1969 Assembly Bill 603

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CHAPTER 255, LAWS OF 1969

AN ACT to repeal 57.01 to 57.04, 57.15, 59.07 (10), 59.82, 59.88, 66.112, 176.01 (5), 300.05 (2) and (3), 885.32 to 885.35, 887.06, chapters 954 to 964, except 954.44, 957.26 (1m), 957.263, 957.265, 963.10 and 963.11 and chapter 965 (title); to renumber 954.44, 957.26 (1m), 957.263, 957.265, 963.10, 963.11, 965.01 to 965.05 and chapter 966; to renumber and amend 299.21 (5); to amend 15.191 (intro.), 15.251 (intro.) and (1), 15.431, 21.36 (3), 26.18, 29.66 (1), 37.11 (16) (d), 46.05 (2), 50.09 (1) and (1m), 51.07 (4), 51.83 (1), as renumbered, 53.06, 54.03 (7), 54.32, 56.18 (1), chapter 57 (title), 59.17 (3), 59.456 (6), 59.47 (2), 59.77 (2), (4) (a) (intro.), (5) and (8) (d), 61.28, 83.016 (1), 141.02 (3), 161.14 (1) and (2), 161.15, 161.16, 165.04 (1), 176.36, 192.47, 204.07, 253.015, 253.164(1), 254.05 (1), 254.09, 256.32, 256.67 (5) (d), as renumbered, 269.55, 295.01 (7), 301.245, 343.18 and 979.121 and 979.19 (3), as renumbered; to repeal and recreate 292.01 (1), 292.03 and 300.18; and to create 299.21 (5) (b) and (c), 946.49, 946.76 and chapters 967 to 976 of the statutes, relating to a revision of criminal procedure laws, and providing a penalty.

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

PREFATORY NOTE: In 1967 the Judicial Council established Criminal

Rules Committee to prepare a complete redraft of those statutes which deal with procedure in criminal cases. Funds for this project were made available by the legislature.

The Criminal Rules Committee had as its cochairmen, Circuit Judges Herbert J. Steffes, Milwaukee, and Richard W. Orton, Lancaster. The other members of the Committee were County Judge Mark J. Farnum, Beloit, Assistant Attorney General William Platz, Madison, Professor Frank J. Remington of the University of Wisconsin Law School, Professor Michael Hogan of Marquette University Law School, Deputy District Attorney Ben Wiener, Milwaukee, Attorneys Daniel Flaherty, La Crosse, David Leichtfuss, Milwaukee, John H. Bowers, Madison and Attorney James E. Hough, Secretary to the Council. County Judges William Curran, Mauston and Warren Grady, Port Washington served on the Committee for a portion of its work. The Reporter for the revision was Attorney Francis R. Croak, Milwaukee.

This bill represents a complete redraft of the statutes dealing with criminal procedure in the State of Wisconsin. It repeals Chapters 954 to 964 and creates Chapters 967 to 976. The bill attempts to codify statutory and case law in systematic form beginning with the initiation of the criminal process (the issuance of complaints and warrants) and ending with post conviction remedies. Procedural revisions of other states and the federal system have been studied as well as various model acts of such groups as the American Law Institute. Also considered wherever applicable were the recently published reports of the American Bar Association project of minimum standards for criminal justice.

The bill eliminates the position of "magistrate" in the administration of criminal justice in Wisconsin. All criminal proceedings are to be held in courts before judges except that court commissioners may still issue warrants and admit defendants to bail at initial appearances.

The provisions for issuance of a search warrant are expanded to reflect recent court decisions and to give more power and flexibility to law enforcement officers in obtaining this invaluable aid. "Stop and frisk" provisions in conformity with the recent United States Supreme Court decisions are also included to give the police officer on the street more ability to deal with emergency situations.

Greater flexibility is contained in the bill relating to bail. The bill attempts to provide for the release of as many defendants as possible without the need for cash bail or a surety bond. It also provides, however, that the judge may place restrictions on the travel, association or place of abode of the person during the period of release, or he may place the person in the custody of a designated person or organization. The judge may also require the defendant to remain in custody during a portion of each day. This provides an almost Huber Law like arrangement for some defendants awaiting trial. These and other provisions in the bail area are taken from the Federal Bail Reform Act of 1966. The cumbersome procedure currently required for the state to effectuate the forfeiture of bail has been redone and modernized to permit the forfeiture hearing to occur in the court where the forfeiture occurred without the necessity of starting a separate action.

To coincide with the more flexible bail provisions, a substantive change creates the crime of bail jumping so that in addition to any forfeiture involved a person who violates the conditions of his bond may also be prosecuted criminally. The punishments are in accordance with the severity of the crime for which he was originally charged.

The bill makes a change in pleas available to a defenndant in a criminal action. In order to raise the defense of mental irresponsibility the bill provides that it is no longer necessary to also enter a formal plea of not guilty. In most cases there is never a dispute that the defendant did, in

fact, commit the crime charged. This change permits the defendant to plead not guilty if he disputes that he committed the act, but otherwise permits him only to raise the issue of his mental condition and saves unnecessary proceedings.

In an attempt to speed up the criminal justice procedures, provisions for a speedy trial set out at length the time in which a preliminary examination must be commenced (20 days after initial appearance), the time for filing an information (30 days after the preliminary examination or waiver thereof) and provisions for the commencement of felony and misdemeanor trials. Felony trials shall commence within 90 days from the date trial is demanded by either the state or the defendant. This is a new provision recognizing the right and interest of the state in obtaining a speedy trial. Misdemeanor actions must commence within 60 days from the date of the defendant's initial appearance in court. At present the issue of insanity may be determined on an optional standard basis. A defendant may choose between the American Law Institute test or the M'Naughten rule. As there have been a growing number of federal circuits and states which have recently changed their criminal procedure codes, the bill opts for the ALI test. The burden is upon the defendant in this test which is felt to be a more modern approach to the issue of mental responsibility. The provisions regarding the effect of a finding of not guilty because of mental defect are the same as in present law. Release from the custody of the department of health and social services after commitment is dependent upon the committed person demonstrating to the committing court that he may be safely discharged or released without danger to himself or others. A new provision provides that he may be conditionally released for a period of up to 5 years.

While not changing the practical effect of the present affidavit of prejudice law, the bill provides for the "substitution of a judge" upon the written request of the defendant. It is felt that most affidavits of prejudice are not truly that in present practice and it is more realistic to call them by what they really are, a request for another judge to hear the particular case.

The bill makes the motion practice in criminal cases more similar to that in the civil practice and imposes time deadlines on the filing of motions so that they may not needlessly delay trial.

Some limited discovery is made available in the bill to both the State and the defendant. Defendants are permitted to inspect any written statements made by them to law enforcement authorities. If a defendant tenders to the state a list of his witnesses, the state must then advise the defendant of witnesses it intends to use at the trial. Either the state or the defendant may trigger provisions which will require that prior to trial both parties be permitted to examine physical evidence intended to be introduced into evidence. Either party may obtain a protective order from the court limiting or denying discovery, inspection of physical evidence or the listing of witnesses upon a showing that to do so would be impractical, prejudicial or dangerous.

With some specific exceptions and except where manifestly inappropriate the rules of evidence and practice in civil actions are made applicable in criminal proceedings. This appears to be the practice in most courts in the state at the present time, but is very ill defined.

The bill gives formal recognition to what has been in practice in this state for generations, namely the pre-sentence investigation after a finding of guilty. It requires disclosure of the contents of the report to the defendant's attorney prior to sentencing, although the judge may conceal the identity of any person who provided information for the report.

The bill requires a judgment of either acquittal or conviction in each case. No such requirement exists presently.

Trials de novo on misdemanor appeals are abolished. The provisions for a new trial are modified to substantially conform to the present civil practice. Appeals to the supreme court have been enlarged as far as the state is concerned. The bill provides that the state may appeal from orders suppressing evidence or confessions since from a practical point of view this type of suppression often affects the state's entire case and without such evidence it is a waste of time to try the case. The time for appeal to the supreme court has been limited to 90 days after entry of judgment or order appealed from. This is a change from the present one year. A provision for an all inclusive post conviction procedure is included and should reduce and simplify hearings of this type.

The only change in the present sex crimes law has been to provide for a procedure for the hearing on the issue of the need for specialized treatment for sex deviates which was mandated by a recent supreme court decision.

The bill also retains the present uniform acts in criminal cases and in addition adopts the Agreement on Detainers which is designed to provide for clearing up detainers based on untried cases involving defendants already incarcerated in one jurisdiction and wanted in another.

SECTION 1. 15.191 (intro.) of the statutes is amended to read:

15.191 (intro.) The department of health and social services shall have the program responsibilities specified for the department under chs. 46 to 58, 69, 140, 141, 143, 145, 146, 156, 158 to 160 ~~and~~, 163 *and 975* and ss. 13.53 (4) and (5), 14.225, 14.752 (1), ~~20.670~~ [20.435], ~~20.930 (2) (c)~~ [~~20.923 (3) (c)~~], ~~20.940~~ [20.916 (3)], ~~20.970~~ [20.920], 23.99, 25.31, 29.145 (1), *and* (1b), 32.02, 35.86, 36.217, 36.225, 36.227, 45.30, 46.99, 59.68, 68.15, 70.117, 97.046, 97.12, 101.40 to 101.43, 121.79 (1) (e), 139.13, 142.05 (4), 143.07 (5), 149.01, 155.01, 161.03, 161.14, 161.19, 174.13, 176.05 (21) (f), 231.11 (8), 236.12, 247.24, 247.29 (3), 285.05, 292.45, 313.03 (3), 319.295, 324.01, 341.12 (4), 343.09, 887.23, ~~957.11, 957.13, 957.27, 957.28~~ ~~and~~ ~~959.15~~ *971.14 and 971.17*. In addition:

SECTION 2. 15.251 (intro.) and (1) of the statutes are amended to read:

15.251 (intro.) The department of justice shall have the program responsibilities specified for the department under ch. 14 and ss. 7.70 (2), 8.50 (1) (a), 10.01 (2) (c), 12.45, 12.56 (2), 13.52, 13.69, 16.007, 16.31, 16.55, 16.77, 16.80, 16.96, 19.015, ~~20.180 (1) (d)~~ ~~and~~ ~~(9)~~ [20.455 (2) (b)], 24.02, 24.03, 25.12, 27.01 (3), 30.03, 35.59, 43.01, 46.16 (7), 52.10 (16), 59.07 (44), 66.912, 66.919 (2), 67.02 (3), 69.07, 71.11 (49), 71.13 (4), 72.15 (12), 72.18, 72.81, 73.03 (22), 73.04, 76.14, 76.37 (4), 77.07 (2), 78.70, 78.81, 88.54 (6), 93.05, 98.14, 100.20 (4), 100.24, 101.24, 101.31 (14) and (15), 102.23 (4), 102.64, 108.09 (7), 108.14 (3m), 110.10 (14), 111.12, 114.065, 125.08, 133.01 to 133.03, 133.06, 133.19, 133.20, 133.22, 133.23, 134.45, 135.11 (15), 135.12, 140.29, 140.58 (4), 143.04, 144.09, 144.536, 146.04, 146.07, 146.19 (2) (f), 147.195, 152.01 (6), 165.01 (4), 168.17, 169.20, 174.13, 175.13, 175.15, 176.90, 180.769, 180.771, 182.220, 185.72, 185.73, 185.84, 186.26, 189.17 (5), 189.20, 194.15, 195.07 (2), 200.19, 200.14, 200.20, 215.02 (10) and (13), 215.03 (4), 215.11 (7), 220.12, 220.25, 221.205, 221.28, 224.06 (7), 227.025, 227.26, 231.34, 234.23, 251.181, 251.19, 256.47, 268.025, 269.56 (11), 274.05, 276.48, 280.02, 280.20, 286.13, 286.15, 286.325, 286.35 to 286.37, 286.41, 286.43, 286.44, 288.05, 294.04, 295.20, 295.21, 318.02, 318.03, 885.07, *and* 945.10 ~~and~~ ~~963.03 (2)~~. In addition:

(1) The crime laboratory division shall have the program responsibilities specified for the division under ch. 165 ~~and s. 963.04 (8)~~.

SECTION 3. 15.431 of the statutes is amended to read:

15.431 The department of revenue shall have the program responsibilities specified for the department under title X, chs. 139, 168 and 176 and ss. 13.44 (2), 25.08, 25.09, 36.30, 67.03, 68.02 to 68.06, 121.06, 128.14 (1), *and* 311.05 ~~and~~ ~~963.03 (2)~~.

SECTION 4. 21.36 (3) of the statutes is amended to read:

21.36 (3) Each company or band may adopt such constitution, rules or bylaws, not inconsistent with the constitution and military regulations of the United States and of this state, as a majority of all the members thereof may approve; and may therein provide fines and penalties for any violation thereof, which, for absence or refusal to appear for instruction or parade, shall not exceed $5, nor be less than ~~one dollar~~ *$1*; and all such fines and penalties shall be collectible in an action in the name of the commanding officer as plaintiff before any competent court ~~or magistrate~~. Such constitution, rules or bylaws shall become operative only when approved by the governor.

SECTION 5. 26.18 of the statutes is amended to read:

26.18 Whenever an arrest ~~shall have~~ *has* been made for any violation of this chapter, or whenever any information of such violation ~~shall have~~ *has* been lodged with him, the district attorney of the county in which the criminal act was committed shall prosecute the offender ~~or offenders~~. If any district attorney ~~shall fail~~ *fails* to comply with this section, he ~~shall be guilty of a misdemeanor and~~ shall be fined not less than $100 nor more than $1,000, or ~~be~~ imprisoned *in county jail* not less than 30 days nor more than one year, or both. ~~The penalties of this section shall apply to any magistrate, with proper authority, who refuses or neglects without cause to issue a warrant for the arrest and prosecution of any person or persons when complaint, under oath, of violation of any terms of this chapter, has been lodged with him.~~

SECTION 6. 29.66 (1) of the statutes is amended to read:

29.66 (1) A person arrested without a warrant for a violation of this chapter, or any rule of the ~~commission~~ *department*, or ss. 134.60, 346.19 and 346.94 (6) and (6m) for which a mandatory jail sentence is not prescribed, who is not released at the time of arrest or without necessary delay brought before a ~~magistrate or~~ court, shall be allowed to make a deposit of money to the office of the sheriff, city or village police headquarters or precinct stations or to the office of the clerk of the court before whom he is summoned to appear by going in the custody of the arresting officer and making such deposit.

SECTION 7. 37.11 (16) (d) of the statutes is amended to read:

37.11 (16) (d) This subsection does not impair the duty of county or municipal police officers within their jurisdictions to arrest and take before the proper court ~~or magistrate~~ persons found in a state of intoxication, engaged in any disturbance of the peace or violating any state law on any property under the jurisdiction of the board *of regents*.

SECTION 8. 46.05 (2) of the statutes is amended to read:

46.05 (2) The warden and the superintendent of all the state charitable, curative, penal and reformatory institutions and of county hospitals and county homes, and such employes under them to whom they delegate police power, may arrest any person within or upon the grounds of such institutions whom they have reason to believe guilty of any offense against the laws or regulations governing the same; ~~may arrest any vagrant or idle person who refuses to leave any such premises; and may take the offender before a magistrate and make complaint against him;~~ and for such purpose they shall possess the powers of constables.

SECTION 9. 50.09 (1) and (1m) of the statutes are amended to read:

50.09 (1) Whenever any person applies for admission to any institution provided for in ch. 50 and s. 58.06 (2), the court, judge~~,~~ ~~magistrate~~ or board before whom such matter is pending shall give due notice of the hearing to the district attorney of such county who shall attend ~~said~~ *the* hearing; and the ~~said~~ court, judge~~,~~ ~~magistrate~~ or board shall upon proper evidence determine the legal settlement of such person and his general

financial ability. If the evidence does not disclose property sufficient to save the county free from the expense of his support, the court, judge, ~~magistrate~~ or board shall ascertain by further proof the residence and financial ability of any person, ~~if any,~~ liable for such support, pursuant to law, and shall order proper proceedings to be brought for the enforcement of such liability; but if the evidence discloses that the legal settlement of the person so examined and found destitute is within some other county within the state, such hearing shall be continued and the district attorney of such other county shall be duly notified and shall appear at such continued hearing. At the conclusion of said hearing the court, judge, ~~magistrate~~ or board shall determine the chargeability for the support of such person and certify such determination to the superintendent of the institution; and thereupon such person shall be admitted. If the court finds that the applicant meets the settlement or residence requirements specified in s. 50.04 (3) it shall make no investigation as to his financial status other than to determine whether or not he is the beneficiary of insurance ~~as provided in said~~ *under this* section.

(1m) ~~In the event~~ *If* the court, judge, ~~magistrate~~ or board fails to give the proper notice by certified mail as provided in sub. (1) the county of admission shall be liable for the cost of care and maintenance of the patient until the county charged with the cost of care and maintenance is given proper notice, a copy of which notice shall be sent to the ~~state board of health~~ *department of health and social services.* If it appears that the patient is without a legal settlement under sub. (1) then the ~~state board of health~~ *department of health and social services* shall be given notice by certified mail that the state shall be chargeable for the care and in the event the state is not notified the county of admission shall be liable for the cost of care until the notice is given unless the state or some other county in a proceeding under sub. (4) is held liable.

SECTION 10. 51.07 (4) of the statutes is amended to read:

51.07 (4) Expenses of the proceedings, from the presentation of the application to the commitment or discharge of the patient, including a reasonable charge for a guardian ad litem, shall be allowed by the court and paid by the county from which the patient is committed or discharged, in the manner that the expenses of a criminal prosecution ~~in justice court~~ are paid, as provided in s. 59.77.

SECTION 11. 53.06 of the statutes is amended to read:

53.06 The sheriff shall deliver to the reception center designated by the department every person convicted in his county and sentenced to the Wisconsin state prisons as soon as may be after sentence, together with ~~the certificate of conviction~~ *a copy of the judgment of conviction.* The warden or superintendent shall deliver to the sheriff a receipt acknowledging receipt of the prisoner, naming him, which receipt the sheriff shall file in the office of the clerk who issued the ~~certificate of conviction~~ *copy of the judgment of conviction.* When transporting or delivering a client to the Wisconsin home for women the sheriff shall be accompanied by an adult woman.

SECTION 12. 54.03 (7) of the statutes is amended to read:

54.03 (7) "Judge" includes all judges ~~and magistrates~~ of courts of record; "court" includes all courts of record.

SECTION 13. 54.32 of the statutes is amended to read:

54.32 Whenever the department is of the opinion that discharge of a person from its control at the time provided in ~~section~~ *s.* 54.31, would be dangerous to the public for reasons set forth in ~~section~~ *s.* 54.33 (2), it shall make an order directing that the person remain subject to its control beyond that period and shall make application to the committing court ~~or magistrate~~ for a review of that order at least 90 days before the time of discharge

stated. The application shall be accompanied by a written statement of the facts upon which the department bases its opinion that discharge of the person from control of the department at the time stated would be dangerous to the public.

SECTION 14. 56.18 (1) of the statutes is amended to read:

56.18 (1) Every court, municipal justice, ~~magistrate~~ or other officer in such county, authorized to commit any person to the county jail upon conviction of any offense or violation of any city or village ordinance, or authorized to sentence any person to imprisonment in the state prison for any term not exceeding 2 years, may in lieu of such sentence commit or sentence such person to said house for an equivalent term, at hard labor. All mittimuses and warrants of commitment in such cases shall be directed to the superintendent of said house and shall be his authority for the detention of the person sentenced or committed.

SECTION 15. Chapter 57 (title) of the statutes is amended to read:

CHAPTER 57.

~~Probation,~~ PAROLES AND PARDONS.

SECTION 16. 57.01 to 57.04 of the statutes are repealed.

SECTION 17. 57.15 of the statutes is repealed.

SECTION 18. 59.07 (10) of the statutes is repealed.

SECTION 19. 59.17 (3) of the statutes is amended to read:

59.17 (3) Sign all orders for the payment of money directed by the board to be issued, and keep in a book therefor a true and correct account thereof, and of the name of the person to whom each order is issued; but he shall in no case sign or issue any county order except upon a recorded vote or resolution of the board authorizing the same; nor shall he sign or issue any such order for the payment of the services of any municipal justice, ~~magistrate,~~ clerk or court, district attorney or sheriff until the person claiming such order files an affidavit stating that he has paid into the county treasury all moneys due the county and collected or received by him in his official capacity; nor shall he sign or issue any order for the payment of money for any purpose in excess of the funds appropriated for such purpose unless first authorized by a resolution passed by the county board pursuant to s. 65.90 (5).

