and (4) (b), as renumbered, are amended to read:

904.045 **(1)** In this ~~subsection~~ section, "sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual intercourse or sexual contact, use of contraceptives, living arrangement and life–style.

(2) (intro.) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, 948.09, or 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually motivated, as defined in s. 980.01 (5), any evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's prior sexual conduct and reputation as to

prior sexual conduct shall not be admitted into evidence during the course of the hearing or trial, nor shall any reference to such conduct be made in the presence of the jury, except the following, subject to s. ~~971.31 (11)~~ 971.65 (6):

(3) Notwithstanding s. 901.06, the limitation on the admission of evidence of or reference to the prior sexual conduct of the complaining witness in ~~par. (b)~~ sub. (2) applies regardless of the purpose of the admission or reference unless the admission is expressly permitted under ~~par. (b) 1., 2. or 3~~ sub. (2) (a), (b), or (c).

(4) (b) The court shall determine the admissibility of evidence under ~~subd. 1.~~ par. (a) upon pretrial motion before it may be introduced at trial.

SECTION 1018. 972.11 (2m) (a) (intro.) and 1. of the statutes are renumbered 972.20 (1) (intro.) and (a), and 972.20 (1) (a) 1., as renumbered, is amended to read:

972.20 **(1)** (a) 1. That the presence of the defendant during the ~~taking of the~~ child's testimony will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

SECTION 1019. 972.11 (2m) (a) 2. (intro.), a. and b. of the statutes are consolidated, renumbered 972.20 (1) (b) and amended to read:

972.20 **(1)** (b) The trial in which the child may be called as a witness will commence~~: a. Prior to~~ before the child's 12th birthday~~;~~ or ~~b. Prior to the child's 16th birthday and, in addition to its finding under subd. 1.,~~ if the court finds that the interests of justice warrant that the child's testimony be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed–circuit audiovisual equipment, before the child's 16th birthday.

SECTION 1020. 972.11 (2m) (b) of the statutes is renumbered 972.20 (2), and 972.20 (2) (intro.), (a), (c), (d), (e), (f), (g) and (h), as renumbered, are amended to read:

1 972.20 **(2)** (intro.) ~~Among the factors which~~ Factors that the court may consider
2 in determining the interests of justice under ~~par. (a) 2. b. are any of~~ sub. (1) (b) include
3 the following:

4 (a) The child's chronological age, level of development, and capacity to
5 comprehend the significance of the events about which the child will testify and to
6 verbalize about them.

7 (c) Whether the events about which the child will testify constituted criminal
8 or antisocial conduct against the child or a person with whom the child had a close
9 emotional relationship and, if the conduct constituted a battery or a sexual assault,
10 its duration and the extent of physical or emotional injury ~~thereby~~ caused by the
11 battery or sexual assault.

12 (d) The child's custodial situation and the attitude of other household members
13 to the events about which the child will testify and ~~to the underlying proceeding~~
14 towards the trial.

15 (e) The child's familial or emotional relationship to those involved in the
16 ~~underlying proceeding~~ trial.

17 (f) The child's behavior at or reaction to previous interviews concerning the
18 events ~~involved~~ about which the child will testify.

19 (g) Whether the child blames himself or herself for the events ~~involved~~ about
20 which the child will testify or has ever been told by any person not to disclose them;
21 whether the child's prior reports to associates or authorities of the events have been
22 disbelieved or not acted upon; and the child's ~~subjective~~ belief regarding what
23 consequences to himself or herself, or persons with whom the child has a close
24 emotional relationship, will ensue from providing testimony.

(h) Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including~~, without limitation,~~ reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self–esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias, or changes in interpersonal relationships.

