

June 1994 Spec. Sess.
Assembly Bill 1

Date of enactment: **June 30, 1994**
Date of publication*: **July 14, 1994**

1993 WISCONSIN ACT 495

AN ACT to repeal 48.296 (5) and 968.38 (5); and to amend 48.296 (2) (b), 48.296 (3) (b), 48.296 (4) (intro.), 48.296 (4) (a), 48.296 (4) (c), 252.14 (3), 968.38 (2) (a), 968.38 (3) (c), 968.38 (4) (intro.) and 968.38 (4) (b) of the statutes, relating to: testing defendants in certain criminal actions and children in certain delinquency proceedings for HIV infection and certain diseases and requiring certain counseling and referral for persons infected with HIV or acquired immunodeficiency syndrome.

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

SECTION 1. 48.296 (2) (b) of the statutes, as created by 1993 Wisconsin Act 32, is amended to read:

48.296 (2) (b) The district attorney or corporation counsel has probable cause to believe that the child has significantly exposed the victim or alleged victim. If the child is adjudicated delinquent or found to be in need of protection or services, this paragraph does not apply.

SECTION 2. 48.296 (3) (b) of the statutes, as created by 1993 Wisconsin Act 32, is amended to read:

48.296 (3) (b) If At any time after the child is adjudicated delinquent or found to be in need of protection or services, ~~within 53 days after the dispositional order is entered.~~

SECTION 3. 48.296 (4) (intro.) of the statutes, as affected by 1993 Wisconsin Acts 32 and 491, is amended to read:

48.296 (4) (intro.) On receipt of an application for an order under sub. (2), the court shall set a time for a hearing on the application. If, after hearing, the court finds probable cause to believe that the child has significantly exposed the victim or alleged victim, the court, ~~except as provided in sub. (5),~~ shall order the child to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease. The court shall require the health

care professional who performs the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), from making the test results part of the child's permanent medical record and to disclose the results of the test to any of the following:

SECTION 4. 48.296 (4) (a) of the statutes, as created by 1993 Wisconsin Act 32, is amended to read:

48.296 (4) (a) The parent, guardian or legal custodian of the child, ~~if the court determines that it is in the child's best interest that the parent, guardian or legal custodian receive that information.~~

SECTION 5. 48.296 (4) (c) of the statutes, as created by 1993 Wisconsin Act 32, is amended to read:

48.296 (4) (c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child ~~and if the court determines that it is in the victim's or alleged victim's best interest that the parent, guardian or legal custodian receive that information.~~

SECTION 6. 48.296 (5) of the statutes, as created by 1993 Wisconsin Act 32, is repealed.

SECTION 7. 252.14 (3) of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.14 (3) A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection shall provide counseling about HIV and referral for appropriate health care and support services as necessary. ~~A health care provider, home health agency or inpatient health care facility that~~ treats an individual who has an HIV infection or acquired

immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

SECTION 8. 968.38 (2) (a) of the statutes is amended to read:

968.38 (2) (a) The district attorney has probable cause to believe that the defendant has significantly exposed the alleged victim or victim. If the defendant is convicted, this paragraph does not apply.

SECTION 9. 968.38 (3) (c) of the statutes is amended to read:

968.38 (3) (c) If At any time after the defendant is convicted, ~~before 53 days after conviction.~~

SECTION 10. 968.38 (4) (intro.) of the statutes, as affected by 1993 Wisconsin Acts 27, 32 and 183, is amended to read:

968.38 (4) (intro.) The court shall set a time for a hearing on the matter under sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; or ~~before 60 days after conviction, if sub. (3) (c) applies.~~ The court shall give the district attorney and the defendant notice of the hearing

at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the defendant has significantly exposed the victim or alleged victim, the court shall, ~~except as provided in sub. (5),~~ order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease. The court ~~may~~ shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain, notwithstanding s. 252.15 (4) (c), from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following:

SECTION 11. 968.38 (4) (b) of the statutes is amended to read:

968.38 (4) (b) The parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor ~~and if the court determines that it is in the alleged victim's or victim's best interests that the parent or guardian receive this information.~~

SECTION 12. 968.38 (5) of the statutes is repealed.