SECTION 20. 59.456 (6) of the statutes is amended to read:

59.456 (6) It is the responsibility of the district attorney, after September 24, 1965, to institute, commence or appear in all civil actions or special proceedings under ss. 52.10, 269.565 and 957.13, and in all actions or proceedings in the criminal branches of the county and circuit courts which are related to or part of criminal prosecutions, and to perform all appropriate duties and appear whenever he may be designated in matters within chs. 292, ~~958, 964, 965~~ *976* and ~~966~~ *979 and ss. 51.81 to 51.85*, except that he shall not appear in matters under s. 292.01 (2). The district attorney is also authorized to appear in children's court matters involving delinquency or neglect, or contributing to either, or violation of traffic laws or ordinances, except that in any such matter the corporation counsel shall appear instead of the district attorney at the request of the court if the presiding judge considers that the interests of justice would be more adequately served thereby; and the district attorney is further authorized to appear in children's court in connection with other matters as requested by the judge. In addition thereto, whenever requested by the county board the district attorney shall prosecute all violations of county ordinances before any of the courts of his county.

SECTION 21. 59.47 (2) of the statutes is amended to read:

59.47 (2) Prosecute all criminal actions, ~~except for battery in violation of s. 940.20 or for disorderly conduct in violation of s. 947.01,~~ before any

~~magistrate~~ *court* in his county, other than those exercising the police jurisdiction of incorporated cities and villages in cases arising under the charter or ordinances thereof, when requested by such ~~magistrate~~ *court*; and upon like request, conduct all criminal examinations which may be had before such ~~magistrate~~ *court*, and prosecute or defend all civil actions before such ~~magistrate~~ *courts* in which the county is interested or a party.

SECTION 22. 59.77 (2), (4) (a) (intro.), (5) and (8) (d) of the statutes are amended to read:

59.77 (2) No claim for official services, in any criminal action or proceeding before *a* ~~municipal justice or other magistrate~~ *judge* shall be allowed by any county board until the same has been examined and a written report made thereon by the district attorney of the proper county as required by sub. (4); nor shall the claim of any sheriff, undersheriff, deputy sheriff, constable or other such officer for the services or expenses of an assistant in making an arrest or commitment be allowed unless the ~~magistrate~~ *judge* before whom the prisoner is brought certifies that there was a necessity for such assistance because of the dangerous character of the defendant or because 2 or more persons were arrested at the same time.

(4) (a) (intro.) At least 10 days before the annual meeting of such board every such officer shall make and file with the county clerk a certified statement of all actions or proceedings had or tried before him in which the state was a party, and wherein the county has become liable for the fees of officers, ~~or magistrates,~~ within the year next preceding the date of such statement, showing the title and nature of the action or examination, date of trial, the names of all officers, who actually attended court and gave in a statement of their attendance and travel; and also such on the part of the defendant as were allowed against the county, and the amount to which they are severally entitled. Such statement shall be substantially in the following form~~, viz.~~:

(5) Whenever any county is liable for fees of jurors, witnesses on the part of the state or on the part of the defendant, or of interpreters in any action or proceeding before a municipal justice, court commissioner~~,~~ *or* county judge ~~or other magistrate~~, procedure to secure payment of the same shall be as follows:

(a) The officer before whom ~~such~~ *the* juror, witness or interpreter attended, shall furnish to ~~such~~ *the* person a certificate setting forth the name of ~~such~~ *the* person, the time served, the number of miles traveled by him and the amount of compensation to which he is entitled, together with the title of the action in which ~~such person so~~ *he* served, the capacity in which he served and the date of service. ~~Such~~ *The* certificate shall be dated and signed by ~~such magistrate~~ *the officer* and examined and certified to by the district attorney of the county in which ~~such persons or~~ *the* person ~~so~~ served.

(b) The person receiving ~~such~~ *the* certificate shall in the presence of the ~~magistrate~~ *officer* issuing the same indorse thereon a certificate that he is the person mentioned therein by the ~~magistrate~~ *officer*, that the time of service, the number of miles traveled and the capacity in which he served are true and correct as therein stated, and that he has not at any time received any compensation therefor.

(c) Upon presentation of ~~such~~ *the* certificate of ~~such magistrate~~ *the officer*, together with the certificate of ~~such~~ *the* district attorney and of the person holding the same indorsed thereon as hereinbefore specified, the county treasurer shall, except in counties having a population of over ~~three hundred thousand~~ *300,000*, pay to the holder of such certificate the amount therein set forth, out of the funds of the county, and ~~such~~ *the* certificate with the indorsement thereon shall be filed in the office of the county treasurer.

(e) ~~Said~~ *The* certificate shall then be filed with the county clerk.

(f) Any ~~magistrate~~ *officer*, juror, witness or interpreter who ~~shall make or sign~~ *makes or signs* any such certificate which is untrue in respect to anything material, which he knows to be false, or which he has not good reason to believe is true shall be punished as provided in s. 946.12.

(8) (d) Any judge, ~~magistrate~~ *municipal justice or court commissioner*, juror, witness, interpreter, attorney, guardian ad litem or recipient of transcript fees who ~~shall make, sign or endorse~~ *makes, signs or indorses* any such certificate or order which is untrue in respect to anything material, which he knows to be false, or which he has not good reason to believe is true, shall be punished as provided in s. 946.12.

SECTION 23. 59.82 of the statutes is repealed.

SECTION 24. 59.88 of the statutes is repealed.

SECTION 25. 61.28 of the statutes is amended to read:

61.28 The village marshal shall execute and file an official bond. He shall possess the powers, enjoy the privileges and be subject to the liabilities conferred and imposed by law upon constables, and be taken as included in all writs and papers addressed to constables. ~~It shall be his duty to~~ *He shall* obey all lawful written orders of the village board; ~~to~~ arrest with or without process ~~and with reasonable diligence to take before the municipal justice~~ every person found in such village in a state of intoxication or engaged in any disturbance of the peace or violating any law of the state or ordinance of such village. He may command all persons present in such case to assist him therein, and if any person, being so commanded, ~~shall refuse or neglect~~ *refuses or neglects* to render such assistance he shall forfeit not exceeding $10. He shall be entitled to the same fees allowed to constables for similar services; for other service rendered the village such compensation as the board ~~shall fix~~ *fixes*.

SECTION 26. 66.112 of the statutes is repealed.

SECTION 27. 83.016 (1) of the statutes is amended to read:

83.016 (1) The county board, or one of its committees to which it may delegate such authority, may appoint traffic patrolmen for the enforcement of laws relating to the highways or their use, or the maintenance of order upon or near the highways. Traffic patrolmen may arrest without warrant any person who, in their presence, violates any law relating to highways or the maintenance of order upon or near highways. Any traffic patrolman, sheriff, constable or other police officer may make such arrest without warrant on the request of any other traffic patrolman, sheriff, constable or police officer in whose presence any such offense has been committed. The appointment of any traffic patrolman may be revoked at any time by the county board or one of its committees to which it may delegate such authority. No traffic patrolman shall receive or accept from or for any person he has arrested, any money or other thing of value, as or in lieu of bail or for the person's appearance before a court ~~or magistrate~~, or to cover or be applied to the payment of fines or costs, or as a condition of such person's release.

SECTION 28. 141.02 (3) of the statutes is amended to read:

141.02 (3) The police ~~and all magistrates~~ and other civil officers and all citizens shall aid, to the utmost of their power, the officer in the discharge of his duties, and on his requisition the chief of police shall serve or detail one or more policemen to serve the notices issued by the officer and to perform such other duties as he ~~may require~~ *requires*.

SECTION 29. 161.14 (1) and (2) of the statutes are amended to read:

161.14 (1) Except as ~~in this section~~ otherwise provided *in this section*, the court ~~or magistrate~~ having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were

seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court ~~or magistrate~~ and to the United States commissioner of narcotics by the officer who destroys them.

(2) Upon written application by the state health officer, the court ~~or magistrate~~ by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said state health officer, for distribution or destruction, as hereinafter provided.

SECTION 30. 161.15 of the statutes is amended to read:

161.15 On the conviction of any person ~~of the violation of any provision~~ *for violating* this chapter, a copy of the judgment and sentence, and of the opinion of the court ~~or magistrate,~~ if any opinion ~~be~~ *is* filed, shall be sent by the clerk of the court~~, or by the magistrate,~~ to the board or officer~~, if any,~~ by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the court may~~, in its discretion,~~ suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration. This section shall not apply in the case of any convictions to which ~~the provisions of subsections (3) and (4) of section~~ *s.* 147.20 ~~apply~~ *(3) and (4) applies*, but in such case the conviction, the person~~,~~ and the license shall be subject to ~~the provisions of~~ said subsections.

SECTION 31. 161.16 of the statutes is amended to read:

161.16 Prescriptions, orders and records required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before ~~a magistrate or~~ a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

SECTION 32. 165.04 (1) of the statutes is amended to read:

165.04 (1) Evidence, information, and analyses of evidence obtained from law enforcement officers by the superintendent or employes of the laboratory shall be privileged and not available to persons other than law enforcement officers nor shall the defendant be entitled to an inspection of information and evidence submitted to the laboratory by the state or of the laboratory's findings thereon, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the state at a preliminary hearing. Upon request of a defendant in a felony action, approved by the presiding judge, the laboratory shall conduct analyses of evidence upon behalf of such defendant; in such event no prosecuting officer shall be entitled to an inspection of information and evidence submitted to the laboratory by the defendant, or of the laboratory's findings thereon, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the accused at a preliminary hearing. Employes of the laboratory who made examinations or analyses of evidence shall attend the criminal trial as witnesses, without subpoena, upon reasonable written notice from either party requesting such attendance. *Nothing in this section shall limit the right of a court to order the production of evidence or reports pursuant to s. 971.23 prior to trial.*

SECTION 33. 176.01 (5) of the statutes is repealed.

SECTION 34. 176.36 of the statutes is amended to read:

176.36 Every sheriff, undersheriff and deputy sheriff, police officer, marshal or deputy marshal or constable of any town, village or city who ~~shall know~~ *knows*, or ~~be~~ *is* credibly informed, that any offense has been committed against the provisions of any law of this state relating to the sale of intoxicating liquors, shall make complaint against the person so offending within their respective towns, villages or cities to a proper ~~municipal justice or other magistrate~~ *judge* therein, and for every neglect or refusal so to do, every such officer shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $50 and the costs of prosecution.

SECTION 35. 192.47 of the statutes is amended to read:

192.47 Any railway company may, at its own expense, appoint and employ policemen at such stations or other places on the line of its road within this state as it ~~may deem~~ *deems* necessary for the protection of its property and the preservation of order on its premises and in and about its cars, depots, depot grounds, yards, buildings or other structures. Each policeman shall take an oath to support the constitution of the United States and showing that he is a citizen of the United States and shall file the same in the office of the commission. Every such policeman shall, when on duty, wear a shield furnished by said company bearing the words "Railroad Police" and the name of the company for which he is appointed. ~~Said~~ *These* policemen may arrest, with or without warrant, any person who in their presence ~~shall commit~~ *commits* upon the premises of any such company or in or about its cars, depots, depot grounds, yards, buildings or other structures any offense against the laws of this state or the ordinances of any town, city or village, and shall also have the authority of sheriffs in regard to the arrest or apprehension of any such offenders in or about the premises or appurtenances aforesaid; but in case of the arrest, by any such policeman, of any person without warrant he shall forthwith take such offender before ~~some magistrate~~ *a judge* having jurisdiction and make complaint against him. Every railway company shall be responsible for the acts of its policemen.

SECTION 36. 204.07 of the statutes is amended to read:

204.07 A licensed surety corporation may guarantee the conditions of or execute any bond, undertaking or obligation which is required or permitted by law to be given for the security of any person, association, corporation, state, county, municipality or other organization, or conditioned for the doing or not doing of anything specified in any such instrument; and all public officers, boards and committees, and all courts~~,~~ *and* judges ~~and magistrates~~ may accept and approve such instruments when executed or the conditions thereof are guaranteed by a licensed surety corporation. Such execution or guarantee shall be a full and complete compliance with all requirements as to how and by whom such instruments shall be executed or guaranteed. Such corporation may execute or guarantee any such instrument given under the laws of the United Sates or of any other state or country. Suretyship obligations need not be under seal unless the law specifically requires a seal and may be executed by any officer, attorney in fact or other authorized representative.

SECTION 37. 253.015 of the statutes is amended to read:

253.015 *(1)* Menominee county shall not be organized separately for county court purposes, but shall be a part of a joint Shawano-Menominee county court, which constitutes a single judicial district. Such court shall have 2 divisions, the Shawano county division and the Menominee county division. No county judge for Menominee county shall be elected separately, but the duly elected judges of the Shawano-Menominee county

court shall serve as county judges of the district. The books, papers and records of the office of such county judges shall be kept at the county seat of the county in which each has his principal office, or, at the discretion of the county judges, at either or both county seats.

(2) The judge of Shawano-Menominee county court, branch one, may appoint a register in probate and a public administrator for each of the 2 divisions of the county court, or may appoint one register in probate or public administrator to serve both divisions. If a separate register in probate is appointed for the Menominee county division, he may be the same person who is the duly elected clerk of circuit court for Menominee county. If one register in probate serves for both the Shawano and Menominee county divisions of the county court, the office of such register in probate shall be in the city of Shawano.

(3) The qualified electors of Menominee county shall be eligible to vote at every election for county judge.

(4) Any civil matter or proceeding ~~or criminal matter or action, except a criminal action which the municipal justice has no jurisdiction to try,~~ commenced in the Shawano-Menominee county court, Menominee county division, which would be within the jurisdiction and authority of a municipal justice in Menominee county had the action been commenced in Menominee county, shall be, on the motion of the defendant ~~in a criminal case or~~ in the case of a forfeiture, and may be on the motion of either party in other cases, transferred by the county judge to a municipal justice in Menominee county for trial.

(5) The county boards of Menominee county and Shawano county shall enter into an agreement prorating the joint expenditures involved in conducting the joint county court, and for such purposes the county board of Menominee county shall be authorized to appropriate, levy and collect a sum each year sufficient to pay its share of such expenses; but no portion of the initial cost, or amortization of debt on the Shawano county courthouse or repair, maintenance, or ~~improvment~~ *improvement* of the same or items which are taxable costs between the parties shall be included as a joint expenditure for proration purposes. If the 2 county boards are unable to agree on prorating the joint expenditures involved, then the judge of the circuit court for the 10th circuit shall, under appropriate notice and hearing, determine the prorating of such expenditures, on the basis of the volume and character of work and responsibilities, to each county, under such procedure as he prescribes.

(6) The county judge may order court held at the county seat in Menominee county or at the county seat in Shawano county or other appropriate place, and the general terms of the court for the county court of Shawano county shall be the terms of Shawano-Menominee county court. The proper place of trial of civil and criminal actions commenced in such court shall be the place in either county where the judge orders court held.

(7) The jury commissioners of Shawano county shall serve as jury commissioners for the Shawano-Menominee county court, and shall add to the present Shawano county court jury list from which jurors shall be drawn the names of qualified residents of Menominee county, and the list shall be known as the Shawano-Menominee county court jury list.

(8) All fines and all costs and fees collected in Shawano-Menominee county court in causes of action arising out of Menominee county shall be accounted for and paid over quarterly to the county treasurer of Menominee county and in causes of action arising out of Shawano county shall be accounted for and paid over quarterly to the county treasurer of Shawano county.

(9) All process and pleadings and documents of the Shawano-Menominee county court shall be entitled "Shawano-Menominee County Court:

. . . . County Division", to be completed with the name of the appropriate county.

SECTION 38. 253.164 (1) of the statutes is amended to read:

253.164 (1) Wherever any matter under s. 253.11 in the county court is related to a term of court, "term" shall be construed, for county courts, to mean the first Monday in April or the first Monday in October, whichever is more appropriate in context. Except as otherwise provided herein ~~and in s. 954.005~~, a regular term of the county court shall be held on the first Tuesday of each month, except July and August.

SECTION 39. 254.05 (1) of the statutes is amended to read:

254.05 (1) Every justice shall have county-wide jurisdiction. If elected in a city or village lying in more than one county, he shall qualify and have jurisdiction in each, the same as though the municipality lay wholly therein, and may hold court in one county while exercising jurisdiction in the other. If a defendant resides in either of such counties, venue on appeal or certiorari in civil cases, except actions brought by cities or villages, shall be in that county, otherwise in that one of the counties where the cause of action arose if it arose in either, otherwise in either county. ~~In criminal cases venue upon appeal or certiorari shall be in the county where the offense was committed.~~ In all actions brought by a city or village appeals may be taken to the circuit court of the county where the action was tried. Juries may be impaneled of persons qualified as jurors in either county.

SECTION 40. 254.09 of the statutes is amended to read:

254.09 The municipal justice may punish a violation of an ordinance or bylaw by ordering payment of a forfeiture plus costs of prosecution or by imprisonment in case the forfeiture and costs are not paid~~, and may sentence any person convicted of a misdemeanor to pay a fine and the costs of prosecution or be imprisoned in the jail of the county in which the offense was committed~~. Persons committed for offenses against ordinances or bylaws shall be committed to the jail of the county in which the offense was tried. Prisoners confined in the county jail or in some other penal or correctional institution for violation of an ordinance or bylaws shall be kept at the expense of the municipality and the municipality shall be liable therefor.

SECTION 41. 256.32 of the statutes is amended to read:

256.32 No person shall be employed or allowed to appear as counsel or attorney before any court in any action which shall have been previously determined before him as a judge~~,~~ *or* justice~~, or examining magistrate~~.

SECTION 42. 269.55 of the statutes is amended to read:

269.55 Upon a trial or examination in any matter wherein any deaf mute or hearing-handicapped person is accused of a crime or misdemeanor, or upon consideration by any state, county or municipal agency of the right or propriety of any such person to have privileges accorded normal hearing people, or when such person is to come under judgment as to his fitness for a place in society, and there is a definite communications barrier as evidenced by such person being incapable of adequately understanding any charge, issue or pertinent utterances or expressing himself because of a lack of ability to use the English language by reason of being deaf or hearing-handicapped, or by such person suffering from a speech defect or other physical defect which handicaps such person in exercising or maintaining his rights in such matter, the court, judge, ~~magistrate,~~ agency, person or body conducting, considering or having jurisdiction of such trial, examination or matter shall call in and appoint an interpreter competent to converse in the special language, oral, manual or sign, familiar to or used by such deaf mute or hearing-handicapped person. The necessary expense of furnishing such interpreter shall be paid by the unit of

government for which such trial, examination, inquiry or consideration is held or made if satisfactory proof ~~be~~ *is* offered that said deaf mute or person is unable to pay the same.

SECTION 43. 292.01 (1) of the statutes is repealed and recreated to read:

292.01 (1) Every person restrained of his liberty may prosecute a writ of habeas corpus to obtain relief from such restraint subject to ss. 292.02 and 974.06.

SECTION 44. 292.03 of the statutes is repealed and recreated to read:

292.03 PETITION FOR WRIT. Application for such writ shall be by petition, signed either by the prisoner or by some person in his behalf, and may be made to the supreme court, or the circuit court of the county or the county court, or to any justice or judge of the supreme, circuit or county court, or to any court commissioner, within the county where the prisoner is detained; or if there is no judge within such county, or for any cause he is incapable of acting, or has refused to grant such writ, then to some judge residing in an adjoining county; but every application, made by or on behalf of a person sentenced to the state prisons, must contain a copy of any motion made pursuant to s. 974.06 and shall indicate the disposition of such motion and the court wherein such disposition was made, or if no motion was made, the petition shall so state.