SECTION 1021. 972.11 (2m) (bm) of the statutes is renumbered 972.20 (3), and 972.20 (3) (intro.), (a) and (d), as renumbered, are amended to read:

972.20 **(3)** (intro.) If a court orders the testimony of a child to be taken under ~~par. (a)~~ sub. (1), the court shall do all of the following:

(a) To the extent it is practical and subject to s. ~~972.10 (3)~~ 972.16 (1), schedule the testimony on a date when the child's recollection is likely to be fresh and at a time of day when the child's energy and attention span are likely to be greatest.

(d) ~~Determine that the child understands that it is wrong to tell a lie and will testify truthfully if~~ If the child's developmental level or verbal skills are such that administration of an oath or affirmation in the usual form would be inappropriate, determine that the child understands that it is wrong to tell a lie and will testify truthfully.

SECTION 1022. 972.11 (2m) (c) (intro.), 1m., 2m. and 3m. of the statutes are renumbered 972.20 (4) (intro.), (a), (b) and (c), and 972.20 (4) (intro.), as renumbered, is amended to read:

972.20 **(4)** (intro.) Only the following persons may be present in the room in which the child is giving testimony under ~~par. (a)~~ sub. (1):

SECTION 1023. 972.11 (3) of the statutes is renumbered 940.22 (6), and 940.22 (6) (a) (intro.) and 1., as renumbered, are amended to read:

940.22 **(6)** (a) (intro.) In a prosecution ~~under s. 940.22 involving a therapist and a patient or client~~ for a violation of sub. (2), (3) (d), or (4) (d), evidence of the patient's or client's personal or medical history is not admissible except if all of the following apply:

1. The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the evidence~~; and~~.

SECTION 1024. 972.11 (3m) of the statutes is renumbered 346.63 (8) and amended to read:

346.63 **(8)** A court may not exclude evidence in any criminal action or traffic forfeiture action for violation of ~~s. 346.63~~ sub. (1) or (5), or a local ordinance in conformity with ~~s. 346.63~~ sub. (1) or (5), on the ground that the evidence existed or was obtained outside of this state.

SECTION 1025. 972.11 (4) of the statutes is renumbered 972.29, and 972.29 (intro.), as renumbered, is amended to read:

972.29 Return of evidence. (intro.) Upon the motion of any party or its own motion, a court may order that any exhibit or evidence be delivered to the party or the owner ~~prior to~~ before or after the final determination of the action or proceeding if all of the following requirements are met:

SECTION 1026. 972.115 (title) of the statutes is repealed.

SECTION 1027. 972.115 (1) of the statutes is renumbered 972.18 (1), and 972.18 (1) (a), as renumbered, is amended to read:

972.18 **(1)** (a) "Custodial interrogation" has the meaning given in s. ~~968.073~~ 969.165 (1) (a).

SECTION 1028. 972.115 (2) of the statutes is renumbered 972.18 (3), and 972.18 (3) (a) (intro.), as renumbered, is amended to read:

1 972.18 **(3)** (a) (intro.) If a statement made by a defendant during a custodial
2 interrogation is admitted into evidence in a trial for a felony before a jury and if an
3 audio or audio and visual recording of the interrogation is not available, upon a
4 request made by the defendant ~~as provided in s. 972.10 (5)~~ and unless the state
5 asserts and the court finds that one of the following conditions applies or that good
6 cause exists for not providing an instruction, the court shall instruct the jury that it
7 is the policy of this state to make an audio or audio and visual recording of a custodial
8 interrogation of a person suspected of committing a felony and that the jury may
9 consider the absence of an audio or audio and visual recording of the interrogation
10 in evaluating the evidence relating to the interrogation and the statement in the
11 case:

12 **SECTION 1029.** 972.115 (4) and (5) of the statutes are renumbered 972.18 (3)
13 (c) and (d), and 972.18 (3) (c), as renumbered, is amended to read:

14 972.18 **(3)** (c) Notwithstanding ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405, a
15 defendant's lack of consent to having an audio or audio and visual recording made
16 of a custodial interrogation does not affect the admissibility in evidence of an audio
17 or audio and visual recording of a statement made by the defendant during the
18 interrogation.

