Electronically scanned images of the published statutes.

CHAPTER 967

CRIMINAL PROCEDURE — GENERAL PROVISIONS

967.01 Title and effective date.
967.02 Words and phrases defined.
967.03 District attorneys
967.04 Depositions in criminal proceedings.
967.05 Methods of prosecution.
967.055 Dismissing or amending charges; operating a motor vehicle; alcohol, intoxicant or drug
967.06 Determination of indigency; appointment of counsel; preparation of record.
967.07 Court commissioners.

967.01 Title and effective date. Chapters 967 to 979 may be referred to as the criminal procedure code and shall be interpreted as a unit. Chapters 967 to 979 shall govern all criminal proceedings and is effective on July 1, 1970. Chapters 967 to 979 apply in all prosecutions commenced on or after that date. Prosecutions commenced prior to July 1, 1970, shall be governed by the law existing prior thereto.

History: 1979 c. 89.

967.02 Words and phrases defined. In chs. 967 to 979, unless the context of a specific section manifestly requires a different construction:

(1) "Clerk" means clerk of circuit court of the county including his deputies.

(2) "Department" means the department of health and social services.

(3) "Bail" means the amount of money set by the court which is required to be obligated and secured as provided by law for the release of a person in custody so that he will appear before the court in which his appearance may be required and that he will comply with such conditions as are set forth in the bail bond.

(4) "Bond" means an undertaking either secured or unsecured entered into by a person in custody by which he binds himself to comply with such conditions as are set forth therein.

(5) "Law enforcement officer" means any person who by virtue of his office or public employment is vested by law with the duty to maintain public order or to make arrests for crimes while acting within the scope of his authority.

(6) "Judge" means judge of a court of record.

(7) "Court" means the circuit court unless otherwise indicated.

(8) "Judgment" means an adjudication by the court that the defendant is guilty or not guilty.

History: 1971 c. 298; 1977 c. 323, 449; 1979 c. 89.

John Doe judge is not equivalent of a court and John Doe proceeding is not a proceeding in court of record. State v. Washington, 83 W (2d) 808, 266 NW (2d) 597 (1978).

967.03 District attorneys. Wherever in chs. 967 to 979 powers or duties are imposed upon district attorneys, the same powers and duties may be discharged by any of their duly qualified deputies or assistants.

History: 1979 c. 89.

967.04 Depositions in criminal proceedings. **(1)** If it appears that a prospective witness may be unable to attend or prevented from attending a criminal trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed pursuant to s. 969.01 (3), the court shall direct that his deposition be taken upon notice to the parties. After the deposition has been subscribed, the court shall discharge the witness.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(3) A deposition shall be taken as provided in civil actions. At the request of a party, the court may direct that a deposition be taken on written interrogatories as provided in civil actions.

(4) (a) If the state or a witness procures such an order, the notice shall inform the defendant that he is required to personally attend at the taking of the deposition and that his failure so to do is a waiver of his right to face the witness whose deposition is to be taken. Failure to attend shall constitute a waiver unless the defendant was physically unable to attend.

Electronically scanned images of the published statutes.

(b) If the defendant is not in custody, he shall be paid witness fees for travel and attendance. If he is in custody, his custodian shall, at county expense, produce him at the taking of the deposition. If the defendant is in custody, leave to take a deposition on motion of the state shall not be granted unless all states which the custodian will enter with the defendant in going to the place the deposition is to be taken have conferred upon the officers of this state the right to convey prisoners in and through them.

(5) (a) At the trial or upon any hearing, a part or all of a deposition (so far as otherwise admissible under the rules of evidence) may be used if it appears: That the witness is dead; that the witness is out of state, unless it appears that the absence of the witness was procured by the party offering the depositions; that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(b) Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(6) Objections to receiving in evidence a deposition may be made as in civil actions.

(7) (a) In this subsection:

1. "Child" has the meaning specified in s. 950.02 (1).

2. "Victim" has the meaning specified in s. 950.02 (4).

3. "Witness" has the meaning specified in s. 950.02 (5).