SECTION 45. 295.01 (7) of the statutes is amended to read:

295.01 (7) All ~~inferior magistrates~~ *municipal justices*, officers and tribunals for disobedience of any lawful order or process of a superior court or for proceeding in any action or proceeding contrary to law after such action or proceeding ~~shall have~~ *has* been removed from their jurisdiction; and

SECTION 46. 299.21 (5) of the statutes is renumbered 299.21 (5) (a) and amended to read:

299.21 (5) (a) If a 6-man jury is demanded, in counties having a population of 500,000 or more, the jury shall be drawn from the circuit court jury panel and selected ~~in accordance with the procedure~~ as set forth under Title XXV. In all other counties, such juries shall be selected as provided *in* ~~s.~~ ~~957.054~~ *pars. (b) and (c)*, except that any party may demand trial by a county-wide jury that the clerk shall select, by lot, the names of sufficient persons qualified to serve as jurors as will provide to each party entitled to separate peremptory challenges the number of challenges specified in ~~s.~~ ~~957.054~~ *par. (b)*. If, subsequent to the payment of the 6-man jury fee under sub. (3) by a defendant charged with a violation of a county ordinance, no jury is impaneled in the action, the court may order the refund of the jury fee to the defendant.

SECTION 47. 299.21 (5) (b) and (c) of the statutes are created to read:

299.21 (5) (b) If a 6-man jury is demanded before the trial begins, the judge shall direct the clerk of the court to select by lot from the current jury panel the names of 18 residents of the county qualified to serve as jurors in courts of record, from which lists either party may strike 5 names. If either party neglects to strike out names, the clerk shall strike out names for him. Except in counties having a population of 500,000 or more, no voir dire examination or challenge for cause shall be permitted. The clerk shall issue a venire to the sheriff or constable to summon any 6 persons whose names are not struck out, to appear at the time and place named in the venire.

(c) Jurors may all be residents of a municipality in which the court is held unless the defendant demands a county-wide jury. For this purpose a municipal jury list may be established, known as the "_____ (name of municipality) jury list", which shall be constituted as follows: The

jury commissioners appointed by the circuit court of the county in which the municipality is located shall, from time to time as required by the county court, provide and furnish a list containing the names of 200 jurors selected by them from citizens residing within the municipality involved. The judge or judges of county court may by court order direct the jury commissioners to furnish a list of less than 200 jurors, but in no event shall such list contain less than 50 names. Except as herein provided, the provisions of s. 255.04, relating to the preparation of jury lists for the circuit court, so far as applicable, shall apply to and govern the preparation of such list, but the slips containing the names of jurors so selected shall be deposited in a box designated the "..... (name of municipality) jury list.".

SECTION 48. 300.05 (2) and (3) of the statutes are repealed.

SECTION 48m. 300.18 of the statutes, as created by chapter 87, laws of 1969, is repealed and recreated to read:

300.18 WARRANTS, POWER TO ISSUE. Municipal justices are authorized to issue civil warrants to enforce matters which are under the jurisdiction of the municipal court. Municipal justices are also authorized to issue inspection warrants under ss. 66.122 and 66.123.

SECTION 49. 301.245 of the statutes is amended to read:

301.245 In counties having a population of less than 500,000, the defendant in any civil action brought in municipal court may, within 5 days after the return day of the process, ~~and in any criminal action brought in municipal court may, at any time prior to trial,~~ transfer the cause to the county court of said county. Upon receipt of such a request, accompanied by a total fee of $4 of which $3 shall be transmitted by the judge to the clerk of the county court as payment of the clerk's fee and suit tax, the judge shall forthwith transmit all the papers in the cause to the clerk of said court.

SECTION 50. 343.18 of the statutes is amended to read:

343.18 (1) Every licensee shall have his license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice, ~~magistrate~~ or traffic officer. However, no person charged with violating this section shall be convicted if he produces in court or in the office of the arresting officer a license theretofore issued to him and valid at the time of his arrest.

(2) For the purpose of verifying the signature on a license, any judge, justice, ~~magistrate~~ or traffic officer may require the licensee to write his signature in the presence of such officer.

SECTION 51. 885.32 to 885.35 of the statutes are repealed.

SECTION 52. 887.06 of the statutes is repealed.

SECTION 53. 946.49 of the statutes is created to read:

946.49 BAIL JUMPING. (1) Whoever, having been released from custody pursuant to ch. 969, intentionally fails to comply with the terms of his bond may:

(a) If the offense with which he is charged is a misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned not more than 6 months or both.

(b) If the offense with which he is charged is a felony, be fined not more than $5,000 or imprisoned not more than 5 years or both.

(2) A witness for whom bail has been required pursuant to s. 969.01 (3) may be fined not more than $1,000 or imprisoned not more than one year in the county jail or both for failure to appear as provided.

SECTION 54. 946.76 of the statutes is created to read:

946.76 SEARCH WARRANT; PREMATURE DISCLOSURE. Whoever discloses prior to its execution that a search warrant has been applied for

or issued, except so far as may be necessary to its execution, may be fined not more than $250 or imprisoned not more than 30 days or both.

SECTION 55. Chapters 954 to 964, except 954.44, 957.26 (1m), 957.263, 957.265, 963.10 and 963.11, of the statutes are repealed.

SECTION 56. 954.44 of the statutes is renumbered 345.61.

SECTION 57. 957.26 (1m) of the statutes is renumbered 256.65.

SECTION 58. 957.263 of the statutes is renumbered 256.66.

SECTION 59. 957.265 of the statutes is renumbered 256.67 and 256.67 (5) (d), as renumbered, is amended to read:

256.67 (5) (d) Upon authorization of the supreme court, to represent any person confined to central state hospital in any proceedings for ~~re-examination~~ *reexamination* of his mental condition initiated under ss. ~~957.11 (4) and 957.13 (4)~~ *971.14 (5) and 971.17 (2)* whom the state public defender determines to be indigent.

SECTION 59m. 963.10 and 963.11 of the statutes are renumbered 66.122 and 66.123, respectively.

SECTION 60. Chapter 965 (title) of the statutes is repealed.

SECTION 61. 965.01 to 965.05 of the statutes are renumbered 51.81 to 51.85 and 51.83 (1), as renumbered, is amended to read:

51.83 (1) Whenever the executive authority of any state demands of the executive authority of this state, any fugitive within the purview of s. ~~965.02~~ *51.82* and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled with an affidavit made before a proper officer showing the person to be such a fugitive, it ~~shall be~~ *is* the duty of the executive authority of this state to cause him to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he ~~shall appear~~ *appears*.

SECTION 62. Chapter 966 of the statutes is renumbered chapter 979 and 979.121 and 979.19 (3) of the statutes, as renumbered, are amended to read:

979.121. The coroner ~~shall have the authority to~~ *may* conduct an autopsy or order the conducting of an autopsy upon the body of a dead person any place within the state and ~~to~~ disinter the body if necessary in cases where a coroner's inquest might be had as provided in s. ~~966.01~~ *979.01* notwithstanding that no such inquest is ordered or had.

979.19 (3) The coroner shall receive a fee of $10, to be paid out of the county treasury, for each body so viewed or inquiry made, unless an annual salary has been established by the county board pursuant to s. ~~966.14~~ *979.14*.

SECTION 63. Chapters 967 to 976 of the statutes are created to read:

TITLE XLVII.

CRIMINAL PROCEDURE.

CHAPTER 967.

GENERAL PROVISIONS.

967.01 TITLE AND EFFECTIVE DATE. Title XLVII may be cited as

the criminal procedure code and shall be interpreted as a unit. This code shall govern all criminal proceedings and is effective on July 1, 1970. It applies 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.

967.02 WORDS AND PHRASES DEFINED. In Title XLVII, 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. For the purposes of issuing summonses or warrants, conducting initial appearances of persons arrested and setting bail, "judge" also includes a court commissioner.

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

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

967.03 DISTRICT ATTORNEYS. Wherever in Title XLVII 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.

NOTE: This section is consistent with the authority found in s. 59.45 for counties other than Milwaukee county. The limitations in s. 59.46 as to the powers of assistant district attorneys in Milwaukee county should be eliminated and all assistant district attorneys in the state should have the same powers. With reference to the duties of district attorneys, see s. 59.47.

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.

(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.

NOTE: Present s. 887.06.

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 or an indictment.

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

NOTE: This section restates existing procedural law and practice. While the Fifth amendment of the United States constitution provides, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . ," ". . . the law is well settled that the presentment or indictment requirements of the Fifth amendment are not made applicable to the states by the Fourteenth amendment". *Goyer v. State*, 26 Wis. 2d 244, 246, 131 NW 2d 888 citing *Kennedy v. Walker* (1948), 135 Conn. 262, 63 A 2d 589, affirmed, 337 U.S. 901, 69 Sup. Ct. 1047, 93 L. Ed. 1715, rehearing denied, 337 U.S. 934, 69 Sup. Ct. 1491, 93 L. Ed. 1740.

967.06 COMPENSATION OF COUNSEL FOR INDIGENTS. (1) Counsel appointed to represent indigent defendants shall be compensated for services commencing with the time of their appointment.

(2) The judge or court under this section shall fix the amount of com-

pensation for counsel appointed hereunder, which shall be such as is customarily charged by attorneys of this state for comparable service, and shall provide for the repayment of actual disbursements for necessary travel and other expense, automobile travel to be compensated at not over 8 cents a mile. The certificate of the clerk shall be sufficient warrant to the county treasurer to make such payment.

(3) If appointment of counsel has not been so made as to include services upon appeal or writ of error, or if no counsel was appointed in the trial court, the supreme court or the chief justice, upon timely notice to the district attorney and upon being satisfied that review is sought in good faith and upon reasonable grounds (or if the appeal or writ of error is prosecuted by the state) may appoint counsel to prosecute or defend such appeal or writ of error. If no counsel was appointed in the trial court, the defendant shall be required to show his inability to employ counsel. Upon the certificate of the clerk of the supreme court the county treasurer shall pay the attorney such sum for compensation and expenses as the supreme court allows.

(4) Under like circumstances counsel may be appointed and compensated for representing prisoners upon writs of habeas corpus.

NOTE: Present s. 957.26 (3), (4), (5) and (6).

CHAPTER 968.

COMMENCEMENT OF CRIMINAL PROCEEDINGS.

968.01 COMPLAINT. The complaint is a written statement of the essential facts constituting the offense charged. It may be made on information and belief. It shall be made upon oath before a district attorney or judge as provided in this chapter.

NOTE: Restatement of present s. 954.02 (1) with the additional authorization for a complaint to be sworn to before a district attorney.

968.02 ISSUANCE AND FILING OF COMPLAINTS. (1) Except as otherwise provided in this section, a complaint charging a person with an offense shall be issued only by a district attorney of the county where the crime is alleged to have been committed. A complaint is issued when it is

approved for filing by the district attorney. The approval shall be in the form of a written indorsement on the complaint.

(2) After a complaint has been issued, it shall be filed wth a judge and either a warrant or summons shall be issued or the complaint shall be dismissed, pursuant to s. 968.03. Such filing commences the action.

(3) If a district attorney refuses or is unavailable to issue a complaint, a county judge may permit the filing of a complaint, if he finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing. Where the district attorney has refused to issue a complaint, he shall be informed of the hearing and may attend. The hearing shall be ex parte without the right of cross-examination.

NOTE: This is a change from the present law designed to give the district attorney a greater voice in the initiating of criminal proceedings. Since his is the obligation of conducting the prosecution it is believed that he should have a voice in the screening out of unfounded complaints and in determining if there was sufficient evidence to warrant prosecution.

Sub. (3) provides a check upon the district attorney who fails to authorize the issuance of a complaint, when one should have been issued, by providing for a judge to authorize its issuance.

Sub. (3) also provides a vehicle for the issuance of complaints when the district attorney is unavailable.

The section is based upon s. 601 of the A.L.I. Model Code of Pre-Arraignment Procedure.

968.03 DISMISSAL OR WITHDRAWAL OF COMPLAINTS. (1) If the judge does not find probable cause to believe that an offense has been committed or that the accused has committed it, he shall indorse such finding on the complaint and file the complaint with the clerk.

(2) An unserved warrant or summons shall, at the request of the district attorney, be returned to the judge who may dismiss the action. Such request shall be in writing, it shall state the reasons therefor in writing and shall be filed with the clerk.

(3) The dismissals in subs. (1) and (2) are without prejudice.

968.04 WARRANT OR SUMMONS ON COMPLAINT. (1) WARRANTS. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint or after an examination under oath of the complainant or witnesses, when the judge determines that this is necessary, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the judge shall issue a warrant for the arrest of the defendant or a summons in lieu thereof. The warrant or summons shall be delivered forthwith to a law enforcement officer for service.

(a) When an accused has been arrested without a warrant and is in custody or appears voluntarily before a judge, no warrant shall be issued and the complaint shall be filed forthwith with a judge.

(b) A warrant or summons may be issued by a judge in another county when there is no available judge of the county in which the complaint is issued. The warrant shall be returnable before a judge in the county in which the offense alleged in the complaint was committed, and the summons shall be returnable before the county court of the county in which the offense alleged in the complaint was committed.

(2) SUMMONS. (a) In any case the district attorney, after the issuance of a complaint, may issue a summons in lieu of requesting the issuance of a warrant. The complaint shall then be filed with the clerk.

(b) In misdemeanor actions where the maximum imprisonment does

not exceed 6 months, the judge shall issue a summons instead of a warrant unless he believes that the defendant will not appear in response to a summons.

(c) If a person summoned fails to appear in response to a summons issued by a district attorney, the district attorney may proceed to file the complaint as provided in s. 968.02 and, in addition to indorsing his approval on the complaint, shall indorse upon the complaint the fact that the accused failed to respond to a summons.

(3) MANDATORY PROVISIONS. (a) *Warrant.* The warrant shall:

1. Be in writing and signed by the judge.

2. State the name of the crime and the section charged and number of the section alleged to have been violated.

3. Have attached to it a copy of the complaint.

4. State the name of the person to be arrested, if known, or if not known, designate the person to be arrested by any description by which he can be identified with reasonable certainty.

5. State the date when it was issued and the name of the judge who issued it together with the title of his office.

6. Command that the person against whom the complaint was made be arrested and brought before the judge issuing the warrant, or, if he is absent or unable to act, before some other judge in the same county. Judges in counties having more than one judge may issue rules for procedures to be followed in determining the judge before whom the initial appearance shall be made, except that in counties having a population of more than 500,000, the initial appearance of a defendant charged with a felony not triable in the county court of such county shall be in a criminal branch of the circuit court if such court is in session.

7. The warrant shall be in substantially the following form:

STATE OF WISCONSIN, ... County
State of Wisconsin vs. ..... (Defendant)
THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER:

A complaint, copy of which is attached, having been filed with me, accusing, the defendant, of committing the crime of ..... contrary to sec. ....., Stats., and I having found that probable cause exists that the crime was committed by the defendant(s).

You are, therefore, commanded to arrest the defendant(s) and bring ..... before me, or, if I am not available, before some other judge of this county.

Dated ....., 19.....
..... (Signature), ... (Title)

8. The complaint and warrant may be on the same form. The warrant shall be beneath the complaint. If separate forms are used, a copy of the complaint shall be attached to the warrant.

(b) *Summons.* 1. The summons shall command the defendant to appear before a court at a certain time and place and shall be in substantially the form set forth in par. (a).

2. A summons may be served anywhere in the state and it shall be served by delivering a copy to the defendant personally or by leaving a copy at his usual place of abode with a person of discretion residing therein or by mailing a copy to the defendant's last-known address. It shall be served by a law enforcement officer.

3. The summons shall be in substantially the following form:

a. When issued by a judge:

STATE OF WISCONSIN, ... County
State of Wisconsin vs. ..... (Defendant)

THE STATE OF WISCONSIN TO SAID DEFENDANT:

A complaint, copy of which is attached, having been filed with me accusing the defendant of committing the crime of ..... contrary to sec. ....., Stats., and I having found that probable cause exists that the crime was committed by the defendant.

You, ..., are, therefore, summoned to appear before Branch ..... of the ..... court of ..... County at the courthouse in the City of ..... to answer said complaint, on ....., 19....., at .... o'clock in the ..... noon, and in case of your failure to appear, a warrant for your arrest will be issued.

Dated ....., 19.....

..... (Signature), ... (Title)

b. When issued by a district attorney:

STATE OF WISCONSIN, ... County
State of Wisconsin vs. ..... (Defendant)
THE STATE OF WISCONSIN TO SAID DEFENDANT:

A complaint, copy of which is attached, having been made before me accusing the defendant of committing the crime of ..... contrary to sec. ....., Stats.

You, ..., are, therefore, summoned to appear before Branch ..... of the ..... court of ..... County at the courthouse in the City of ..... to answer said complaint, on ....., 19....., at .... o'clock in the ..... noon, and in case of your failure to appear, a warrant for your arrest may be issued.

Dated ....., 19.....

..... (Signature), ... District Attorney

4. The complaint and summons may be on the same form. The summons shall be beneath the complaint. If separate forms are used, a copy of the complaint shall be attached to the summons.

(4) SERVICE. (a) The warrant shall be directed to all law enforcement officers of the state. A warrant may be served anywhere in the state.

(b) A warrant is served by arresting the defendant and informing him as soon as practicable of the nature of the crime with which he is charged.

(c) An arrest may be made by a law enforcement officer without a warrant in his possession when he has knowledge that a warrant has been issued. In such case, the officer shall inform the defendant as soon as practicable of the nature of the crime with which he is charged.

(d) The law enforcement officer arresting a defendant shall indorse upon the warrant the time and place of the arrest and his fees and mileage therefor.

NOTE: Sub. (1) is a modification of the present s. 954.02 (2) with additional language designed to conform with *White vs. Simpson*, 28 Wis. 2d 590; 137 N.W. 2d 391.

Par. (b) permits warrants or summonses to be issued by a judge in another county when there is no judge available in the county where the crime is alleged to have been committed.

Sub. (2) retains present language in s. 954.02 (4) and in addition adopts s. 604 of the Model Code of Pre-Arraignment Procedure designed to encourage greater usages of summonses in misdemeanors. Studies have shown that in most misdemeanors, defendants are subsequently released prior to trial without bail and it would seem that arresting them when such release is likely is an unnecessary waste of police manpower.

Sub. (3) permits a simplification of the present form for warrants

and complaints. Both documents may be contained on a single form.

968.05 CORPORATIONS: SUMMONS IN CRIMINAL CASES. (1) When a corporation is charged with the commission of a criminal offense, the judge or district attorney shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before a court at a specific time and place.

(2) The summons for the appearance of a corporation may be served as provided for service of a summons upon a corporation in a civil action. The summons shall be returnable not less than 10 days after service.

NOTE: This section enlarges the scope of present s. 954.017 to include felonies. The method of commencing actions against corporations should be uniform in both misdemeanors and felonies.

968.06 WARRANTS AND SUMMONS UPON INDICTMENT. A judge shall issue a warrant or a summons for a defendant named in an indictment by a grand jury. Section 968.04 (3) shall apply to such process.

968.07 ARREST BY A LAW ENFORCEMENT OFFICER. (1) A law enforcement officer may arrest a person when:

(a) He has a warrant commanding that such person be arrested; or

(b) He believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or

(c) He believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or

(d) There are reasonable grounds to believe that the person is committing or has committed a crime.

(2) A law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer.

NOTE: Sub. (1) increases the power of a law enforcement officer to arrest for all crimes when he has reasonable grounds to believe that a person has committed a crime. Present s. 954.03 (1) refers only to misdemeanors and contains limitations which this section has abolished. At present, arrest powers in felonies are not codifed.

Sub. (2) is a new provision designed to clarify a law enforcement officer's power to seek the aid of a citizen in making an arrest.

968.08 RELEASE BY LAW ENFORCEMENT OFFICER OF ARRESTED PERSON. A law enforcement officer having custody of a person arrested without a warrant may release the person arrested without requiring him to appear before a judge if the law enforcement officer is satisfed that there are insufficient grounds for the issuance of a criminal complaint against the person arrested.

NOTE: At present there is no statute authorizing a release by a law enforcement officer of a person arrested without taking that person to court. Everyone recognizes, however, that many people are so released and that this authority should be codified. (See Ill. Rev. Stat. Ch. 38 S 107-6 and s. 309 (2) of the A.L.I. Model Code of Pre-Arraignment Procedure.)

968.10 SEARCHES AND SEIZURES; WHEN AUTHORIZED. A search of a person, object or place may be made and things may be seized when the search is made:

(1) Incident to a lawful arrest;

(2) With consent;

(3) Pursuant to a valid search warrant;

(4) With the authority and within the scope of a right of lawful inspection;

(5) Pursuant to a search during an authorized temporary question-

ing as provided in s. 968.25; or

(6) As otherwise authorized by law.