19 **SECTION 1030.** 972.12 of the statutes is renumbered 972.05 and amended to
20 read:

21 **972.05 Sequestration of jurors.** ~~The~~ At any stage of the proceedings, the
22 court may direct that ~~the~~ jurors who have been sworn be kept together or be
23 permitted to separate. The court may appoint an officer of the court to keep the jurors
24 together and to prevent communication between the jurors and others. After the case

has been submitted to the jurors, the court may permit them to separate, but shall instruct the jurors to suspend deliberations while separated.

SECTION 1031. 972.13 (title) of the statutes is repealed.

SECTION 1032. 972.13 (1) of the statutes is renumbered 972.28 (1) and amended to read:

972.28 **(1)** ~~A~~ The court shall grant a judgment of conviction ~~shall be entered~~ upon accepting a jury verdict of guilty ~~by the jury, a,~~ upon finding ~~of~~ the defendant guilty ~~by the court in cases~~ in a case where a jury is waived, or upon finding the defendant guilty after accepting a plea of guilty or no contest.

SECTION 1033. 972.13 (2) of the statutes is renumbered 972.28 (2) and amended to read:

972.28 **(2)** ~~Except in cases where ch. 975 is applicable~~ Unless entry of judgment is deferred, upon granting a judgment of conviction, the court shall proceed under ch. 973. The court may adjourn the case ~~from time to time for the purpose of~~ before pronouncing sentence.

SECTION 1034. 972.13 (3) of the statutes is renumbered 972.28 (3) and amended to read:

972.28 **(3)** ~~A~~ When a judgment of conviction is entered, it shall set forth the plea, the verdict or finding, the adjudication and sentence, and a finding as to the specific number of days for which sentence credit is to be granted under s. 973.155.

(5) If the defendant is acquitted, the court shall grant a judgment ~~shall be entered accordingly~~ of acquittal.

SECTION 1035. 972.13 (4) of the statutes is renumbered 972.28 (6).

SECTION 1036. 972.13 (5) of the statutes is renumbered 972.28 (4) and amended to read:

972.28 **(4)** A copy of the judgment of conviction shall constitute authority for the sheriff to execute the sentence.

SECTION 1037. 972.13 (6) of the statutes is repealed.

SECTION 1038. 972.13 (7) of the statutes is repealed.

SECTION 1039. 972.14 (title), (2), (2m) and (3) of the statutes are renumbered 973.003 (title), (2), (2m) and (3), and 973.003 (2), as renumbered, is amended to read:

973.003 **(2)** Before pronouncing sentence, the court shall ask the defendant why sentence should not be pronounced upon him or her and allow the district attorney, defense counsel, and defendant an opportunity to make a statement with respect to any matter relevant to the sentence. In addition, if the defendant is under 21 years of age and if the court has not ordered a presentence investigation under s. ~~972.15~~ 973.004, the court shall ask the defendant if he or she has been adjudged delinquent under ch. 48, 1993 stats., or ch. 938, or has had a similar adjudication in any other state in the 4 years immediately preceding the date the criminal complaint relating to the present offense was issued.

SECTION 1040. 972.14 (1) (intro.) and (b) of the statutes are consolidated, renumbered 973.003 (1) and amended to read:

973.003 **(1)** (intro.) In this section~~: (b) "Victim"~~, "victim" has the meaning specified in s. 950.02 (4).

SECTION 1041. 972.14 (1) (ag) of the statutes is repealed.

