

1983 Assembly Bill 115

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**1983 Wisconsin Act 197**

AN ACT to renumber 950.02 (1); to amend 48.31 (2) and 57.06 (3); and to create 950.02 (1), 950.055, 967.04 (7), 971.105 and 973.10 (2m) of the statutes, relating to rights of child victims and witnesses of crimes.

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

SECTION 1. 48.31 (2) of the statutes is amended to read:

48.31 (2) The hearing shall be to the court unless the child, parent, guardian or legal custodian exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. Chapters 756 and 805 shall govern the selection of jurors except that ss. 972.03 and 972.04 shall apply in cases in which the juvenile is alleged to be delinquent under s. 48.12. If the hearing involves a child victim or witness, as defined in s. 967.04 (7) (a), the court may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) and, with the district attorney, shall comply with s. 971.105. At

the conclusion of the hearing, the court or jury shall make a determination of the facts. If the court finds that the child is not within the jurisdiction of the court or the court or jury finds that the facts alleged in the petition or citation have not been proved, the court shall dismiss the petition or citation with prejudice.

SECTION 2. 57.06 (3) of the statutes is amended to read:

57.06 (3) Every paroled prisoner remains in the legal custody of the department unless otherwise provided by the department. If the department alleges that any condition or rule of parole has been violated by the prisoner, the department may take physical custody of the prisoner for the investigation of the alleged violation. If the department is satisfied that any condition or rule of parole has been violated it shall afford the prisoner such administrative hearings as are required by law. The final administrative hearing shall be held before a hearing ~~examiners~~ examiner who ~~are~~ is licensed to practice law in this state. The hearing ~~examiners~~ examiner shall enter an order revoking or not revoking parole which order shall be, upon request by either party, reviewed by the secretary. The hearing examiner may order the taking and allow the use of a videotaped deposition under s. 967.04 (7). If the examiner or the secretary upon review finds that the prisoner has violated the rules or conditions of parole, the examiner, or the secretary upon review, may order the prisoner returned to prison to continue serving his or her sentence, or to continue on parole, and in either case, may order that the prisoner forfeit good time as provided in s. 53.11 (2a). If the prisoner claims or appears to be indigent, the department shall refer the prisoner to the authority for indigency determinations specified under s. 977.07 (1).

SECTION 3. 950.02 (1) of the statutes is renumbered 950.02 (1m).

SECTION 4. 950.02 (1) of the statutes is created to read:

950.02 (1) "Child" means a person who is less than 18 years of age.

SECTION 5. 950.055 of the statutes is created to read:

**950.055 Child victims and witnesses; rights and services.** (1) **LEGISLATIVE INTENT.** The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.

(2) **ADDITIONAL SERVICES.** In addition to all rights afforded to victims and witnesses under s. 950.04 and services provided under s. 950.05, counties are encouraged to provide the following additional services on behalf of children who are involved in criminal proceedings as victims or witnesses:

(a) Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.

(b) Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of videotaped depositions under s. 967.04 (7) and the duty to expedite proceedings under s. 971.105.

(c) Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.

(d) Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

(3) **PROGRAM RESPONSIBILITY.** In each county, the county board is responsible for the enforcement of rights and the provision of services under this section. A county may seek reimbursement for services provided under this section as part of its program plan

submitted to the department under s. 950.06. To the extent possible, counties shall utilize volunteers and existing public resources for the provision of these services.

SECTION 6. 967.04 (7) of the statutes is created to read:

967.04 (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.

SECTION 7. 971.105 of the statutes is created to read:

**971.105 Child victims and witnesses; duty to expedite proceedings.** In all criminal cases and juvenile fact-finding hearings under s. 48.31 involving a child victim or witness, as defined in s. 967.04 (7) (a), the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

SECTION 8. 973.10 (2m) of the statutes is created to read:

973.10 (2m) In any administrative hearing under sub. (2), the hearing examiner may order the taking and allow the use of a videotaped deposition under s. 967.04 (7).

SECTION 9. **Nonstatutory provisions.** (1) **INTENT.** The legislature finds that guidelines will assist circuit courts in determining how and when to use videotaped depositions under section 967.04 (7) of the statutes. Guidelines would help ensure consistent use of the videotaped deposition procedure throughout the state.

(2) **GUIDELINES.** The legislature requests the supreme court to promulgate rules providing guidelines to circuit courts regarding how and when to order the taking of videotaped depositions of a child victim or witness under section 967.04 (7) of the statutes. Upon the request of the supreme court, the department of health and social services shall assist the court in developing the guidelines.

SECTION 10. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
103.87	950.02 (1)	950.02 (1m)