NOTE: This section codifies existing law. Sub. (4) recognizes authority for constitutionally authorized inspections such as public health, livestock and building equipment. (See *Camera v. Municipal Court*, 387 U.S. 523, 87 Sup. Ct. 1727, 18 L. Ed. 2d 930 (1967).)

968.11 SCOPE OF SEARCH INCIDENT TO LAWFUL ARREST. When a lawful arrest is made, a law enforcement officer may reasonably search the person arrested and an area within such person's immediate presence for the purpose of:

(1) Protecting the officer from attack;

(2) Preventing the person from escaping;

(3) Discovering and seizing the fruits of the crime; or

(4) Discovering and seizing any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.

NOTE: This section codifies existing case law and is patterned after Ch. 38 1. 108-1 Ill. Rev. Code.

968.12 SEARCH WARRANT; DEFINED; ISSUANCE. (1) A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object or a designated place for the purpose of seizing designated property or kinds of property, and to deliver any property so seized to the clerk designated in the warrant. A judge shall issue a search warrant if probable cause is shown. The warrant shall be based upon sworn complaint or affidavit, or testimony recorded by a phonographic reporter, showing probable cause therefor. The complaint, affidavit or testimony may be upon information and belief.

(2) A search warrant may authorize a search to be conducted anywhere in the state and may be executed pursuant to its terms anywhere in the state.

NOTE: Sub. (1) is a restatement of existing case law which codifies the decision in *State v. Beal*, 40 Wis. 2d 607, 162 N.W. 2d 640 (1968) which permits search warrants to be based upon testimony given on information and belief.

Sub. (2) authorizes a search warrant to be issued by any judge in the state and to be executed in any county. Currently only employes of the Attorney General may obtain warrants in counties other than those in which they are to be executed. No valid reason appears to exist for this distinction. Factors which led to the decison to permit warrants to be issued in any county are: the need, on occasion, for speed in obtaining a search warrant; the advisability of secrecy in certain cases; and, the fact that the witnesses whose testimony is necessary are frequently more readily available in another county.

It should be noted that sub. (1) provides that a warrant shall designate the clerk to whom property seized under the warrant is to be returned. Normally this will be the court where the criminal action is pending or where it is contemplated that one will be brought.

968.13 SEARCH WARRANT; PROPERTY SUBJECT TO SEIZURE. A search warrant may authorize the seizure of the following:

(1) Contraband, which includes without limitation because of enumeration lottery tickets, gambling machines or other gambling devices, lewd, obscene or indecent written matter, pictures, sound recordings or motion picture films, forged money or written instruments and the tools, dies, machines or materials for making them, and narcotic drugs and the implements for smoking or injecting them.

(2) Anything which is the fruit of, has been used in the commission of, or which may constitute evidence of any crime.

NOTE: This is basically a restatement of existing case law including a recent U.S. Supreme Court decision in *Warden v. Hayden* (1967) 87 Sup. Ct. 1642 which provides for the right of a law enforcement officer to search for "mere evidence".

968.14 USE OF FORCE. All necessary force may be used to execute a search warrant or to effect any entry into any building or property or part thereof to execute a search warrant.

NOTE: New. Codifies existing case law. See Ch. 38 s. 108-8 Ill. Rev. Code.

968.15 SEARCH WARRANTS; WHEN EXECUTABLE. (1) A search warrant must be executed and returned not more than 5 days after the date of issuance.

(2) Any search warrant not executed within the time provided in sub. (1) shall be void and shall be returned to the judge issuing it.

NOTE: Current law has no provision on the execution of a search warrant. It is believed that there should be some reasonable period in which a warrant should be executed and returned. Experience teaches that normally search warrants have little effect if they are not promptly served. They should not be held by an officer and served at his whim. Various states have adopted times different than the federal requirement in F.R. Cr. P. 41 (d) which has a 10-day limitation. The Council, after consultation with law enforcement authorities, felt 5 days was a reasonable period.

968.16 DETENTION AND SEARCH OF PERSONS ON PREMISES. The person executing the search warrant may reasonably detain and search any person on the premises at the time to protect himself from attack or to prevent the disposal or concealment of any item particularly described in the search warrant.

NOTE: The forms for search warrants currently found in s. 963.05 appear to confer the powers contained in this section, but aside from case law there is no current statutory authority. If this power is not given, the effectiveness of a search warrant may be thwarted by a person or persons on the premises searched by concealing, on their person, the items subject to seizure. Obviously an officer would also want to ascertain if there are any weapons which would endanger his safety.

968.17 RETURN OF SEARCH WARRANT. The return of the search warrant shall be made within 48 hours after execution to the clerk designated in the warrant. The return shall be accompanied by a written inventory of any property taken. Upon request, the clerk shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the search warrant.

NOTE: This section requires a return to the clerk, and in addition, provides that a copy of the inventory of items seized be given to the deprived possessor. This provision is for the protection of both the party whose property was seized and the officer making the seizure. (See Ch. 38 Ill. Rev. Code s. 108-10 and Mont. Rev. Code 95-712.)

968.18 RECEIPT FOR SEIZED PROPERTY. Any law enforcement officer seizing any items without a search warrant shall give a receipt as soon as practicable to the person from whose possession they are taken. Failure to give such receipt shall not render the evidence seized inadmissible upon a trial.

NOTE: This is a new provision which guarantees the same rights of persons whose property is seized without a warrant as those whose property is taken with a search warrant. (See s. 968.17.)

968.19 CUSTODY OF PROPERTY SEIZED. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer, who may leave it in the custody of the sheriff and take a receipt therefor, so long as necessary for the purpose of being produced as evidence on any trial.

NOTE: Present s. 963.04.

968.20 RETURN OF PROPERTY SEIZED. (1) Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the county court for the county in which the property was seized or where the search warrant was returned. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband, returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All procedings in which it might be required have been completed.

(2) Property not required for evidence or use in further investigation, unless contraband, may be returned by the officer to the person from whom it was seized without the requirement of a hearing.

NOTE: This section is a new provision which establishes a simplified procedure for obtaining the return of property seized with or without a warrant. Obviously if such property is needed for use as evidence, it need not be returned unless arrangements can be made for its subsequent use as evidence. Contraband need never be returned.

Sub. (2) authorizes the officer to return property not needed for evidence or investigation without a formal court proceeding.

968.21 SEARCH WARRANT; SECRECY. A search warrant shall be issued with all practicable secrecy, and the complaint, affidavit or testimony upon which it is based shall not be filed with the clerk or made public in any way until the search warrant is executed.

NOTE: Present s. 963.07. The criminal penalties found in the current section have been transferred to the Criminal Code as s. 946.76.

968.22 EFFECT OF TECHNICAL IRREGULARITIES. No evidence seized under a search warrant shall be suppressed because of technical irregularities not affecting the substantial rights of the defendant.

NOTE: Present s. 963.08.

968.23 FORMS. The following forms for use under this chapter are illustrative and not mandatory:

STATE OF WISCONSIN, ... County.

AFFIDAVIT OR COMPLAINT. In the ..... court of the ..... of .....

A. B., being duly sworn, says that on the ..... day of ....., A. D., 19....., in said county, in and upon certain premises in the (city, town or village) of ..... in said county, occupied by ..... and more particularly described as follows: (describe the premises) there are now located and concealed certain things, to wit: (describe the things to be searched for) (possessed for the purpose of evading or violating the laws of the state of Wisconsin and contrary to section ..... of the Wisconsin statutes) (or, which things were stolen from their true owner, in violation of section ..... of the Wisconsin statutes) (or, which things were used in the commission of (or may constitute evidence of) a crime to wit: (describe crime) committed in violation of section ..... of the Wisconsin statutes).

The facts tending to establish the grounds for issuing a search warrant

are as follows: (set forth evidentiary facts showing probable cause for issuance of warrant).

Wherefore, the said A. B. prays that a search warrant be issued to search such premises for the said property, and to bring the same, if found, and the person in whose possession the same is found, before the said court (or, before the ..... court for ..... county), to be dealt with according to law.

(Signed) A. B.

Subscribed and sworn to before me this ..... day of ....., 19..... ....., Judge of the ..... Court.

STATE OF WISCONSIN, ... County.

SEARCH WARRANT. In the ..... court of the ..... of .....

THE STATE OF WISCONSIN, to the sheriff or any constable or any peace officer of said county:

Whereas, A. B. has this day complained (in writing) to the said court upon oath that on the ..... day of ....., A. D., 19....., in said county, in and upon certain premises in the (city, town or village) of ..... in said county, occupied by .... and more particularly described as follows: (describe the premises) there are now located and concealed certain things, to wit: (describe the things to be searched for) (possessed for the purpose of evading or violating the laws of the state of Wisconsin and contrary to section ..... of the Wisconsin statutes) (or, which things were stolen from their true owner, in violation of section ..... of the Wisconsin statutes) (or which things were used in the commission of (or, may constitute evidence of) a crime, to wit: (describe crime) committed in violation of section ..... of the Wisconsin statutes) and prayed that a search warrant be issued to search said premises for said property.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said things, and if the same or any portion thereof are found, to bring the same and the person in whose possession the same are found, and return this warrant within 48 hours before the said court (or, before the ..... court for ..... county), to be dealt with according to law.

Dated this ..... day of ....., 19..... ....., Judge of the ..... Court.

INDORSEMENT ON WARRANT

Received by me ....., 19....., at ..... o'clock .... M. ....., Sheriff (or peace officer)

RETURN OF OFFICER

State of Wisconsin in ..... Court, ... County.

I hereby certify that by virtue of the within warrant I searched the within named premises and found the following things: (describe things seized) and have the same now in my possession subject to the directon of the court.

Dated this ..... day of ....., 19..... ....., Sheriff (or peace officer)

968.24 TEMPORARY QUESTIONING WITHOUT ARREST. After having identified himself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of his conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

NOTE: See note for s. 968.25.

968.25 SEARCH DURING TEMPORARY QUESTIONING. When a law enforcement officer has stopped a person for temporary questioning pursuant to s. 968.24 and reasonably suspects that he or another is in danger of physical injury, he may search such person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. If he finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, or which may constitute a threat to his safety, he may take it and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest the person so questioned.

NOTE: Ss. 968.24 and 968.25 are called "stop and frisk" laws. They give additional powers to law enforcement officers to conduct brief questioning and investigation on the street without the formal requirements necessary for an arrest. They also provide for the safety of the officer by permitting a search for weapons. The Wisconsin Supreme Court has recognized the common law right to "stop and frisk" in *Huebner v. State* 33 Wis. 2d 505, 147 N.W. 2d 646. (These sections are taken from New York Criminal Code s. 180-a.) It should be noted that "stop and frisk" rights of law enforcement officers were approved by the U.S. Supreme Court in *Sibron v. New York* and *Peters v. New York*, 392 U.S. 40, 88 Sup. Ct. 1889, 20 L. Ed. 2d 917 (1968) and *Terry v. Ohio*, 392 U.S. 1, 88 Sup. Ct. 1868, 20 L. Ed. 2d 889 (1968). While *Sibron* and *Peters* were decided on other grounds, both were New York cases and the U.S. Supreme Court did not use those cases to disapprove of language which is substantially the same as is found in these sections.

968.26 JOHN DOE PROCEEDING. If a person complains to a judge that he has reason to believe that a crime has been committed within his jurisdiction, the judge shall examine the complainant under oath and any witnesses produced by him and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed. The extent to which the judge may proceed in such examination is within his discretion. The examination may be adjourned and may be secret. Any witness examined under this section may have counsel present at the examination but such counsel shall not be allowed to examine his client, cross-examine other witnesses or argue before the judge. If it appears probable from the testimony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. Subject to s. 971.23, the record of such proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used.

NOTE: Present s. 954.025.

CHAPTER 969.

BAIL.

969.01 RIGHT TO BAIL. (1) BEFORE CONVICTION. Before conviction, a defendant arrested for a criminal offense shall be admitted to bail, except as provided in s. 971.14 (1).

(2) AFTER CONVICTION. (a) Release pursuant to s. 969.02 or 969.03 may be allowed in the discretion of the trial court after conviction and prior to sentencing or the granting of probation.

(b) In misdemeanors, bail shall be allowed upon appeal.

(c) In felonies, bail may be allowed upon appeal in the discretion of the trial court.

(d) The supreme court or a justice thereof may allow bail after conviction.

(e) Any court or judge or any justice authorized to grant bail after conviction for a felony may, in addition to the powers granted in s. 969.08, revoke the order admitting a defendant to bail.

(3) BAIL FOR WITNESS. If it appears by affidavit that the testimony of a person is material in any felony criminal proceeding and that it may become impracticable to secure his presence by subpoena, the judge may require such person to give bail for his appearance as a witness. If the witness is not in court, a warrant for his arrest may be issued and upon return thereof the court may require him to give bail as provided in s. 969.03 for his appearance as a witness. If he fails to give bail, he may be committed to the custody of the sheriff for a period not to exceed 15 days within which time his deposition shall be taken as provided in s. 967.04.

(4) CONSIDERATIONS IN FIXING AMOUNT OF BAIL. The amount of bail shall be determined in reference to the purpose of bail to assure the appearance of the defendant when it is his duty to appear to answer a criminal prosecution. Proper considerations in fixing a reasonable amount of bail which will assure the defendant's appearance for trial are: The ability of the arrested person to give bail, the nature and gravity of the offense and the potential penalty the defendant faces, the defendant's prior criminal record, if any, the character, residence and reputation of the defendant, his health, the character and strength of the evidence which has been presented to the judge, whether the defendant is already on bail in other pending cases, whether the defendant has in the past forfeited bail or was a fugitive from justice at the time of his arrest, and the policy against unnecessary detention of defendants pending trial.

NOTE: Sub. (2) continues the current law which requires bail in misdemeanor cases after conviction and upon appeal and gives discretion to the trial court as to the release of the defendant after conviction in felony cases.

Sub. (3) is the present s. 954.20.

Sub. (4) restates the considerations which the judge should utilize in setting bail and which are spelled out in *State v. Whitty*, 34 Wis. 2d 278, 149 NW 2d 557.

969.02 BAIL IN MISDEMEANORS. (1) A judge may release a defendant charged with a misdemeanor without bail or may permit him to execute an unsecured appearance bond in an amount specified by the judge.

(2) In lieu of release pursuant to sub. (1), the judge may:

(a) Permit the defendant to deposit with the clerk, in cash, a sum

not to exceed 10% of the amount of the bond but in no event less than $25; or

(b) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(3) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08.

(4) When a judgment for a fine or costs or both is entered in a prosecution in which a deposit had been made in accordance with sub. (2), the balance of such deposit, after deduction of the bond costs, shall be applied to the payment of the judgment.

(5) Subject to sub. (4), when the conditions of the bond have been performed and the person for whom bail was required has been discharged from all obligations, the clerk shall return to the defendant 90% of the sum which had been deposited and shall retain as costs 10% of the amount deposited pursuant to sub. (2). If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit pursuant to sub. (2) shall be returned to the person who made the deposit, his heirs or assigns, subject to sub. (4).

NOTE: See note after s. 969.03.

969.03 BAIL IN FELONIES. (1) A defendant charged with a felony may be released by the judge upon the execution of an unsecured appearance bond or the judge may in addition thereto or in lieu thereof impose one or more of the following conditions which will assure his appearance for trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(c) Require the deposit with the clerk, in cash, of a sum not to exceed 10% of the amount of the bond. When the conditions of the bond have been performed and the defendant for whom bail was required has been discharged from all obligations, the clerk shall return to the defendant 90% of the sum which had been deposited and shall retain as costs 10% of the amount deposited. If the complaint against the defendant has been dismissed or if the defendant is acquitted, the entire sum deposited shall be returned. When a judgment for a fine or costs or both is entered in a prosecution in which a deposit has been made, the balance of such deposit after deduction of the bond costs shall be applied to the payment of the judgment.

(d) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(e) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the defendant return to custody after specified hours. The charges authorized by s. 56.08 (4) and (5) shall not apply under this section.

(2) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08. A single bond form shall be utilized for all stages of the proceedings through conviction and sentencing or the granting of probation.

NOTE: This section, and the preceding section which is concerned with misdemeanor bail, represent a complete revision of existing bail practice in Wisconsin. Modeled primarily after 18 USCA s. 3156, the Federal Bail Reform Act of 1966, and the bail provisions found in the

1965 revision of the Illinois Criminal Code, these sections are designed to see that a maximum number of persons are released prior to trial with a minimum of financial burden upon them and to give the courts greater flexibility in insuring the appearance of the more serious law violator. Cash and surety bonds by individual or corporate sureties are still permitted. In addition, a judge has an option of permitting a defendant to post 10% of the amount of the bail, and if all of the conditions of the bond are met, then this deposit will be returned if the defendant is acquitted; or if he is convicted, 90% of the deposit will be returned. If a defendant is fined, the amount of the fine is taken from any deposit made.

Sub. (1) requires a bond in every felony case although it may be unsecured at the judge's option. Other alternatives available in felony cases include the right to place restrictions on travel, association or residence of a defendant. Further, the judge may, under sub. (1) (e), require a defendant to return to custody after specified hours. This provision would permit a defendant to work, confer with his attorney and assist in the preparation of his case all outside of jail and still insure his appearance in court for trial. It is anticipated that this provision would be used very sparingly and only in those cases where there was substantial doubt that the defendant would appear. This concept is contained in the Federal law and while it has been used but infrequently, it seems to offer a partial solution to the artificial practice at present of setting unreasonably high bail to insure that a defendant remains incarcerated prior to trial. The Wisconsin constitution guarantees bail in every case, and the United States constitution proscribes excessive bail. It is believed that far too many people are restrained prior to trial at a great cost to both the individual and to the counties involved. These provisions are designed to alleviate those problems. Illinois' experience with the 10% proviso has been that there has been no significant change in the number of defendants who fail to appear for trial. It should be noted that in Illinois the law has abolished the use of professional bondsmen while this section still permits the judge to require a security bond which may be furnished by a corporate surety.

969.04 SURETY MAY SATISFY DEFAULT. Any surety may, after default, pay to the clerk of the court the amount for which he was bound, or such lesser sum as the court, after notice and hearing, may direct, and thereupon be discharged.

NOTE: Present s. 954.31.

969.05 ENDORSEMENT OF BAIL UPON WARRANTS. (1) In misdemeanor actions, the judge who issues a warrant may indorse upon the warrant the amount of bail. If no indorsement is made, s. 969.06 shall apply.

(2) The amount and method of posting bail may be indorsed upon felony warrants.

NOTE: This section is a restatement of language found in s. 954.034 (2) (a).

969.06 BAIL SCHEDULES. (1) County judges having jurisdiction over misdemeanors shall by rule adopt a schedule of cash bail for all misdemeanors. The schedule shall contain a list of offenses and the amount of cash bail applicable thereto as the judges determine to be appropriate. If the schedule does not list all misdemeanors, it shall contain a general clause providing for a designated amount of bail for all misdemeanors not specifically listed in the schedule. The schedule of bail may be revised from time to time.

(2) In all misdemeanors, bail shall not exceed the maximum fine provided for the offense.

NOTE: This section, which applies only to misdemeanors, is designed to insure the right of a defendant to a prompt determination of bail when he cannot be taken before a judge immediately upon his arrest. In traffic matters, bail schedules have been utilized successfully in the state for many years. See s. 8.02 (1) of the ALI Model Code of Pre-Arraignment Procedure.

969.07 TAKING OF BAIL BY LAW ENFORCEMENT OFFICER. When bail conditions have been set for a particular offense or defendant, any law enforcement officer may take bail in accordance with ss. 969.02 and 969.03 and release the defendant to appear in accordance with the conditions of the appearance bond. The law enforcement officer shall give a receipt to the defendant for the bail so taken and within a reasonable time deposit such bail with the clerk of court before whom the defendant is to appear. Bail taken by a law enforcement officer may be taken only at a sheriff's office or police station. The receipts shall be numbered serially and shall be in triplicate, one copy for the defendant, one copy to be filed with the clerk and one copy to be filed with the police or sheriff's department which takes the bail. Nothing herein shall require the release of a defendant from custody under this section where an officer is of the opinion that the defendant is not in a fit condition to care for his own safety or would constitute, because of his physical condition, a danger to the safety of others. If a defendant is not released pursuant to this section, s. 970.01 shall apply.

NOTE: This provision formalizes a practice which has been in use in this state for many years. It lays down some conditions to insure uniformity and freedom from abuse.