SECTION 1042. 972.15 of the statutes is renumbered 973.004, and 973.004 (5) (intro.), as renumbered, is amended to read:

973.004 **(5)** (intro.) The department may use the presentence investigation report for correctional programming, parole consideration or care and treatment of any person sentenced to imprisonment or the intensive sanctions program, placed

on probation, released on parole or extended supervision or committed to the department under ch. 51 or ~~971~~ 975 or any other person in the custody of the department or for research purposes. The department may make the report available to other agencies or persons to use for purposes related to correctional programming, parole consideration, care and treatment, or research. Any use of the report under this subsection is subject to the following conditions:

SECTION 1043. 972.16 (1) and (2) of the statutes are created to read:

972.16 **(1)** Unless the court for cause otherwise permits, the parties shall proceed with statements and presentation of evidence in the following order:

(a) The state may make an opening statement.

(b) The defense may make an opening statement or reserve the right to make an opening statement until after the state rests its case in chief.

(c) The state shall present its case in chief.

(d) At the close of the state's case in chief, the defense may move to dismiss. The court shall grant the motion to dismiss if it appears that, viewing the evidence in the light most favorable to the state and drawing all reasonable inferences therefrom, a reasonable jury could not find the defendant guilty beyond a reasonable doubt. The court shall decide the motion before the defense presents its case in chief.

(e) The defense may present a case in chief. If a defendant presents evidence, the defendant waives the right to appeal the denial of a motion for dismissal made under par. (d).

(f) The state and the defense may present rebuttal evidence.

(g) The court for cause may permit a party to present further evidence in chief. If the court permits the state to present further evidence in chief, the defense may also present further evidence in chief.

1 (h) After the state and the defense have rested, the defense may move to
2 dismiss. The court shall grant the motion to dismiss if it appears that, viewing all
3 of the evidence, including evidence presented by the defense, in the light most
4 favorable to the state and drawing all reasonable inferences therefrom, a reasonable
5 jury could not find the defendant guilty beyond a reasonable doubt of the charged
6 crime or an included crime under s. 939.66. If the jury could find the defendant guilty
7 beyond a reasonable doubt of an included crime but not the charged crime, the court
8 shall order the complaint amended accordingly.

9 (i) The state may make a closing argument.

10 (j) The defense may make a closing argument.

11 (k) The state may make a rebuttal argument.

12 **(2)** If there are 2 or more defendants and they do not agree on the order in which
13 the defendants will proceed under sub. (1), the court shall determine the order in
14 which the defendants will proceed.

15 **SECTION 1044.** 972.18 (title) of the statutes is created to read:

16 **972.18** (title) **Admissibility of a defendant's statement.**

17 **SECTION 1045.** 972.19 of the statutes is created to read:

18 **972.19 Stipulations. (1)** In this section, "stipulation" means an agreement
19 between the parties that a specified fact is or shall be taken as established without
20 need for proof.

21 **(2)** A stipulation shall be set forth on the record at the time the court accepts
22 it.

23 **(3)** In a trial before a jury, the court shall instruct the jury that it is to take
24 stipulated facts as conclusively proved.

1 **(4)** If stipulated facts establish an element of the crime, the court shall proceed
2 as provided in s. 972.005 (2).

3 **SECTION 1046.** 972.20 (title) of the statutes is created to read:

4 **972.20** (title) **Child testimony by closed–circuit audiovisual means.**

5 **SECTION 1047.** 972.22 (title) of the statutes is created to read:

6 **972.22** (title) **Final jury instructions.**

7 **SECTION 1048.** 972.23 (title) of the statutes is created to read:

8 **972.23** (title) **Dismissal of alternate jurors.**

9 **SECTION 1049.** 972.23 (2) of the statutes is created to read:

10 972.23 **(2)** The court may retain alternate jurors after the jury retires to
11 deliberate. The court shall ensure that a retained alternate does not discuss the case
12 with anyone until that alternate replaces a juror or is discharged. If an alternate
13 replaces a juror after deliberations have begun, the court shall instruct the jury to
14 begin its deliberations anew.

15 **SECTION 1050.** 972.24 of the statutes is created to read:

16 **972.24 Return of verdict.** A verdict must be unanimous and returned in open
17 court.

