



1995 SENATE BILL 35

January 24, 1995 - Introduced by Senators BURKE, ROSENZWEIG, ANDREA, BRESKE, CHVALA, MOEN and PLEWA, cosponsored by Representatives HUBER, DOBYNS, GOETSCH, HAHN, HANSON, KRUSICK, LADWIG, LEHMAN, RILEY, SILBAUGH, SPRINGER, TURNER, UNDERHEIM and ZIEGELBAUER. Referred to Committee on Judiciary.

1 **AN ACT to amend** 968.29 (3) (b) of the statutes; **relating to:** disclosure of the
2 contents of recorded communications in court proceedings for felony offenses.

Analysis by the Legislative Reference Bureau

Under current law, a conversation or other oral, electronic or wire communication may be lawfully recorded by a person acting under color of law when one party to the communication consents to the recording. However, with one exception, the contents of a recorded communication may be disclosed in a court proceeding only if the disclosure is authorized under state or federal law. The Wisconsin supreme court, in *State ex rel. Arnold v. County Court*, 51 Wis. 2d 434 (1971), found that these one-party consent recordings were *lawful*, but not *authorized*, under state law. Thus, the state could not use the results of the intercepted communications in the one-party consent situation in the case-in-chief portion of a criminal prosecution. The exception specifically allows the introduction of evidence in court proceedings regarding the results of a lawful recording of an intercepted communication in this one-party consent situation if the proceeding concerns a controlled substance (dangerous drug) felony or a felony involving conspiracy or solicitation, and if the party who consented to the interception is available to testify or a different witness or evidence is available to authenticate the recording. This bill expands this exception to also cover homicides, attempts to commit a homicide and attempts to commit a controlled substance felony.

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

3 **SECTION 1.** 968.29 (3) (b) of the statutes is amended to read:
4 968.29 (3) (b) In addition to the disclosure provisions of par. (a), any person who
5 has received, in the manner described under s. 968.31 (2) (b), any information

SECTION 1

1 concerning a wire, electronic or oral communication or evidence derived therefrom,
2 may disclose the contents of that communication or that derivative evidence while
3 giving testimony under oath or affirmation in any proceeding described in par. (a) in
4 which a person is accused of any act constituting a felony under ch. 161 or s. 939.30
5 or, 939.31, 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09 or 940.10,
6 or any attempt to commit any of the felonies listed in this paragraph, and only if the
7 party who consented to the interception is available to testify at the proceeding or
8 if another witness is available to authenticate the recording.

9 **SECTION 2. Initial applicability.**

10 (1) This act first applies to communications occurring on the effective date of
11 this subsection.

12 (END)