969.08 REDUCTION OR INCREASE OF BAIL. (1) Either party on reasonable notice may petition the court for an alteration in the amount of the bail or conditions of the bond.

(2) A judge ordering the release of a person on any condition specified in this chapter may at any time amend his order to impose additional or different conditions of release.

(3) A defendant for whom conditions of release are imposed and who after 72 hours from the time of his initial appearance before a judge continues to be detained in custody as a result of his inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judge of the court before whom the action against the defendant is pending. Unless the conditions of release are amended and the defendant is thereupon released, the judge shall set forth on the record his reasons for requiring the continuation of the conditions imposed. A defendant who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judge of the court before whom the action is pending. Unless the requirement is removed and the defendant thereupon released on another condition, the judge shall set forth on the record the reasons for continuing the requirement. If the judge before whom the action is pending is not available, any other county judge or circuit judge of the county may review such conditions.

(4) Information stated in, or offered in connection with, any order entered pursuant to this chapter setting bail need not conform to the rules of evidence.

NOTE: Circumstances may require that the amount of bail be reduced or raised after it is initially set. This section is designed to give the greatest flexibility in this regard.

969.09 CONDITIONS OF BOND. (1) If a defendant is admitted to

bail before sentencing the conditions of the bond shall include, without limitation, the requirements that he will appear in the court having jurisdiction on a day certain and thereafter as ordered until discharged on final order of the court and that he will submit himself to the orders and process of the court.

(2) If the defendant is admitted to bail upon appeal, the conditions of the bond shall be that he will duly prosecute his appeal, that he will appear at such time and place as the court directs, and that if the judgment is affirmed or reversed and remanded for a new trial or further proceedings upon notice after remittitur, he will surrender to the sheriff of the county in which he was tried.

(3) A defendant shall receive a copy of the bond which he executes pursuant to this chapter.

NOTE: Sub. (3) requires that a copy of the bond be given to a defendant who is released. This is so that he may have notice of the conditions of his release. Some of those conditions are contained in subs. (1) and (2), and in addition, broad latitude is given to the releasing judge to set other conditions.

969.10 NOTICE OF CHANGE OF ADDRESS. A person who has been admitted to bail shall give written notice to the clerk of any change in his address within 48 hours after such change. This requirement shall be printed on all bonds.

969.11 BAIL UPON ARREST IN ANOTHER COUNTY. (1) If the defendant is arrested in a county other than the county in which the offense was committed, he shall, without unreasonable delay, either be brought before a judge of the county in which arrested for the purpose of setting bail or be returned to the county in which the offense was committed. The judge shall admit him to bail under this chapter to appear before a court in the county in which the offense was committed at a specified time and place.

(2) If the defendant is released on bail pursuant to sub. (1), the judge shall make a record of the proceedings and shall certify his minutes thereof and shall forward the bond and bail to the court before whom the defendant is bound to appear.

NOTE: Substantially the same provision that is currently contained in s. 954.034 (1) (a).

969.12 SURETIES. (1) Every surety, except a corporate surety, shall be a resident of the state.

(2) A corporate surety shall be licensed to do business in the state and the commissioner of insurance shall file with the clerk in each county a list of corporate sureties so licensed.

(3) A court may require a surety to justify by sworn affidavit that he is worth the amount specified in the bond exclusive of property exempt from execution. The surety shall provide such evidence of financial responsibility as the judge requires. The court may at any time examine the sufficiency of the bail in such manner as it deems proper, and in all cases the state may challenge the sufficiency of the surety.

969.13 FORFEITURE. (1) If the conditions of the bond are not complied with, the court having jurisdiction over the defendant in the criminal action shall enter an order declaring the bail to be forfeited.

(2) This order may be set aside upon such conditions as the court imposes if it appears that justice does not require the enforcement of the forfeiture.

(3) By entering into a bond, the defendant and sureties submit to the jurisdiction of the court for the purposes of liability on the bond and irrevocably appoint the clerk as their agent upon whom any papers affect-

ing their bond liability may be served. Their liability may be enforced without the necessity of an independent action.

(4) Notice of the order of forfeiture under sub. (1) shall be mailed forthwith by the clerk to the defendant and his sureties at their last addresses. If the defendant does not appear and surrender to the court within 30 days from the date of the forfeiture or within such period he or his sureties do not satisfy the court that appearance and surrender by the defendant is impossible and without his fault, the court shall upon motion of the district attorney enter judgment for the state against the defendant and any surety for the amount of the bail and costs of the court proceeding. The motion and such notice of motion as the court prescribes may be served on the clerk who shall forthwith mail copies to the defendant and his sureties at their last addresses.

(5) A cash deposit made with the clerk pursuant to this chapter shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs, it shall be applied to payment of the judgment of forfeiture.

NOTE: This section represents a complete revamping of the current procedure. Currently, it is necessary to start a separate action to collect a forfeiture.

Sub. (3) requires the defendant and surety to appoint the clerk as their agent for the service of process in a forfeiture proceeding. Also, it provides that it is unnecessary to commence a separate action and the case may be heard before the judge who was to hear the principal criminal case.

969.14 SURRENDER OF PRINCIPAL BY SURETY. (1) When the sureties desire to be discharged from the obligations of their bond, they may arrest the principal and deliver him to the sheriff of the county in which the action against him is pending.

(2) The sureties shall, at the time of surrendering the principal, deliver to the sheriff a certified copy of the original warrant and of the order admitting him to bail and of the bond thereon; such delivery of these documents shall be sufficient authority for the sheriff to receive and retain the principal until he is otherwise bailed or discharged.

(3) Upon the delivery of the principal as provided herein, the sureties may apply to the court for an order discharging them from liability as sureties; and upon satisfactory proof being made that this section has been complied with the court shall make an order discharging them from liability.

NOTE: This is substantially present s. 954.43.

CHAPTER 970.
PRELIMINARY PROCEEDINGS.

970.01 INITIAL APPEARANCE BEFORE A JUDGE. (1) When any person is arrested he shall be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed.

(2) When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith.

NOTE: Sub. (1) restates existing case law. See *Van Ermen v. Burke*, 30 Wis. 2d 324; 140 NW 2d 737; *Reimers v. State*, 31 Wis. 2d 457; 143

NW 2d 525. What is a reasonable time in a rural county may be unreasonable in a large metropolitan county.

Sub. (2) recognizes the requirements of *Pillsbury v. State*, 31 Wis. 2d 87; 147 NW 2d 187.

970.02 DUTY OF A JUDGE AT THE INITIAL APPEARANCE. (1) At the initial appearance the judge shall inform the defendant:

(a) Of the charge against him and shall furnish the defendant with a copy of the complaint.

(b) Of his right to counsel and, in any case required by the U. S. or Wisconsin constitution, that an attorney will be appointed to represent him at county expense if he is financially unable to employ counsel.

(c) That he is entitled to a preliminary examination if charged with a felony, unless waived, or unless he has been returned to this state by extradition proceedings pursuant to ch. 976 or is a corporation.

(2) The judge shall admit the defendant to bail in accordance with ch. 969.

(3) Upon request of a defendant charged with a misdemeanor, the judge shall immediately set a date for the trial. If the judge does not have jurisdiction to try the case, he shall forthwith transfer the case to a court which has jurisdiction. Judges of courts of record in the county may adopt rules to facilitate such transfers.

(4) A defendant charged with a felony may waive preliminary examination, and upon such waiver, the judge shall bind him over for trial to either the circuit or county court.

(5) If the defendant does not waive preliminary examination, the judge shall forthwith transfer the action to the county court for a preliminary examination pursuant to s. 970.03. Judges of courts of record in the county may adopt rules to facilitate such transfers.

(6) The judge shall in all cases where required by the U. S. or Wisconsin constitution appoint counsel for defendants who are financially unable to employ counsel, unless waived, at the initial appearance. The judges of courts of record in each county shall establish procedures for the appointment of counsel in that county; except that in any county having a population of 500,000 or more in any case not triable in the county court, the judge before whom the defendant initially appears shall transfer the case to the circuit court for the county and the clerk shall assign it to one of the criminal branches of that court. In such counties, an initial appearance may be before the circuit court. A determination of whether the defendant is financially able to employ counsel shall thereupon be made, and counsel appointed, if necessary, and the case remanded to the county court for a preliminary examination. The defendant may waive preliminary examination and the case need not be remanded for such waiver.

NOTE: This section spells out the duties of a judge in the initial appearance of a defendant charged with either a misdemeanor or a felony.

Sub. (1) requires the judge to advise a defendant of certain basic rights in every case and to give him a copy of the complaint against him. The furnishing of a copy of the complaint will assist counsel in the preparation of the case, since normally counsel first sees a defendant either in jail or in his office and does not have access at that time to court records. It is consistent with the view that both sides should have copies of all pleadings. The requirement of par. (b) is found in present s. 957.26 (1) and in *Jones v. State*, 37 Wis. 2d 56.

Sub. (6) is basically a restatement of s. 957.26 (2) providing for the appointment of counsel for indigents.

970.03 PRELIMINARY EXAMINATION. (1) A preliminary examination is a hearing before a court for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(2) The preliminary examination shall be commenced within 20 days after the initial appearance of the defendant if the defendant has been released from custody or within 10 days if the defendant is in custody and bail has been fixed in excess of $500. On stipulation of the parties or on motion and for cause, the court may extend such time.

(3) A plea shall not be accepted in any case in which a preliminary examination is required until the defendant has been bound over following preliminary examination or waiver thereof.

(4) If the defendant is accused of a crime against chastity or morality or decency, the judge may exclude from the hearing all persons not officers of the court or otherwise required to attend.

(5) All witnesses shall be sworn and their testimony reported by a phonographic reporter. The defendant may cross-examine witnesses against him, and may call witnesses on his own behalf who then are subject to cross-examination.

(6) During the preliminary examination, the court may exclude witnesses until they are called to testify, may direct that persons who are expected to be called as witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined.

(7) If the court finds probable cause to believe that a felony has been committed by the defendant, it shall bind him over for trial to either the circuit or county court.

(8) If the court finds that it is probable that only a misdemeanor has been committed by the defendant, it shall amend the complaint to conform to the evidence. The action shall then proceed as though it had originated as a misdemeanor action.

(9) If the court does not find probable cause to believe that a crime has been committed by the defendant, it shall order the defendant discharged forthwith.

(10) In multiple count complaints, the court shall order dismissed any count for which it finds there is no probable cause. The facts arising out of any court ordered dismissed shall not be the basis for a count in any information filed pursuant to ch. 971. Section 970.04 shall apply to any dismissed count.

NOTE: Sub. (3) is a restatement of present law.

Sub. (4) is the present s. 954.10.

Sub. (6) is the present s. 954.08 (2).

Sub. (7) is a restatement of s. 954.13 (1).

Sub. (8) is a simplification of the present s. 954.13 (2).

Sub. (10) is a new provision requiring a finding of probable cause as to each count in a multiple count complaint. If such a finding is not made as to any count, it shall be dismissed. This reverses the rule in *Hobbins v. State*, 214 Wis. 496; 253 NW 570.

970.04 SECOND EXAMINATION. If a preliminary examination has been had and the defendant has been discharged, the district attorney may file another complaint if he has or discovers additional evidence.

NOTE: Restatement of s. 955.20.

970.05 TESTIMONY AT PRELIMINARY EXAMINATION. The testimony at the preliminary examination shall be transcribed if requested by the district attorney or the defendant or ordered by the judge to whom the trial is assigned. The reporter shall file such transcript with the clerk within 10 days after it is requested. When a transcript is requested,

the county shall pay the cost of the original and any additional copies shall be paid for at the statutory rate by the party requesting such copies.

NOTE: This section retains the existing requirement that a record be made of the testimony at all preliminary examinations. However, the Judicial Council has found that transcripts often are not used by the parties or the court especially where a defendant enters a plea of guilty. In such cases the preliminary examination transcript is often not even on file until after the defendant has been sentenced. This section preserves the right of any party or the court to order the testimony to be transcribed if it is felt there is a need for such testimony. It is believed that in most cases this will not be done since an overwhelming number of cases are disposed of by guilty pleas. This provision should relieve the burden on court reporters, speed the preparation of needed transcripts and result in reducing the expenses attendant to criminal trial, all without prejudice to the administration of criminal justice.

CHAPTER 971.
PROCEEDINGS BEFORE AND AT TRIAL.

971.01 FILING OF THE INFORMATION. (1) The district attorney shall examine all facts and circumstances connected with any preliminary

examination touching the commission of any crime if the defendant has been bound over for trial and, subject to s. 970.03 (10), shall file an information according to the evidence on such examination subscribing his name thereto.

(2) The information shall be filed with the clerk within 30 days after the completion of the preliminary examination or waiver thereof except that the district attorney may move the court wherein the information is to be filed for an order extending the period for filing such information for cause. Notice of such motion shall be given the defendant. Failure to file the information within such time shall entitle the defendant to have the action dismissed without prejudice.

NOTE: Sub. (1) restates s. 955.17 (1).

Under present s. 955.01 if an information is not filed within 6 months after a preliminary examination, a defendant is entitled to be released without bail. The Council feels a shorter period is adequate.

Sub. (2) adopts 30 days as the standard but permits an extension of time upon application of the district attorney. The penalty for failure to file within the time limitation is a dismissal without prejudice, which will permit a second charge being brought.

971.02 PRELIMINARY EXAMINATION; WHEN A PREREQUISITE TO INFORMATION. (1) No information shall be filed until the defendant has had a preliminary examination unless he waives such examination, except that informations may be filed without an examination against defendants who are involuntarily returned to the state under ch. 976 and against corporations. The omission of the preliminary examination shall not invalidate any information unless the defendant moves to dismiss prior to the entry of a plea.

(2) Upon motion and for cause shown, the trial court may remand the case for a preliminary examination. "Cause" means:

(a) The preliminary examination was waived; and

(b) Defendant did not have advice of counsel prior to such waiver; and

(c) Defendant denies that probable cause exists to hold him for trial; and

(d) Defendant intends to plead not guilty.

NOTE: Present s. 955.18.

971.03 FORM OF INFORMATION. The information may be in the following form:

STATE OF WISCONSIN, ... County, in ..... Court.
The State of Wisconsin v. ..... (Name of defendant).

I, ... district attorney for said county, hereby inform the court that on the ..... day of ....., in the year 19....., at said county the defendant did (state the crime) ..... contrary to section ..... of the statutes.

Dated ....., 19....., ... District Attorney

971.04 DEFENDANT TO BE PRESENT. (1) Except as provided in subs. (2) and (3), the defendant shall be present:

(a) At the arraignment;

(b) At trial;

(c) At all proceedings when the jury is being selected;

(d) At any evidentiary hearing;

(e) At any view by the jury;

(f) When the jury returns its verdict;

(g) At the pronouncement of judgment and the imposition of sentence;

(h) At any other proceeding when ordered by the court.

(2) A defendant charged with a misdemeanor may authorize his attorney in writing to act on his behalf in any manner, with leave of the court, and be excused from attendance at any or all proceedings.

(3) If the defendant is present at the beginning of the trial and shall thereafter, during the progress of the trial or before the verdict of the jury has been returned into court, voluntarily absent himself from the presence of the court without leave of the court, the trial or return of verdict of the jury in the case shall not thereby be postponed or delayed, but the trial or submission of said case to the jury for verdict and the return of verdict thereon, if required, shall proceed in all respects as though the defendant were present in court at all times.

NOTE: New. This is designed to clarify rules for attendance of defendant at various stages in criminal proceedings. The section recognizes that at certain hearings, such as arguments on matters of law and calendaring, a defendant need not be present.

Sub. (2) retains the right of a defendant to waive his appearance when charged with a misdemeanor. This is currently found in s. 957.07.

Sub. (3) is designed to prevent a defendant from stopping a trial which has commenced by absenting himself. (See Fla. CrPR 1.180 (b).)

971.05 ARRAIGNMENT. The arraignment shall be in the trial court and shall be conducted in the following manner:

(1) The arraignment shall be in open court.

(2) If the defendant appears for arraignment without counsel, the court shall advise him of his right to counsel as provided in s. 970.02.

(3) The district attorney shall deliver to the defendant a copy of the indictment or information in felony cases and in all cases shall read the indictment, information or complaint to the defendant unless the defendant waives such reading. Thereupon the court shall ask him his plea.

(4) The defendant then shall plead unless in accordance with s. 971.31 he has filed a motion which requires determination before the entry of a plea. The court may extend the time for the filing of such motion.

NOTE: Sub. (3) requires that in felonies a defendant be given a copy of the indictment or information. Currently this requirement exists only in first degree murder cases. The section is consistent with the philosophy of this Code, which requires all parties to have copies of all pleadings.

971.06 PLEAS. (1) A defendant charged with a criminal offense may plead as follows:

(a) Guilty.

(b) Not guilty.

(c) No contest, subject to the approval of the court.

(d) Not guilty by reason of mental disease or defect. This plea may be joined with a plea of not guilty. If it is not so joined, this plea admits that but for lack of mental capacity the defendant committed all the essential elements of the offense charged in the indictment, information or complaint.

(2) If a defendant stands mute or refuses to plead, the court shall direct the entry of a plea of not guilty on his behalf.

NOTE: This section is derived from s. 1016 of the California Penal Code. The section contains 2 changes from existing Wisconsin practice.

Par. (c) changes the present nolo contendere to "no contest", a term which has more meaning to the average defendant. Par. (d) is a major change for 2 reasons. The plea "not guilty by reason of mental disease or defect" is necessary because of the terminology in s. 971.15 (ALI Test). It is the successor to the former plea of "not guilty by reason of insanity". This plea, however, must be coupled with a "not guilty" plea or it admits that the defendant committed all of the elements of the crime charged and the only issue for the fact finder is the mental responsibility of the defendant. It is believed that a provision such as this will eliminate needless trials on the issue of whether the defendant did, in fact, commit the offense. In nearly all cases where an issue of mental responsibility is raised, there is no dispute that the defendant committed the act and by utilizing a plea system such as found in this section, greater efficiency and more intellectual honesty can be achieved in framing the issues.

971.07 MULTIPLE DEFENDANTS. Defendants who are jointly charged may be arraigned separately or together, in the discretion of the court.

971.08 PLEAS OF GUILTY AND NO CONTEST; WITHDRAWAL THEREOF. (1) Before the court accepts a plea of guilty or no contest, it shall:

(a) Address the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted; and

(b) Make such inquiry as satisfies it that the defendant in fact committed the crime charged.

(2) The court shall not permit the withdrawal of a plea of guilty or no contest later than 120 days after conviction.

(3) Any plea of guilty which is not accepted by the court or which is subsequently permitted to be withdrawn shall not be used against the defendant in a subsequent action.

NOTE: This section is modeled after F.R.Cr.P. 11. Provisions such as those contained in sub. (1) (b) should make for the preparation of records which will better withstand attack in post-conviction proceedings which claim that a "guilty" plea was not knowingly entered.

Sub. (2) reduces from one year to 120 days the time for withdrawing a "guilty" plea. (See *Pulaski v. State*, 23 Wis. 2d 138, 126 NW 2d 625.)

971.09 PLEA OF GUILTY TO OFFENSES COMMITTED IN SEVERAL COUNTIES. (1) Any person who admits that he has committed felonies or violations of s. 943.24, or both, in the county in which he is in custody and also in another county in this state, may apply to the district attorney of the county in which he is in custody to be charged with those crimes so that he may plead guilty and be sentenced for them in the county of custody. The application shall contain a description of all admitted crimes and the name of the county in which each was committed.

(2) Upon receipt of the application the district attorney shall prepare an information charging all the admitted crimes and naming in each count the county where each was committed. He shall send a copy of the information to the district attorney of each other county in which the defendant admits he committed crimes, together with a statement that the defendant has applied to plead guilty in the county of custody. Upon receipt of the information and statement, the district attorney of the other county may execute a consent in writing allowing the defendant to enter a plea of guilty in the county of custody, to the crime charged in the information and committed in the other county, and send it to the district attorney who prepared the information.

(3) The district attorney shall file the information in any court of his county having jurisdiction to try or accept a plea of guilty to the most serious crime alleged therein as to which, if alleged to have been committed in another county, the district attorney of that county has executed a consent as provided in sub. (2). The defendant then may enter a plea of guilty to all offenses alleged to have been committed in the county where the court is located and to all offenses alleged to have been committed in other counties as to which the district attorney has executed a consent under sub. (2). Before entering his plea of guilty, the defendant shall waive in writing any right to be tried in the county where the crime was committed. The district attorney of the county where the crime was committed need not be present when the plea is made but his written consent shall be filed with the court.