18 **SECTION 1051.** 972.25 of the statutes is created to read:

19 **972.25 Polling the jury.** The court shall poll the jury when a verdict proper
20 in form is returned. The court or the clerk shall conduct the poll by asking each juror
21 individually whether the verdict as returned was and is in the juror's verdict.

22 **SECTION 1052.** 972.26 of the statutes is created to read:

23 **972.26 Accepting the verdict. (1)** The court shall accept the verdict if it is
24 proper in form and confirmed by the jury poll. When the verdict is accepted, the jury
25 shall be discharged.

1 **(2)** After the verdict is accepted, the complaint shall be deemed amended as to
2 technical variances to conform to the proof if no objection to the relevance of the
3 evidence was timely raised.

4 **SECTION 1053.** 972.28 (title) of the statutes is created to read:

5 **972.28** (title) **Granting judgment.**

6 **SECTION 1054.** 973.013 (4) of the statutes is amended to read:

7 973.013 **(4)** If information under s. ~~972.15~~ 973.004 (2m) has been provided in
8 a presentence investigation report, the court shall consider that information when
9 sentencing the defendant.

10 **SECTION 1055.** 973.017 (6m) (a) 2. of the statutes is amended to read:

11 973.017 **(6m)** (a) 2. "Domestic abuse" has the meaning given in s. ~~968.075~~
12 969.27 (1) (a).

13 **SECTION 1056.** 973.03 (3) (b) of the statutes is amended to read:

14 973.03 **(3)** (b) The court may require that the defendant perform community
15 service work for a public agency or a nonprofit charitable organization. The number
16 of hours of work required may not exceed what would be reasonable considering the
17 seriousness of the offense and any ~~other offense which is read into the record at the~~
18 ~~time of conviction~~ read–in crimes. An order may only apply if agreed to by the
19 defendant and the organization or agency. The court shall ensure that the defendant
20 is provided a written statement of the terms of the community service order and that
21 the community service order is monitored.

22 **SECTION 1057.** 973.03 (3) (e) 2. of the statutes is amended to read:

23 973.03 **(3)** (e) 2. A crime which is a Class D, E, F, or G felony listed in s. ~~969.08~~
24 ~~(10)~~ 969.51 (7) (b), but not including any crime specified in s. 943.10.

25 **SECTION 1058.** 973.03 (4) (d) of the statutes is amended to read:

973.03 **(4)** (d) A sentence under this subsection is not a sentence of imprisonment, except for purposes of ss. 973.04, 973.15 (8) (a) and ~~973.19~~ 974.03.

SECTION 1059. 973.03 (5) (a) 1. of the statutes is amended to read:

973.03 **(5)** (a) 1. "Commission of a serious crime" has the meaning given under s. ~~969.08 (10)~~ 969.51 (7) (a).

SECTION 1060. 973.03 (5) (a) 2. of the statutes is amended to read:

973.03 **(5)** (a) 2. "Serious crime" has the meaning given under s. ~~969.08 (10)~~ 969.51 (7) (b).

SECTION 1061. 973.042 (4) of the statutes is amended to read:

973.042 **(4)** After determining the amount due, the clerk ~~of court~~ shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

SECTION 1062. 973.043 (2) of the statutes is amended to read:

973.043 **(2)** After determining the amount due, the clerk ~~of court~~ shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

SECTION 1063. 973.045 (2) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

973.045 **(2)** After the clerk determines the amount due, the clerk ~~of court~~ shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2. The secretary of administration shall credit to the appropriation

account under s. 20.455 (5) (g) the amount paid to the secretary by the county treasurer under this subsection and any amount collected under sub. (4).

SECTION 1064. 973.046 (2) of the statutes is amended to read:

973.046 **(2)** After the clerk ~~of court~~ determines the amount due, the clerk shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

SECTION 1065. 973.048 (5) of the statutes is amended to read:

973.048 **(5)** If the court orders a person to comply with the reporting requirements under s. 301.45, the clerk ~~of the court in which the order is entered~~ shall promptly forward a copy of the order to the department of corrections. If the conviction on which the order is based is reversed, set aside or vacated, the clerk ~~of the court~~ shall promptly forward to the department of corrections a certificate stating that the conviction has been reversed, set aside or vacated.