(b) In any prosecution or juvenile fact-finding hearing under s. 48.31 involving a child victim or witness, the court, on its own motion or the motion of the district attorney or corporation counsel, as applicable, may order the taking of a videotaped deposition of the victim or witness if there is a substantial likelihood that the child will otherwise suffer severe emotional or mental strain. The court may allow the videotaped deposition to be used at any proceeding in lieu of or in addition to the direct testimony of the child, except that if the defendant did not have the opportunity to cross-examine the child at the time of taking the videotaped deposition, the deposition may not be used at trial in lieu of the direct testimony of the child. The judge may specify where the deposition is taken and who may be present when the deposition is taken. The court may exclude persons whose presence is not necessary for the taking of the deposition. If at the time of taking the deposition the district attorney anticipates using the deposition of the child at trial, examination and cross-examination of the child shall proceed in the same manner as permitted at trial. In any proceeding under s. 57.06 (3) or 973.10 (2), the hearing examiner may order the taking of a videotaped deposition as provided in this subsection which may be used in lieu of or in addition to the direct testimony of the child.

History: 1983 a. 197.

See note to Art. I, sec. 7, citing Sheehan v. State, 65 W (2d) 757, 223 NW (2d) 600.

967.05 Methods of prosecution. **(1)** A prosecution may be commenced by the filing of:

(a) A complaint;

(b) In the case of a corporation, an information;

(c) An indictment.

(2) The trial of a misdemeanor action shall be upon a complaint.

(3) The trial of a felony action shall be upon an information.

History: 1979 c. 291.

967.055 Dismissing or amending charges; operating a motor vehicle; alcohol, intoxicant or drug. **(1)** INTENT. The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motor vehicles by persons under the influence of an intoxicant, a controlled substance or both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or having a blood alcohol concentration of 0.1% or more.

(1m) DEFINITION. In this section, "drug" has the meaning specified in s. 450.06.

(2) DISMISSING OR AMENDING CHARGE. Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motor vehicles by persons who are under the influence of an intoxicant, a controlled substance or both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the com-

Electronically scanned images of the published statutes.

bined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving.

History: 1981 c. 20, 184; 1983 a. 459.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

967.06 Determination of indigency; appointment of counsel; preparation of record. As soon as practicable after a person has been detained or arrested in connection with any offense which is punishable by incarceration, or in connection with any civil commitment proceeding, or in any other situation in which a person is entitled to counsel regardless of ability to pay under the constitution or laws of the United States or this state, the person shall be informed of his or her right to counsel. Persons who indicate at any time that they wish to be represented by a lawyer, and who claim that they are not able to pay in full for a lawyer's services, shall immediately be permitted to contact the authority for indigency determinations specified under s. 977.07 (1). The authority for indigency determination in each county shall have daily telephone access to the county jail in order to identify all persons who are being held in the jail. The jail personnel shall provide by phone information requested by the authority. In any case in which the state public defender provides representation to an indigent person, the public defender may request that the applicable court reporter or clerk of courts prepare and transmit any transcript or court record. The request shall be complied with. The county treasurer shall compensate the court reporter or clerk of courts for the preparation and transmittal of the documents, upon the written statement of the state public defender that the documents were required in order to provide representation to the indigent person.

History: Sup. Ct. Order, 71 W (2d) ix; 1977 c. 29, 418; 1979 c. 356; 1981 c. 20; 1983 a. 377.

Defendant was entitled to court-appointed counsel in state-initiated civil contempt action. Brotzman v. Brotzman, 91 W (2d) 335, 283 NW (2d) 600 (Ct. App. 1979).

This section gives public defender right to receive juvenile records of indigent client notwithstanding 48.396 (2). State ex rel. S. M. O. 110 W (2d) 447, 329 NW (2d) 275 (Ct. App. 1982).

See note to 971.04, citing State v. Neave, 117 W (2d) 359, 344 NW (2d) 181 (1984).

967.07 Court commissioners. A court commissioner may exercise powers or perform duties specified for a judge if such action is permitted under s. 757.69.

History: 1977 c. 323.