(4) Thereupon the court shall enter such judgment, the same as though all the crimes charged were alleged to have been committed in the county where the court is located, whether or not the court has jurisdiction to try all those crimes to which the defendant has pleaded guilty under this section.

(5) The county where the plea is made shall pay the costs of prosecution if the defendant does not pay them, and is entitled to retain fees for receiving and paying to the state any fine which may be paid by the defendant. The clerk where the plea is made shall file a copy of the judgment of conviction with the clerk in each county where a crime covered by the plea was committed. The district attorney shall then move to dismiss any charges covered by the plea of guilty, which are pending against the defendant in his county, and the same shall thereupon be dismissed.

NOTE: Present s. 956.01 (13).

971.10 SPEEDY TRIAL. (1) In misdemeanor actions trial shall commence within 60 days from the date of the defendant's initial appearance in court.

(2) (a) The trial of a defendant charged with a felony shall commence within 90 days from the date trial is demanded by any party in writing or on the record. The demand may not be made until after the filing of the information or indictment.

(b) If the court is unable to schedule a trial pursuant to par. (a), the case shall be transferred to another judge pursuant to s. 251.82, 252.031 or 253.19.

(3) (a) The court may continue a case for cause on its own motion or on application of any party. Further continuances may be granted for cause, but no continuance shall be for a period in excess of 60 days.

(b) Continuances may be granted on stipulation of the parties for periods not to exceed 60 days.

(4) Every defendant not tried in accordance with this section shall be discharged from custody or released from the obligations of his bond.

NOTE: This section is the first Wisconsin attempt to make a meaningful effort to expedite the trial of cases. The President's Crime Commission proposed that the period from arrest to trial of a felony be not more than 4 months. Sub. (2) (a) provides that trial of a felony shall commence 90 days after either party demands trial following the filing of an information. This is an attempt to give the state a right to move for a speedy trial. Recognizing crowded court calendars in certain jurisdictions, sub. (2) (b) is an attempt to insure that cases are promptly tried and it is anticipated that occasional judicial manpower will have to be shifted to meet the requirements of this section. Experience indicates that there are relatively few defendants who are ultimately interested in speedy trials. The section is flexible enough to accommodate those defendants and provide a ve-

hicle for the State to assert its rights in this area. Far too much time and effort are wasted when trials are unnecessarily delayed. Some states provide for trial within fixed periods after arrest and if trial is not held a defendant is absolutely discharged. (See Ill. Rev. Stat. Ch. 38 s. 103-5 (a) which provides a 120-day limitation.) California provides 15 days for the filing of an information after a bind over and then 60 days from the filing of the information to trial. (See Cal. Pen. Code s. 1,382.) If populous states such as these can adhere to these requirements it would seem that Wisconsin could enact similar timetables. The A. B. A. "Minimum Standards on Speedy Trial", s. 2.1, recommends that a defendant's right to a speedy trial be expressed in terms of days or months. While this section sets up a specific timetable for felonies and misdemeanors, it should be noted that sub. (4) provides that the only sanction for failure to comply is the release of a defendant from custody or from the obligation of his bond. The constitutional requirements of a speedy trial are in no way modified by this section. (See *Commodore v. State*, 33 Wis. 2d 373, 147 N.W. 2d 283 and *State v. Reynolds*, 28 Wis. 2d 350, 137 N.W. 2d 14.)

971.11 PROMPT DISPOSITION OF INTRASTATE DETAINERS. (1) Whenever the warden or superintendent receives notice of an untried criminal case pending in this state against an inmate of a state prison, he shall, at the request of the inmate, send by certified mail a written request to the district attorney for prompt disposition of the case. The request shall state the sentence then being served, the date of parole eligibility, the approximate discharge or conditional release date, and prior decision relating to parole. If there has been no preliminary examination on the pending case, the request shall state whether the inmate waives such examination, and, if so, shall be accompanied by a written waiver signed by the inmate.

(2) If the crime charged is a felony, the district attorney shall either move to dismiss the pending case or arrange a date for preliminary examination as soon as convenient and notify the warden or superintendent of the prison thereof, unless such examination has already been held or has been waived. After the preliminary examination or upon waiver thereof, the district attorney shall file an information, unless it has already been filed, and mail a copy thereof to the warden or superintendent for service on the inmate. He shall bring the case on for trial within 120 days after receipt of the request subject to s. 971.10.

(3) If the crime charged is a misdemeanor, the district attorney shall either move to dismiss the charge or bring it on for trial within 90 days after receipt of the request.

(4) If the defendant desires to plead guilty or no contest to the complaint or to the information served upon him, he shall notify the district attorney thereof. The district attorney shall thereupon arrange for his arraignment as soon as possible and the court may receive the plea and pronounce judgment.

(5) If the defendant wishes to plead guilty to cases pending in more than one county, the several district attorneys involved may agree with him and among themselves for all such pleas to be received in the appropriate court of one of such counties, and s. 971.09 shall govern the procedure thereon so far as applicable.

(6) The prisoner shall be delivered into the custody of the sheriff of the county in which the charge is pending for transportation to the court, and he shall be retained in such custody during all proceedings under this section. The sheriff shall return him to the prison upon the completion of the proceedings and during any adjournments or continuances and between the preliminary examination and the trial, except that if the department certifies a jail as being suitable to detain the prisoner he may

be detained there until the court disposes of the case. His existing sentence continues to run and good time is earned under s. 53.11 while he is in custody.

(7) If the district attorney moves to dismiss any pending case or if it is not brought on for trial within the time specified in sub. (2) or (3) the case shall be dismissed unless the defendant has escaped or otherwise prevented the trial, in which case the request for disposition of the case shall be deemed withdrawn and of no further legal effect. Nothing in this section prevents a trial after the period specified in sub. (2) or (3) if a trial commenced within such period terminates in a mistrial or a new trial is granted.

NOTE: This is present s. 955.22 modified to shorten the period for bringing a case on for trial from 180 to 120 days in felonies and from 180 to 90 days in misdemeanors. It should be noted that these periods are different than those contained in s. 971.10 but because there are transportation and communication problems involved with prisoners physically held in other jurisdictions, more time is needed.

971.12 JOINDER OF CRIMES AND OF DEFENDANTS. (1) JOINDER OF CRIMES. Two or more crimes may be charged in the same complaint, information or indictment in a separate count for each crime if the crimes charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan. When a misdemeanor is joined with a felony, the trial shall be in the court with jurisdiction to try the felony.

(2) JOINDER OF DEFENDANTS. Two or more defendants may be charged in the same complaint, information or indictment if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting one or more crimes. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

(3) RELIEF FROM PREJUDICIAL JOINDER. If it appears that a defendant or the state is prejudiced by a joinder of crimes or of defendants in a complaint, information or indictment or by such joinder for trial together, the court may order separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. The district attorney shall advise the court prior to trial if he intends to use the statement of a codefendant which implicates another defendant in the crime charged. Thereupon, the judge shall grant a severance as to any such defendant.

(4) TRIAL TOGETHER OF SEPARATE CHARGES. The court may order 2 or more complaints, informations or indictments to be tried together if the crimes and the defendants, if there is more than one, could have been joined in a single complaint, information or indictment. The procedure shall be the same as if the prosecution were under such single complaint, information or indictment.

NOTE: Sub. (1) is F.R.Cr.P. 8(a) restated. Sub. (2) is F.R.Cr.P. 8 (b). Sub. (3) is taken from F.R.Cr.P. 14 and in addition provides a mechanism to insure that trials will be conducted in conformity with *Bruton v. United States*, 391 US 123, 88 Sup. Ct. 1620, which prohibits the use at a trial of a statement of a codefendant which implicates another defendant.

Sub. (4) is F.R.Cr.P. 13.

971.13 COMPETENCY TO PROCEED. No person who as a result of mental disease or defect is unable to understand the proceedings against him or to assist in his own defense, shall be tried, convicted, sentenced or committed for the commission of an offense so long as such incapacity endures.

NOTE: This is ALI Model Penal Code 4.04. Compare this with present s. 957.13 (2), which basically contains the same criteria.

971.14 EXAMINATION OF DEFENDANT WITH RESPECT TO COMPETENCY TO PROCEED. (1) Whenever there is reason to doubt a defendant's competency to proceed, the court shall:

(a) Hold a hearing to establish whether it is probable that the defendant committed the crime charged, except that if he has previously been bound over for trial after a preliminary examination or has been adjudged guilty but has not been sentenced, such hearing shall not be necessary.

(b) If the defendant is without counsel, provide him with the right to cross-examine state's witnesses and to call witnesses on his own behalf.

(c) At the conclusion of the hearing required by par. (a), make a finding on the issue of probable guilt.

(d) If the finding is in the affirmative, then proceed to determine the defendant's competency to proceed.

(e) If the finding is that the state has failed to prove the probability that the defendant has committed the crime charged, discharge the defendant, but the court may temporarily detain him so as to permit civil proceedings to be instituted under ch. 51 to determine his mental competency.

(2) When probable cause has been established pursuant to sub. (1), the court shall appoint at least one physician to examine and report upon the condition of the defendant. In lieu of such appointment, or in addition thereto, the court may order the defendant committed to a state or county mental hospital or other suitable facility for the purpose of examination for a specified period not to exceed 60 days. At the conclusion of the examination, the physician who examined the defendant, or the facility to which he was committed, shall forward a written report of such examination in triplicate to the clerk. The report of the examination shall include:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense.

(3) The report of the examination shall be filed in triplicate with the clerk who shall cause copies to be delivered forthwith to the district attorney and to counsel for the defendant or to the defendant personally if he is not represented by counsel. The report shall not be otherwise disclosed until the hearing on the defendant's competency.

(4) The defendant's competency to proceed shall be summarily determined by the court. If neither the district attorney nor the counsel for the defendant contest the finding of the report filed pursuant to sub. (2), the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue.

(5) If the court determines that the defendant lacks competency to proceed, the proceeding against him shall be suspended and the court shall commit him to the custody of the department to be placed in an appropriate institution of the department for so long as such condition endures. When the court, on its own motion or upon the application of the department, the defendant or the district attorney, determines, after a hearing pursuant to s. 51.11, that the defendant has regained competency to proceed, the proceeding shall be resumed. The defendant shall be entitled to a rehearing on the issue of his competency to proceed, but another rehearing shall not be had unless the court is satisfied there is reasonable

cause to believe that there is improvement in his mental condition. When the maximum period for which the defendant could have been imprisoned if convicted of the offense charged has elapsed, the court shall dismiss the case and shall order the defendant to be discharged subject to the right of the department to proceed against the defendant under ch. 51.

(6) The fact that the defendant is not competent to proceed does not preclude any legal objection to the prosecution pursuant to s. 971.31 which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

(7) When, notwithstanding the report filed pursuant to sub. (2), the defendant wishes to be examined by a physician or other expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purposes of such examination.

NOTE: This section is derived from ALI M.P.C. 4.06, present s. 957.13 and the decision in *State v. McCredden*, 33 Wis. 2d 661. Before commitment of an incompetent defendant, a hearing must be had to establish probable cause that a crime was committed. When probable cause is determined the court conducts a summary hearing after having appointed one or more doctors to examine the defendant. The doctor(s) must file written reports available to all parties and the court prior to the hearing and if no party contests the result the report may be the basis for the determination. This would be particularly appropriate where the report indicates that the defendant is competent. The rehearing provisions of s. 957.13 are retained.

Sub. (6) permits legal issues to be resolved even if the defendant is incompetent since some matters are purely legal in nature and motions which might result in freeing a defendant from the criminal court's jurisdiction should be permitted at any time. In such cases the Department would presumably proceed against a defendant under Ch. 51.

971.15 MENTAL RESPONSIBILITY OF DEFENDANT. (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacked substantial capacity either to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of law.

(2) As used in this chapter, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence.

NOTE: This is ALI, M.P.C. 4.01 and 4.03. *State v. Shoffner*, 31 Wis. 2d 412, 143 NW 2d 458, permits a defendant to have an option as to whether to accept the test found in this section or the ancient *M'Naughten* right and wrong test. It is the Council's view that the option given by Shoffner was designed to permit Wisconsin to experience a period of trial using both tests. The ALI summation is a more modern attempt to deal with a complex problem. Its language is more meaningful both to the doctor who testifies and to the trier of fact. The ALI rule has been recently adopted by half of the Federal Circuits and by a growing number of states in the last few years. (For example, see Ill, Anno Ch. 38, 6-2, Vt. Stat. Ann. Tit. 13 Sec. 4801, Mo. Stat. Ann. 552.030, Md. Stat. Chap. 709, Mont. Rev. Code Sec. 95-501.) Numerous other states' courts have expressed dissatisfaction with M'Naughten and the legislatures of several states are considering the adoption of the ALI test.

971.16 EXAMINATION OF DEFENDANT. (1) Whenever the defend-

ant has entered a plea of not guilty by reason of mental disease or defect or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the case, the court may appoint at least one physician but not more than 3 to examine the defendant and to testify at the trial. The compensation of such physicians shall be fixed by the court and paid by the county upon the order of the court as part of the costs of the action. The receipt by any physician summoned under this section of any other compensation than that so fixed by the court and paid by the county, or the offer or promise by any person to pay such other compensation, is unlawful and punishable as contempt of court. The fact that such physician has been appointed by the court shall be made known to the jury and such physician shall be subject to cross-examination by both parties.

(2) Not less than 10 days before trial, or such other time as the court directs, any physician appointed pursuant to sub. (1) shall file a report of his examination of the defendant with the judge, who shall cause copies to be transmitted to the district attorney and to counsel for the defendant. The contents of the report shall be confidential until the physician has testified or at the completion of the trial. The report shall contain an opinion regarding the ability of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct with the requirements of law at the time of the commisson of the criminal offense charged.

(3) Whenever the defendant wishes to be examined by a physician or other expert of his own choice, the examiner shall be permitted to have reasonable access to the defendant for the purposes of examination. No testimony regarding the mental condition of the defendant shall be received from a physician or expert witness summoned by the defendant unless not less than 3 days before trial a report of the examination has been transmitted to the district attorney and unless the prosecution has been afforded an opportunity to examine and observe the defendant if such opportunity has been seasonably demanded. The state may summon a physician or other expert to testify, but such witness shall not give testimony unless not less than 3 days before trial a written report of his examination of the defendant has been transmitted to counsel for the defendant.

(4) When a physician or other expert who has examined the defendant testifies concerning his mental condition, he shall be permitted to make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to appreciate the wrongfulness of his conduct or to conform to the requirements of law. He shall be permitted to make an explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

(5) Nothing in this section shall require the attendance at the trial of any physician or other expert witness for any purpose other than the giving of his testimony.

NOTE: The examination of a defendant on the issue of his mental responsibility is essentially the same as in current practice. However, sub. (2) requires that 10 days before trial any examining physician shall file a report with counsel and the court stating his opinion of the defendant's ability to appreciate the wrongfulness of his conduct or to conform his conduct with the requirements of law. It is believed that this requirement will result in focusing the issue for trial and in many cases eliminate the issue of mental responsiblty from the trial. All experts' testimony are frequently in agreement and if this can be determined prior to trial, the necessity for calling a large number of

witnesses who will give the same testimony can be eliminated. A defendant may also, if confronted with unanimously unfavorable reports, abandon a defense of mental irresponsibility.

971.17 LEGAL EFFECT OF FINDING OF NOT GUILTY BECAUSE OF MENTAL DISEASE OR DEFECT. (1) When a defendant is found not guilty by reason of mental disease or defect, the court shall order him to be committed to the department to be placed in an appropriate institution for custody, care and treatment until discharged as provided in this section.

(2) A reexamination of a defendant's mental condition may be had as provided in s. 51.11, except that the reexamination shall be before the committing court and notice shall be given to the district attorney. The application may be made by the defendant or the department. The burden shall be on the defendant to prove that he may safely be discharged or released without danger to himself or others. If the court is so satisfied, it shall order the discharge of the defendant or his release on such conditions as the court determines to be necessary. If it is not so satisfied, it shall recommit him to the custody of the department.

(3) If, within 5 years of the conditional release of a committed person, the court determines after a hearing that the conditions of release have not been fulfilled and that the safety of such person or the safety of others requires that his conditional release be revoked, the court shall forthwith order him recommitted to the department, subject to discharge or release only in accordance with sub. (2).

(4) When the maximum period for which a defendant could have been imprisoned if convicted of the offense charged has elapsed, the court shall order the defendant discharged subject to the right of the department to proceed against the defendant under ch. 51. If the department does not so proceed, the court may order such proceeding.

NOTE: This section is based upon ALI M.P.C. 4.08 and s. 957.11. Two new provisions not currently found in existing Wisconsin law are contained in this section. Sub. (2) requires that a defendant prove that he may be safely discharged or released without danger to himself and others. Dangerousness is a better criterion for continued control. Although a defendant's mental disease may have improved, he should not be released if, because of factors in his personality or background, he would still be dangerous to himself and society. Further, he may be released for a period of up to 5 years on such conditions as are considered necessary to control his conduct and to insure outpatient treatment.

Sub. (3) limits the period of conditional release to 5 years.

Sub. (4) provides that when the maximum term a defendant could have been imprisoned for the offense charged has elapsed, he must be discharged. For example, a defendant charged with burglary can be retained no longer than 10 years. At the expiration of this term the Department must proceed against a defendant under Ch. 51 or discharge him.

971.175 SEQUENTIAL ORDER OF PROOF. When a defendant couples a plea of not guilty with a plea of not guilty by reason of mental disease or defect, there shall be a separation of the issues with a sequential order of proof before the same jury in a continuous trial. The guilt issue shall be heard first and then the issue of the defendant's mental responsibility. The jury shall be informed of the 2 pleas and that a verdict will be taken upon the plea of not guilty before the introduction of evidence on the plea of not guilty by reason of mental disease or defect. This section does not apply to cases tried before the court without a jury.

NOTE: This section recognizes the bifurcated trial provisions man-

dated by the decision in *State ex rel LaFollette v. Raskin*, 34 Wis. 2d 607, 150 NW 2d 318.

971.18 INADMISSIBILITY OF STATEMENTS FOR PURPOSES OF EXAMINATON. A statement made by a person subjected to psychiatric examinaton or treatment pursuant to this chapter for the purposes of such examination or treatment shall not be admissible in evidence against him in any criminal proceeding on any issue other than that of his mental condition.

NOTE: This is taken from ALI M.P.C. 4.09. (See also the decision in *LaFollette v. Raskin*, supra.)

971.19 PLACE OF TRIAL. (1) Criminal actions shall be tried in the county where the crime was committed, except as otherwise provided.

(2) Where 2 or more acts are requisite to the commission of any offense, the trial may be in any county in which any of such acts occurred.

(3) Where an offense is committed on or within one-fourth of a mile of the boundary of 2 or more counties, the defendant may be tried in any of such counties.

(4) If a crime is committed in, on or against any vehicle passing through or within this state, and it cannot readily be determined in which county the crime was committed, the defendant may be tried in any county through which such vehicle has passed or in the county where his travel commenced or terminated.

(5) If the act causing death is in one county and the death ensues in another, the defendant may be tried in either county. If neither location can be determined, the defendant may be tried in the county where the body is found.

(6) If an offense is commenced outside the state and is consummated within the state, the defendant may be tried in the county where the offense was consummated.

(7) If a crime is committed on boundary waters at a place where 2 or more counties have common jurisdiction under s. 2.03 or 2.04 or under any other law, the prosecution may be in either county. The county whose process against the offender is first served shall be conclusively presumed to be the county in which the crime was committed.

NOTE: This is a restatement of s. 956.01. Sub. (4) is a broadened provision designed to cover motor vehicles, trains and airplanes. Sub. (5) is designed to solve a problem found in some homicide cases where the exact location of the killing cannot be established.

971.20 SUBSTITUTION OF JUDGE. (1) The defendant may file with the clerk a written request for a substitution of a new judge for the judge assigned to the trial of that case. Such request shall be signed by the defendant personally and shall be made before making any motion or before arraignment.

(2) Upon the filing of such request in proper form and within the proper time the judge named in the request shall be without authority to act further in the case except to set bail if requested by the defendant. Not more than one judge can be disqualified in any action. All defendants must join in any request to substitute a judge.