SECTION 1066. 973.049 (1) (b) of the statutes is repealed.

SECTION 1067. 973.05 (3) (b) of the statutes is amended to read:

973.05 **(3)** (b) The court may require that the defendant perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any ~~other offense which is read into the record at the time of conviction~~ read–in crimes. An order may only apply if agreed to by the defendant and the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

SECTION 1068. 973.05 (4) (b) of the statutes is amended to read:

973.05 **(4)** (b) Issue an order assigning not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102, and other money due or to be due in the future to the clerk ~~of circuit court~~ for payment of the unpaid fine, surcharge, costs, or fees. In this paragraph, "employer" includes the state and its political subdivisions.

SECTION 1069. 973.05 (4) (c) of the statutes is amended to read:

973.05 **(4)** (c) Issue an order assigning lottery prizes won by a defendant whose name is on the list supplied to the clerk ~~of circuit court~~ under s. 565.30 (5r) (a), for payment of the unpaid fine, surcharge, costs, or fees.

SECTION 1070. 973.05 (5) (a) 1. of the statutes is amended to read:

973.05 **(5)** (a) 1. Upon entry of the assignment under sub. (4) (b), unless the court finds that income withholding is likely to cause the defendant irreparable harm, the court shall provide notice of the assignment by regular mail to the last–known address of the person from whom the defendant receives or will receive money. If the clerk ~~of circuit court~~ does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the defendant receives or will receive money. Notice of an assignment under sub. (4) (b) shall inform the intended recipient that, if a prior assignment under sub. (4) (b) has been received relating to the same defendant, the recipient is required to notify the clerk ~~of circuit court~~ that sent the subsequent notice of assignment that another assignment has already been received. A notice of assignment shall include a form permitting the recipient to designate on the form that another assignment has already been received.

SECTION 1071. 973.05 (5) (a) 2. of the statutes is amended to read:

973.05 **(5)** (a) 2. If, after receiving the annual list under s. 565.30 (5r) (a), the clerk ~~of circuit court~~ determines that a person identified in the list may be subject to an assignment under sub. (4) (c), the clerk shall inform the court of that determination. If the court issues an order under sub. (4) (c), the clerk ~~of circuit court~~ shall send the notice of that order to the administrator of the lottery division of the department of revenue, including a statement of the amount owed under the judgment and the name and address of the person owing the judgment. The court shall notify the administrator of the lottery division of the department of revenue when the judgment that is the basis of the assignment has been paid in full.

SECTION 1072. 973.05 (5) (c) of the statutes is amended to read:

973.05 **(5)** (c) A person who receives notice of the assignment under sub. (4) (b) shall withhold the amount specified in the notice from any money that person pays to the defendant later than one week after receipt of the notice of assignment. Within 5 days after the day on which the person pays money to the defendant, the person shall send the amount withheld to the clerk of ~~circuit~~ <u>the</u> court of the jurisdiction providing notice. If the person has already received a notice of an assignment under sub. (4) (b), the person shall retain the later assignment and withhold the amount specified in that assignment after the last of any prior assignments is paid in full. Within 10 days of receipt of the later notice, the person shall notify the clerk of ~~circuit~~ <u>the</u> court that sent the notice that the person has received a prior notice of an assignment under sub. (4) (b). Section 241.09 does not apply to assignments under this section.

SECTION 1073. 973.05 (5) (d) of the statutes is amended to read:

973.05 **(5)** (d) If after receipt of notice of assignment under par. (a) 1. the person from whom the defendant receives money fails to withhold the money or send the

money to the clerk ~~of circuit court~~ as provided in this subsection, the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than $50 nor more than an amount, if the amount exceeds $50, that is equal to 1% of the amount not withheld or sent.