(3) In addition to the procedure under sub. (1), a request for the substitution of a judge may also be made by the defendant at the preliminary examination except that the request must be filed at the initial appearance or at least 5 days before the preliminary examination unless the court otherwise permits.

(4) In counties having 3 or more county judges the clerk shall reassign all misdemeanor cases and preliminary examinations transferred by virtue of the substitution of a judge as provided herein. The county

board of judges shall make rules for such reassignment. All other cases shall be assigned pursuant to s. 251.182.

(5) The request in sub. (1) may be in the following form:

STATE OF WISCONSIN, _____ County, _____ Court
State of Wisconsin vs. _____ (Defendant)

Pursuant to s. 971.20 the defendant requests a substitution for the Hon. _____ as judge in the above entitled action.

Dated _____ _____ (Signed by defendant personally)

NOTE: This is new terminology replacing present s. 956.03 (1). "Affidavit of Prejudice" has normally not meant prejudice since most defendants have no knowledge of the judge and have filed the affidavit solely for tactical purposes usually on an attorney's advice. This terminology is felt to be more accurate. (See Ill. Rev. Code Chap. 38, s. 114-5, Mont. Rev. Code 95-1709.)

971.21 ELIGIBILITY OF JUDGE TO CONDUCT TRIAL. The judge who conducts the preliminary examination shall not conduct further proceedings unless the defendant and the district attorney consent on the record.

NOTE: New. The Council feels that this provision, which prohibits a judge from conducting both a preliminary examination and a trial, is needed. Most judges presently routinely refuse to conduct both proceedings. Sufficient manpower exists in all but a few counties to implement this section and the number of felony trials in the remaining counties is so small that this section will not have any appreciable effect. In those smaller counties, the overwhelming number of cases are disposed of by guilty pleas and it is believed that the parties will routinely consent to the judge who conducts the preliminary handling the guilty plea. It is not only a question of fairness but of the appearance of fairness.

971.22 CHANGE OF PLACE OF TRIAL. (1) The defendant may move for a change of the place of trial on the ground that an impartial trial cannot be had in the county. The motion shall be made at arraignment, but it may be made thereafter for cause.

(2) The motion shall be in writing and supported by affidavit which shall state evidentiary facts showing the nature of the prejudice alleged. The district attorney may file counter affidavits.

(3) If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall order that the trial be held in any county where an impartial trial can be had. Only one change may be granted under this subsection. The judge who orders the change in the place of trial shall preside at the trial. Preliminary matters prior to trial may be conducted in either county at the discretion of the court. The judge shall determine where the defendant, if he is in custody, shall be held and where the record shall be kept.

NOTE: This is a modification of the current s. 956.03 (3). It should be noted that the judge who grants a motion under this section will conduct the trial in the county where the case is transferred. He shall also determine where the defendant, if in custody, and the records of the case shall be kept. With regard to the criteria for granting a motion under this section, see *State v. Nutley*, 24 Wis. 2d 527, 129 NW 2d 155, and *State v. Woodington*, 31 Wis. 2d 151, 142NW 2d 810.

971.23 DISCOVERY AND INSPECTION. (1) DEFENDANT'S STATEMENTS. Upon demand, the district attorney shall permit the defendant within a reasonable time before trial to inspect and copy or photograph any written or recorded statement concerning the alleged crime made by the defendant which is within the possession, custody or control of the state including the testimony of the defendant in an s. 968.26 proceeding

or before a grand jury. Upon demand, the district attorney shall furnish the defendant with a written summary of all oral statements of the defendant which he plans to use in the course of the trial. The names of witnesses to the written and oral statements which the state plans to use in the course of the trial shall also be furnished.

(2) PRIOR CRIMINAL RECORD. Upon demand prior to trial, the district attorney shall furnish the defendant a copy of his criminal record which is within the possession, custody or control of the state.

(3) LIST OF WITNESSES. (a) A defendant may, not less than 15 days nor more than 30 days before trial, serve upon the district attorney an offer in writing to furnish the state a list of all witnesses the defendant intends to call at the trial, whereupon within 5 days after the receipt of such offer, the district attorney shall furnish the defendant a list of all witnesses and their addresses whom he intends to call at the trial. Within 5 days after the district attorney furnishes such list, the defendant shall furnish the district attorney a list of all witnesses and their addresses whom the defendant intends to call at the trial. This section shall not apply to rebuttal witnesses or those called for impeachment only.

(b) No comment or instruction regarding the failure to call a witness at the trial shall be made or given if the sole basis for such comment or instruction is the fact the name of the witness appears upon a list furnished pursuant to this section.

(4) INSPECTION OF PHYSICAL EVIDENCE. On motion of a party subject to s. 971.31 (5), all parties shall produce at a reasonable time and place designated by the court all physical evidence which each party intends to introduce in evidence. Thereupon, any party shall be permitted to inspect or copy such physical evidence in the presence of a person designated by the court. The order shall specify the time, place and manner of making the inspection, copies or photographs and may prescribe such terms and conditions as are just.

(5) SCIENTIFIC TESTING. On motion of a party subject to s. 971.31 (5), the court may order the production of any item of physical evidence which is intended to be introduced at the trial for scientific analysis under such terms and conditions as the court prescribes. The court may also order the production of reports or results of any scientific tests or experiments made by any party relating to evidence intended to be introduced at the trial.

(6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order that discovery, inspection or the listing of witnesses be denied, restricted or deferred, or make other appropriate orders. If the district attorney or defense counsel certifies that to list a witness may subject the witness or others to physical or economic harm or coercion, the court may order that the deposition of the witness be taken pursuant to s. 967.04 (2) to (6). The name of the witness need not be divulged prior to the taking of such deposition. If the witness becomes unavailable or changes his testimony, the deposition shall be admissible at trial as substantive evidence.

(7) CONTINUING DUTY TO DISCLOSE; FAILURE TO COMPLY. If, subsequent to compliance with a requirement of this section, and prior to or during trial, a party discovers additional material or the names of additional witnesses requested which are subject to discovery, inspection or production hereunder, he shall promptly notify the other party of the existence of the additional material or names. The court shall exclude any witness not listed or evidence not presented for inspection or copying required by this section, unless good cause is shown for failure to comply. The court may in appropriate cases grant the opposing party a recess or a continuance.

(8) NOTICE OF ALIBI. (a) If the defendant intends to rely upon an alibi as a defense, he shall give written notice thereof to the district attorney at the arraignment or at least 20 days before trial stating particularly the place where he claims to have been when the crime is alleged to have been committed together with the names and addresses of witnesses to the alibi, if known.

(b) In default of such notice, no evidence of the alibi shall be received unless the court, for cause, orders otherwise.

(c) The court may enlarge the time for filing a notice of alibi as provided in par. (a) for cause.

NOTE: This section is the first Wisconsin statute attempting to afford pretrial discovery to both the State and the defendant. Based primarily upon F.R.Cr.P. 16, it is believed that the section represents an improvement in the existing pretrial procedures while protecting the basic rights of the parties. Limited pretrial discovery should increase the efficient administration of criminal justice in this state by speeding up the disposition of cases, improving the performance of counsel, eliminating the increasing number of pretrial motions and increasing the number of guilty pleas. The section contemplates that most of the discovery provisions are to be implemented without the necessity for motions or court hearings.

Sub. (1) requires the district attorney to provide the defendant with any statements he is alleged to have made. No valid argument exists for refusal to provide a defendant with his own statement and a growing number of jurisdictions require production of such statements. (See *State v. Johnson*, 145 A 2d 313, Fla. Stat. Ann. s. 925.05.) In practice many district attorneys in Wisconsin, recognizing the influence that such statements have upon a defendant's decision to plead guilty, currently provide defense counsel with such statements.

Sub. (2), providing for the defendant's criminal record to be made available, serves to resolve prior to trial any disputes as to the correctness of such records. The defendant's criminal record comes into play if he takes the stand as a witness or if he is charged as a repeater and, of course, is relevant on sentencing if he is convicted. The production of defendant's statements prior to trial will alert the defense to the necessity of bringing any motions to suppress such statements. (See *State ex rel Goodchild v. Burke*, 27 Wis. 2d 244, 133 NW 2d 820.)

Sub. (3) is not a requirement for a listing of prosecution witnesses in each case. Some 22 states have requirements which make mandatory a notification prior to trial of witnesses intended to be called by the state. This subsecton, modeled after Fla. Cr.P.R. 1.220 (e), is a procedure whereby the defendant may obtain the names of state's witnesses after agreeing to tender to the district attorney the names of all defense witnesses. If the defendant is unwilling to disclose his own witnesses, then he is not entitled to learn the names of the state's witnesses. In those cases where the disclosure of the names of the state's witnesses might cause some danger to the witnesses, or in some other way jeopardize the public interest, sub. (6) provides a vehicle for obtaining a protective order denying such disclosure.

Subs. (4) and (5) are concerned with physical evidence and inspection and testing thereof. Experience under Fed. Rule 16 has demonstrated that this insures fairness and saves considerable time at trial. It is virtually impossible to repute physical evidence without an opportunity in advance to examine it and, as the Sup. Ct. of Okla. said in *State v. Lackey*, 319 P 2d 610, 614, referring to a laboratory analysis, "Certainly, if it contains factual truth, as we presume it does, the elements thereof are irrefutable. On the other hand, if it shows the defendant was not connected with the tragedy, he is entitled to the

benefit of it." When physical testing would destroy an item of evidence, obviously the court will want to preclude any such testing. Sub. (5) gives the court discretion to deny testing. Subs. (4) and (5) are limited to items of evidence which are intended to be introduced at trial and either the state or the defendant may move for an examination of such evidence or for scientific testing.

Sub. (6) provides sufficient flexibility to restrict or defer discovery where there is a likelihood of harm to witnesses or the interference with a continuing investigation. Its implementation is in the discretion of the trial court and contemplates that it will be used only in rare cases and is not intended to permit a denial of disclosure without some factual basis for a request for such denial.

Sub. (8) is a restatement of the present alibi notice statute, s. 955.07.

971.24 STATEMENT OF WITNESSES. (1) At the trial before a witness other than the defendant testifies, written or phonographically recorded statements of the witness, if any, shall be given to the other party in the absence of the jury. For cause, the court may order the production of such statements prior to trial.

(2) Either party may move for an in camera inspection by the court of the documents referred to in sub. (1) for the purpose of masking or deleting any material which is not relevant to the case being tried. The court shall mask or delete any irrelevant material.

NOTE: This is a restatement of the existing case law in *State v. Richards*, 21 Wis. 2d 622, 124 NW 2d 684, except that it broadens the decision in that case and requires that the statements of a witness be given to the opposing party prior to the witness' testifying on direct examination. This section does not require that these statements be turned over before the trial begins, but only before the witness testifies, so that the section may be complied with while the trial is going on. Such statements obviously have a value for impeachment and if counsel has them while the witness is testifying, time will be saved, and they may be more efficiently utilized. Such statements should be turned over in the absence of the jury.

971.25 DISCLOSURE OF CRIMINAL RECORD. (1) The district attorney shall disclose to the defendant, upon demand, the criminal record of a prosecution witness which is known to the district attorney.

(2) The defense attorney shall disclose to the district attorney, upon demand, the criminal record of a defense witness, other than the defendant, which is known to the defense attorney.

NOTE: New. The section recognizes that neither party should withhold the fact that a witness has a prior criminal record. (See Wis. J I Cr. 325.)

971.26 FORMAL DEFECTS. No indictment, information, complaint or warrant shall be invalid, nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant.

971.27 LOST INFORMATION, COMPLAINT OR INDICTMENT. In the case of the loss or destruction of an information or complaint, the district attorney may file a copy, and the prosecution shall proceed without delay from that cause. In the case of the loss or destruction of an indictment, an information may be filed.

NOTE: Present s. 955.36.

971.28 PLEADING JUDGMENT. In pleading a judgment or other determination of or proceeding before any court or officer, it shall be sufficient to state that the judgment or determination was duly rendered or made or the proceeding duly had.

NOTE: Present s. 955.34.

971.29 AMENDING THE CHARGE. (1) A complaint or information may be amended at any time prior to arraignment without leave of the court.

(2) At the trial, the court may allow amendment of the complaint, indictment or information to conform to the proof where such amendment is not prejudicial to the defendant. After verdict the pleading shall be deemed amended to conform to the proof if no objection to the relevance of the evidence was timely raised upon the trial.

(3) Upon allowing an amendment to the complaint or indictment or information, the court may direct other amendments thereby rendered necessary and may proceed with or postpone the trial.

NOTE: This section is a restatement of existing law except that it provides that prior to arraignment the district attorney may amend a complaint or information without leave of the court or notice to the other party. Since the district attorney is in charge of the prosecution he should be permitted to amend his pleadings prior to the time that the defendant has been required to plead.

971.30 MOTION DEFINED. (1) "Motion" means an application for an order.

(2) Unless otherwise provided or ordered by the court, all motions shall be in writing and shall state with particularity the grounds therefor and the order or relief sought.

NOTE: Sub. (1). See s. 269.27.

Sub. (2) is new. This is designed to make more orderly and formal the motion practice in criminal cases.

971.31 MOTIONS BEFORE TRIAL. (1) Any motion which is capable of determination without the trial of the general issue may be made before trial.

(2) Except as provided in sub. (5), defenses and objections based on defects in the institution of the proceedings, insufficiency of the complaint, information or indictment, invalidity in whole or in part of the statute on which the prosecution is founded, or the use of illegal means to secure evidence shall be raised before trial by motion or be deemed waived. The court may, however, entertain such motion at the trial, in which case the defendant waives any jeopardy that may have attached. The motion to suppress evidence shall be so entertained with waiver of jeopardy when it appears that the defendant is surprised by the state's possession of such evidence.

(3) The admissibility of any statement of the defendant shall be determined at the trial by the court in an evidentiary hearing out of the presence of the jury, unless the defendant, by motion, challenges the admissibility of such statement before trial.

(4) Except as provided in sub. (3), a motion shall be determined before trial of the general issue unless the court orders that it be deferred for determination at the trial. All issues of fact arising out of such motion shall be tried by the court without a jury.

(5) (a) Motions before trial shall be served and filed within 10 days after the initial appearance of the defendant in a misdemeanor action or 10 days after arraignment in a felony action unless the court otherwise permits.

(b) In felony actions, motions to suppress evidence or motions under ss. 971.23 to 971.25 or objections to the admissibility of statements of a defendant shall not be made at a preliminary examination and not until an information has been filed.

(c) In felony actions, objections based on the insufficiency of the com-

plaint shall be made prior to the preliminary examination or waiver thereof or be deemed waived.

(6) If the court grants a motion to dismiss based upon a defect in the indictment, information or complaint, or in the institution of the proceedings, it may order that the defendant be held in custody or that his bail be continued for not more than 72 hours pending issuance of a new summons or warrant or the filing of a new indictment, information or complaint.

(7) If the motion to dismiss is based upon a misnomer, the court shall forthwith amend the indictment, information or complaint in that respect, and require the defendant to plead thereto.

(8) No complaint, indictment, information, process, return or other proceeding shall be dismissed or reversed for any error or mistake where the case and the identity of the defendant may be readily understood by the court; and the court may order an amendment curing such defects.

(9) A motion required to be served on a defendant may be served upon his attorney of record.

(10) An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant may be reviewed upon appeal from a judgment of conviction notwithstanding the fact that such judgment was entered upon a plea of guilty.

NOTE: This is a restatement of s. 955.09 with several significant changes.

Sub. (5) (a) places a time limit on the filing of motions. It is hoped that this provision will help to prevent the use of motions as delaying devices in criminal actions.

Sub. (5) (b) limits motions to suppress evidence and objects to the admissibility of statements of a defendant to the trial court thus preventing the same motion being made at preliminary examination and prior to trial.

Sub. (5) (c) changes the decision in *State ex rel LaFollette v. Raskin*, 30 Wis. 2d 39, 139 NW 2d 667, which permitted motions based on the insufficiency of the complaint to be made in felony actions at any time prior to pleading. Since preliminary examinations are now to be held before a judge, and in the county court, this threshold objection should be made there or waived.

Sub. (6) places a limit of 72 hours on the period in which a defendant may be held in custody or his bail continued pending filing of new process after a charge is dismissed against him upon a formal defect in the pleadings.

Sub. (10) is a new provision. It permits a defendant to appeal from a guilty plea when, prior to the entry of the guilty plea, the court had denied a motion to suppress evidence. On review, the appellate court can determine whether or not the order denying a suppression of evidence was proper. This subsection, based upon N.Y.Cr. Code s. 813-c., should reduce the number of contested trials since in many situations, the motion to suppress evidence is really determinative of the result of the trial. In such instances defendants usually are only contesting the legality of the search and not whether or not they did, in fact, possess the item seized. S. 974.06 affords a complimentary right to the state and should be read in conjunction with this subsection.

971.32 OWNERSHIP, HOW ALLEGED. In an indictment, information or complaint for a crime committed in relation to property, it shall be sufficient to state the name of any one of several coowners, or of any officer of any corporation or association owning the same.

NOTE: Present s. 955.39.

971.33 POSSESSION OF PROPERTY, WHAT SUFFICIENT. In the prosecution of a crime committed upon or in relation to or in any way affecting real property or any crime committed by stealing, damaging or fraudulently receiving or concealing personal property, it is sufficient if it is proved that at the time the crime was committed either the actual or constructive possession or the general or special property in any part of such property was in the person alleged to be the owner thereof.

NOTE: Present s. 955.395.

971.34 INTENT TO DEFRAUD. Where the intent to defraud is necessary to constitute the crime it is sufficient to allege the intent generally; and on the trial it shall be sufficient if there appears to be an intent to defraud the United States or any state or any person.

NOTE: Present s. 955.40.

971.35 MURDER AND MANSLAUGHTER. It is sufficient in an indictment or information for murder to charge that the defendant did feloniously and with intent to kill murder the deceased. In any indictment or information for manslaughter it is sufficient to charge that the defendant did feloniously slay the deceased.

NOTE: Present s. 955.24.

971.36 THEFT; PLEADING AND EVIDENCE; SUBSEQUENT PROSECUTIONS. (1) In any criminal pleading for theft, it is sufficient to charge that the defendant did steal the property (describing it) of the owner (naming him) of the value of (stating the value in money).

(2) Any criminal pleading for theft may contain a count for receiving the same property and the jury may find all or any of the persons charged guilty of either of the crimes.

(3) In any case of theft involving more than one theft, all thefts may be prosecuted as a single crime if:

(a) The property belonged to the same owner and the thefts were committed pursuant to a single intent and design or in execution of a single deceptive scheme;

(b) The property belonged to the same owner and was stolen by a person in possession of it; or

(c) The property belonged to more than one owner and was stolen from the same place pursuant to a single intent and design.

(4) In any case of theft involving more than one theft but prosecuted as a single crime, it is sufficient to allege generally a theft of property to a certain value committed between certain dates, without specifying any particulars. On the trial, evidence may be given of any such theft committed on or between the dates alleged; and it is sufficient to maintain the charge and is not a variance if it is proved that any property was stolen during such period. But an acquittal or conviction in any such case does not bar a subsequent prosecution for any acts of theft on which no evidence was received at the trial of the original charge. In case of a conviction on the original charge on a plea of guilty or no contest, the district attorney may, at any time before sentence, file a bill of particulars or other written statement specifying what particular acts of theft are included in the charge and in that event conviction does not bar a subsequent prosecution for any other acts of theft.

NOTE: Present s. 955.31.

CHAPTER 972.

CRIMINAL TRIALS.

972.01 CRIMINAL TRIAL; RULES OF CIVIL TRIALS APPLICABLE. The summoning of jurors, the impaneling and qualifications of the jury, the challenge of jurors for cause and the duty of the court in charging the jury and giving instructions and discharging the jury when unable to agree shall be the same in criminal as in civil actions, except that s. 270.18 shall not apply.

NOTE: Substantially present s. 957.14.

972.02 JURY TRIAL; WAIVER. (1) Except as otherwise provided in this chapter, criminal cases shall be tried by a jury of 12, drawn as prescribed in ch. 270, unless the defendant waives a jury in writing or by statement in open court, on the record, with the approval of the court and the consent of the state.

(2) At any time before verdict the parties may stipulate in writing or by statement in open court, on the record, with the approval of the court, that the jury shall consist of any number less than 12.