SECTION 1074. 973.05 (5) (e) of the statutes is amended to read:

973.05 **(5)** (e) If an employer who receives notice of an assignment under sub. (4) (b) fails to notify the clerk ~~of circuit court~~ within 10 days after an employee is terminated or otherwise temporarily or permanently leaves the employer's employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

SECTION 1075. 973.055 (2) (a) of the statutes is amended to read:

973.055 **(2)** (a) If the surcharge is imposed by a court of record, after the court determines the amount due, the clerk ~~of the court~~ shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

SECTION 1076. 973.06 (1) (av) 2. a. and b. of the statutes are amended to read:

973.06 **(1)** (av) 2. a. The defendant was charged under s. 946.41 solely because he or she recanted a report of abusive conduct, including interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in s. 49.165 (1) (a), 813.12 (1) (am), or ~~968.075~~ <u>969.27</u> (1) (a), harassment, as defined in s. 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11.

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

SECTION 1077. 973.06 (1) (h) of the statutes is amended to read:

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

SECTION 1078. 973.076 (2) (a) of the statutes is amended to read:

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

SECTION 1079. 973.08 (5) of the statutes is amended to read:

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

SECTION 1080. 973.09 (2) (a) 1. b. of the statutes is amended to read:

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

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

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

SECTION 1082. 973.09 (3) (bm) 4. of the statutes is amended to read:

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

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

SECTION 1083. 973.09 (7m) (a) of the statutes is amended to read:

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

SECTION 1084. 973.10 (2m) of the statutes is amended to read:

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

SECTION 1085. 973.135 (3) of the statutes is amended to read:

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

SECTION 1086. 973.18 (title) of the statutes is renumbered 973.25 (title).

SECTION 1087. 973.18 (1) of the statutes is renumbered 973.25 (1) and amended to read:

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

SECTION 1088. 973.18 (2), (3) and (4) of the statutes are renumbered 973.25 (2), (3) and (4) and amended to read:

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

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

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

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

SECTION 1089. 973.18 (5) of the statutes is renumbered 973.25 (5).

SECTION 1090. 973.19 (title) of the statutes is renumbered 974.03 (title).

SECTION 1091. 973.19 (1) (a) of the statutes is renumbered 974.03 (1) (a) and amended to read:

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

SECTION 1092. 973.19 (1) (b) of the statutes is renumbered 974.03 (2) and amended to read:

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

SECTION 1093. 973.19 (2), (3), (4) and (5) of the statutes are renumbered 974.03 (1) (b), (c), (d) and (e) and amended to read:

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

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

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

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

SECTION 1094. 973.195 (1r) (e) of the statutes is amended to read:

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

SECTION 1095. 973.20 (1g) of the statutes is repealed.

SECTION 1096. 973.20 (1r) of the statutes is amended to read:

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

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

SECTION 1097. 973.20 (9m) of the statutes is amended to read:

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

SECTION 1098. 973.20 (11) (a) of the statutes is amended to read:

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

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

SECTION 1099. 973.20 (12) (c) of the statutes is amended to read:

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

SECTION 1100. 974.02 of the statutes is amended to read:

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

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

SECTION 1101. 974.02 (3) of the statutes is created to read:

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

SECTION 1102. 974.05 (1) (intro.) of the statutes is amended to read:

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

SECTION 1103. 974.05 (1) (a), (b), (c) and (d) (intro.), 1. and 2. of the statutes are amended to read:

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

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

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

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

1. Quashing an arrest warrant~~;~~.

2. Suppressing evidence~~; or~~.

SECTION 1104. 974.05 (2) of the statutes is amended to read:

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

SECTION 1105. 974.05 (3) of the statutes is repealed.

SECTION 1106. 974.06 (title), (1), (2) and (3) (intro.), (a), (b) and (d) of the statutes are amended to read:

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

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

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

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