(3) In a case tried without a jury the court shall make a general finding and may in addition find the facts specially.

(4) No member of the grand jury which found the indictment shall be a juror for the trial of the indictment.

NOTE: This section combines the present ss. 957.01 and 957.02. It should be noted that this bill does not contain any provision for a 6-man jury. Sub. (2) permits the parties, with the approval of the court, to stipulate for a jury of less than 12, however.

972.03 PEREMPTORY CHALLENGES. Each side is entitled to only 4 peremptory challenges except as otherwise provided in this section. When the crime charged is punishable by life imprisonment the state is entitled to 6 peremptory challenges and the defendant is entitled to 6 peremptory challenges. If there is more than one defendant, the court shall divide the challenges as equally as practicable among them; 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 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 cases 6 challenges if there are only 2 defendants and 9 challenges if there are more than 2.

NOTE: This is the present s. 957.03 except that the number of peremptory challenges in first degree murder cases is reduced to 6. Experience has indicated that in most first degree murder cases the existing provisions for 12 are unneeded and merely increase time and expense.

972.04 EXERCISE OF CHALLENGES. (1) The number of jurors called shall total 12 plus the number of peremptory challenges available to all the parties, and that number, exclusive of those challenged for

cause, shall be maintained in the jury box until all jurors have been examined. The parties shall thereupon exercise in their order, the state beginning, the peremptory challenges available to them, and if any party declines to challenge, such challenge shall be made by the clerk by lot.

(2) A party may waive in advance any or all of its peremptory challenges and the number of jurors called pursuant to sub. (1) shall be reduced by this number.

NOTE: This section retains the present system of exercising challenges found in s. 957.04. The section has been completely redrafted, however, to make the procedure more clear.

972.05 ALTERNATE JURORS. If the court is of the opinion that the trial of the action is likely to be protracted, it may, immediately after the jury is impaneled and sworn, call one or 2 alternate jurors. They shall be drawn in the same manner and have the same qualifications as regular jurors and shall be subject to like examination and challenge. Each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the oath or affirmation and shall be seated next to the regular jurors and shall attend the trial at all times. If the regular jurors are kept in custody, the alternates shall also be so kept. If before the final submission of the cause a regular juror dies or is discharged, the court shall order an alternate juror to take his place in the jury box. If there are 2 alternate jurors, the court shall select one by lot. Upon entering the jury box, the alternate juror becomes a regular juror.

NOTE: Present s. 957.05.

972.06 VIEW. The court may order a view by the jury.

NOTE: Present s. 957.08.

972.07 JEOPARDY. Jeopardy attaches:

(1) In a trial to the court without a jury when a witness is sworn;

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

NOTE: New. Based on the majority view as found in the case law of this and other states.

972.08 INCRIMINATING TESTIMONY COMPELLED; IMMUNTY. Whenever any person refuses to testify or to produce books, papers or documents when required to do so before any grand jury, in a proceeding under s. 967.06 or at a preliminary examination, criminal hearing or trial for the reason that the testimony or evidence required of him may tend to incriminate him or subject him to a forfeiture or penalty, he may nevertheless be compelled to testify or produce such 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 such case shall be liable to any forfeiture or penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, but no person shall be exempted from prosecution and punishment for perjury or false swearing committed in so testifying.

NOTE: This is present s. 885.34 with language changes to conform to the terminology of this bill. It should be further noted that the cumbersome procedure for granting immunity at John Doe proceedings or preliminary examinations mandated by *State ex rel Jackson v. Coffey,* 18 Wis. 2d 529, will no longer be necessary since these proceedings now will be conducted by judges who will have authority to grant immunity in those proceedings. The convening of a separate proceeding for such purpose will no longer be necessary.

972.09 HOSTILE WITNESS IN CRIMINAL CASES. Where testimony of a witness at any preliminary examination, hearing or trial in a criminal action is inconsistent with a statement previously made by him and

reduced to writing and approved by him or taken by a phonographic reporter, he may, in the discretion of the court, be regarded as a hostile witness and examined as an adverse witness, and the party producing him may impeach him by evidence of such prior contradictory statement. When called by the defendant, a law enforcement officer who was involved in the seizure of evidence shall be regarded as a hostile witness and may be examined as an adverse witness at any hearing in which the legality of such seizure may properly be raised.

NOTE: This is present s. 885.35 broadened to cover preliminary examinations or other criminal hearings. This is especially important in view of the decision in *Gelhaar v. State*, 41 Wis. 2d 230, which adopts Professor McCormick's view that a statement made on a former occasion by declarant may be received as evidence for such facts if the witness is present and subject to cross-examination. The previous rule in Wisconsin found in *State v. Major*, 274 Wis. 110, 79 NW 2d 75, has thus been overruled and the broadening of this statute should be of assistance to prosecutors at the preliminary examination who are faced with recalcitrant witnesses.

972.10 ORDER OF TRIAL. (1) After the selection of a jury, the court may instruct it as to its duties. Such general instructions shall be furnished 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.

(2) In a trial where the issue is mental responsibilty of a defendant, the defendant may make an opening statement on such issue prior to his offer of evidence. The state may make its opening statement on such issue prior to the defendant's offer of evidence or reserve the right to make such statement until after the defendant has rested.

(3) The state first offers evidence in support of the prosecution. The defendant may offer evidence after the state has rested. If the state and defendant have offered evidence upon the original case, the parties may then respectively offer rebuttal testimony only, unless the court in its discretion permits them to offer evidence upon their original case.

(4) At the close of the state's case and at the conclusion of the entire case, the defendant may move on the record for a dismssal.

(5) When the evidence is concluded and the testimony closed, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, signed by the party or his attorney and filed with the clerk, unless the court otherwise directs. Counsel for the parties, or the defendant if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and to present and argue to the court objections to the adoption or rejection of any instructions requested by counsel. The court shall advise the parties of the instructions to be given. Counsel, or the defendant if he 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 must specify with particularity wherein the instruction is insufficient, or does not state the law, or to what particular language there is an objection. All objections must be on the record.

(6) In closing argument, the state on the issue of guilt and the defendant on the issue of mental responsibility shall commence and may conclude the argument.

NOTE: New. Subs. (2) and (6) are required because the defendant will have the burden of proof on issues of mental responsibilty. (See s. 971.15 (3).) Other provisions of this section reflect the current practice in this state and should be codified.

972.11 EVIDENCE; CIVIL RULES APPLICABLE. The rules of evidence and practice in civil actions 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. Title XLIII, except ss. 885.14, 887.05 to 887.12, 887.23 to 887.29, 889.22, 895.29 and 895.30, shall apply in all criminal proceedings.

NOTE: New. *Heyroth v. State*, 275 Wis. 104, 81 NW 2d 56, holds that only those rules of civil procedure expressly enumerated in s. 957.14 (s. 972.01 in this bill) are applicable in criminal trials. Those provisions are far too limiting and in practice it has been found that there is a great deal of utilization of civil rules in many courts of the state. Uniformity in this regard should be achieved and the Judicial Council feels that this section is desirable and will achieve such uniformity as well as improve the conduct of criminal trials.

972.12 CONDUCT OF JURY AFTER COMMENCEMENT OF TRIAL. (1) The jurors sworn may, at any time before the submission of the case, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer, except in trials for crimes punishable by life imprisonment, where the jurors shall be kept together as provided in sub. (2) after they have been sworn.

(2) When the jury retires to consider its verdict, an officer of the court shall be appointed to keep them together and to prevent communication between the jurors and others.

NOTE: This section codifies the existing practice.

972.13 JUDGMENT. (1) A judgment of conviction shall be entered upon a verdict of guilty by the jury, a finding of guilty by the court in cases where a jury is waived, or a plea of guilty or no contest.

(2) Except in cases where ch. 975 is applicable, upon a judgment of conviction the court shall either impose or withhold sentence and, if the defendant is not fined or imprisoned, he shall be placed on probation as provided in s. 973.09. The court may adjourn the case from time to time for the purpose of pronouncing sentence.

(3) A judgment of conviction shall set forth the plea, the verdict or finding, and the adjudication and sentence. If the defendant is acquitted, judgment shall be entered accordingly.

(4) Judgments shall be in writing and signed by the judge or clerk.

(5) A copy of the judgment shall constitute authority for the sheriff to execute the sentence.

(6) The following forms may be used for judgments:

STATE OF WISCONSIN, ... County in ..... Court
The State of Wisconsin, vs. ..... (Name of defendant)

UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty) (no contest) on the ..... day of ....., 19....., of the crime of ..... in violation of s. .....; and the court having asked the defendant whether he has anything to state why sentence should not be pronounced, and no sufficient grounds to the contrary being shown or appearing to the court.

IT IS ADJUDGED that the defendant is guilty as convicted.

*IT IS ADJUDGED that the defendant is hereby committed to the Wisconsin state prisons (county jail of ..... county) for an indeterminate term of not more than .....

*IT IS ADJUDGED that the defendant is ordered to pay a fine of $..... (and the costs of this action).

*The ..... at ..... is designated as the Reception Center to which the said defendant shall be delivered by the sheriff.

*IT IS ORDERED that the clerk deliver a duplicate original of this judgment to the sheriff who shall forthwith execute the same and deliver it to the warden.

Dated this ..... day of ....., 19.....

BY THE COURT .....

Date of Offense ....., District Attorney ....., Defense Attorney .....

*Strike inapplicable paragraphs.

STATE OF WISCONSIN, ... County in ..... Court

The State of Wisconsin, vs. ..... (Name of defendant)

On the ..... day of ....., 19....., the district attorney appeared for the state and the defendant appeared in person and by ..... his attorney.

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

IT IS ADJUDGED that the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.

Dated this ..... day of ....., 19.....

BY THE COURT .....

(7) The department shall prescribe and furnish forms to the clerk of each county for use as judgments in cases where a defendant is placed on probation or committed to the custody of the department pursuant to this title.

NOTE: Subs. (1) and (2) combine the present ss. 959.01 and 959.02. Currently in criminal actions in Wisconsin no written judgments are entered. Sub. (4) corrects this deficiency. The present commitment form which is utilized when a defendant is taken to a penal institution is eliminated and in its place a copy of the judgment is substituted. Commitment forms under existing law ended up in the prisoner's file at the institution but the case file usually had no formal documents indicating the final disposition of the case or the defendant.

972.14 STATEMENTS BEFORE SENTENCING. Before pronouncing sentence, the court shall inquire of the defendant why sentence should not be pronounced upon him and accord the district attorney, defense counsel and defendant an opportunity to make a statement with respect to any matter relevant to sentence.

NOTE: This is a codification of the common law right of allocution. Its omission is probably no prejudicial error, (see *Boehm v. State*, 190 Wis. 609), but fairness and good practice dictate its retention.

972.15 PRESENTENCE INVESTIGATION. (1) After conviction the court may order a presentence investigation.

(2) When a presentence investigation report has been received the judge shall disclose the contents of the report to the defendant's attorney and to the district attorney prior to sentencing. When the defendant is not represented by an attorney, the contents shall be disclosed to the defendant.

(3) The judge may conceal the identity of any person who provided information in the presentence investigation report.

(4) After sentencing, unless otherwise ordered by the court, the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court.

NOTE: Most judges and attorneys will be surprised to learn that, outside of a provision for Milwaukee county (s. 57.02 (6)), there is

presently no statutory authority for presentence investigations. Wisconsin has been a pioneer in this field and obviously the presentence investigation is an integral part of the sentencing practice in this state.

Sub. (2) provides for a disclosure of the contents of the presentence report to the district attorney and the defense. This provision is subject to a great deal of debate nationally. After weighing all factors, the Council believes that the Model Penal Code, s. 7.07 (5) provisions are appropriate whereby the contents are disclosed. The judge may, however, conceal the identity of persons who provided information for the report. This concept is found in subs. (2) and (3) and is consistent with the recommendations of the President's Crime Commission report, *The Challenge of Crime in a Free Society*, 145, and the American Bar Association's *Project on Minimum Standards for Criminal Justice, Sentencing Alternatives and Procedure Standards*, s. 4.4. The Division of Corrections was consulted by the Council prior to the adoption of subs. (3) and (4) and indicated that they would not object to these provisions.

Sub. (4) is consistent with *ABA Sentencing Alternatives and Procedure Standards*, s. 4.3, that presentence reports should not be public records. The information in such reports is often unverified and would in many cases, even if true, cause irreparable harm to informants or the defendant. The information may, of course, upon specific authorization of the court, be made available to any agencies, courts or individuals which have a legitimate need for it.

CHAPTER 973.

SENTENCING.

973.01 INDETERMINATE SENTENCE; WISCONSIN STATE PRISONS. (1) (a) If imprisonment in the Wisconsin state prisons for a term of years is imposed, the court may fix a term less than the prescribed maximum. The form of such sentence shall be substantially as follows: "You are hereby sentenced to the Wisconsin state prisons for an indeterminate term of not more than ..... (the maximum as fixed by the court) years".

(b) The sentence shall have the effect of a sentence at hard labor for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the department or by pardon as provided by law. If a person is sentenced for a definite time for an offense for which he may be sentenced under this section, he is in legal effect sentenced as required by this section, said definite time being the maximum

period. A defendant convicted of a crime for which the minimum penalty is life shall be sentenced for life.

(2) Upon the recommendation of the department, the governor may, without the procedure required by ch. 57, discharge absolutely, or upon such conditions and restrictions and under such limitation as he thinks proper, any inmate committed to the Wisconsin state prisons after he has served the minimum term of punishment prescribed by law for the offense for which he was sentenced, except that if the term was life imprisonment, 5 years must elapse after parole before such a recommendation can be made to the governor. Such discharge shall have the effect of an absolute or conditional pardon, respectively.

(3) Female persons convicted of a felony may be committed to the Wisconsin home for women.

(4) A female person over 18 years of age convicted of a misdemeanor for which the maximum penalty is imprisonment for 6 months or more may be sentenced to a term not less than 6 months in the Wisconsin home for women instead of the county jail if the department certifies to the court that it has adequate facilities at said home and is willing to accept such commitment.

NOTE: Present s. 959.05.

973.02 PLACE OF IMPRISONMENT WHEN NONE EXPRESSED. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, 1) a sentence of less than one year shall be to the county jail, 2) a sentence of more than one year shall be to the Wisconsin state prisons and the minimum under the indeterminate sentence law shall be one year, and 3) a sentence of one year may be to either the Wisconsin state prisons or the county jail. But in any proper case sentence and commitment may nevertheless be to the Wisconsin home for women, the department or any house of correction or other institution as provided by law.

NOTE: Present s. 959.044.

973.03 JAIL SENTENCE. (1) If at the time of passing sentence upon a defendant who is to be imprisoned in a county jail, there is no jail in the county suitable for said defendant, the court may sentence him to any suitable county jail in the state. The expenses of supporting him there shall be borne by the county in which the crime was committed.

(2) A defendant sentenced to the Wisconsin state prisons and to a county jail for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons.

NOTE: Sub. (1) is present s. 959.06.

Sub. (2) is new. After a defendant receives a prison sentence, he should be at the prison and not at a county jail where he often creates security and disciplinary problems. Nothing herein prevents the misdemeanor sentence from being concurrent or consecutive.

973.04 CREDIT FOR IMPRISONMENT UNDER EARLIER SENTENCE FOR THE SAME CRIME. When a sentence is vacated and a new sentence is imposed upon the defendant for the same crime, the department shall credit the defendant with confinement theretofore served and good time, if any, earned by the defendant pursuant to ss. 53.11 and 53.12 while so confined.

NOTE: S. 958.06 (3) (b) is restated to give a defendant credit for imprisonment and good time earned under a vacated sentence.

973.05 FINES. (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a period not to exceed 60 days. If no such permission is embodied in the sentence, the fine shall be payable forthwith.

(2) When a defendant is sentenced to pay a fine and is also placed on probation, the court may make the payment of the fine a condition of probation.

NOTE: This is present s. 959.055 (1) except that the time that may be granted for a stay of execution to pay a fine is extended from 30 to 60 days.

973.06 COSTS. (1) The costs taxable against the defendant shall consist of the following items and no others:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed to return a defendant from another state or country.

(b) Fees and travel allowance of witnesses for the state at the preliminary examination and the trial.

(c) Fees and disbursements allowed by the court to expert witnesses. Section 271.04 (2) shall not apply in criminal cases.

(d) Fees and travel allowance of witnesses for the defense incurred by the county at the request of the defendant, at the preliminary hearing and the trial.

(e) Attorney fees payable to the defense attorney by the county.

(2) The court may remit the taxable costs, in whole or in part.

NOTE: This is present s. 959.055 (2) and (3).

Par. (1) (c) is expanded to permit the payment of expert fees in excess of $25.

973.07 FAILURE TO PAY FINE OR COSTS. When a fine or the costs are not paid as required by the sentence, the defendant may be committed to the county jail until the fine and costs are paid or discharged for a period fixed by the court not to exceed 6 months.

NOTE: Taken from s. 959.055 (1).

973.08 RECORDS ACCOMPANYING PRISONER. When any defendant is sentenced to the Wisconsin state prisons, a copy of the judgment of conviction shall be delivered by the officer executing the judgment to the warden or superintendent of the institution when the prisoner is delivered. The transcript of the testimony and proceedings shall be filed pursuant to s. 256.27 (2) within 120 days from the date sentence is imposed unless the period is extended by the court.

NOTE: This is comparable to present s. 959.052 except that it abolishes certificates of conviction and other commitment forms and substitutes a copy of the judgment. The requirement on filing transcripts within 120 days is designed to insure that transcripts are available promptly for use by authorities at the prison. Investigation by the Council indicated that many counties are very slow in forwarding transcripts. Appeals are delayed and transcripts are not available when the parole board considers a prisoner for release. Both of these reasons justify a requirement that transcripts be forwarded promptly.

973.09 PROBATION. (1) When a person is convicted of a crime, the court may, by order, withhold sentence or impose sentence and stay its execution, and in either case place him on probation to the department for a stated period, stating in the order the reasons therefor, and may impose any conditions which appear to be reasonable and appropriate. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously.

(2) The original term of probation shall be:

(a) For misdemeanors, not more than 2 years;

(b) For felonies, not less than one year nor more than either the statutory maximum term of imprisonment for the crime or 3 years, whichever is greater.

(3) Prior to the expiration of any probation period, the court may for cause by order extend probation for a stated period or modify the terms and conditions thereof.

(4) The court may also require as a condition of probation that the probationer be confined in the county jail between the hours or periods of his employment during such portion of his term of probation as the court specifies, but not to exceed one year and the court shall require him to pay the cost of his board as provided in s. 56.08 (4).

(5) When the probationer has satisfied the conditions of his probation, he shall be discharged and the department shall issue him a certificate of final discharge, a copy of which shall be filed with the clerk.

NOTE: This is a modification of present s. 57.01. The principal change is that all judges may now impose reasonable and appropriate conditions for probation. Previously this discretion was only vested in Milwaukee county judges. There is no basis for any distinction.

973.10 CONTROL AND SUPERVISION OF PROBATIONERS. (1) A sentence of probation shall have the effect of placing the defendant in the custody of the department and shall subject him to the control of the department under conditions set by the court and rules and regulations established by the department.

(2) If a probationer violates the conditions of his probation, the department may order him brought before the court for sentence which shall then be imposed without further stay or if he has already been sentenced, may order him to prison; and the term of the sentence shall begin on the date he enters the prison. A copy of the order of the department shall be sufficient authority for the officer executing it to take the probationer to court or to prison.

(3) The department may upon request of any court having jurisdiction under s. 973.11 receive for supervision outside of any county to which s. 973.11 is applicable, probationers convicted in such county and shall have the same custody and control of the persons as it has over other probationers in custody of the department.

NOTE: This is a restatement of language in present ss. 57.02, 57.03 (1) and 57.15.

973.11 PROBATION IN POPULOUS COUNTIES. (1) This section applies only to counties having a population of more than 500,000.

(2) The probation department of the criminal branches of the circuit court and the misdemeanor and traffic branches of the county court, respectively, shall have custody of persons on probation from each court.

(3) All courts in the county shall have all the powers contained in ss. 973.09 and 973.10 with respect to the imposition of probation and its terms and conditions. Wherever in those sections the term department is used it refers to the probation department established pursuant to this section.

(4) The senior judge of the criminal branches of the circuit court shall appoint a chief probation officer. Such judge may appoint additional probation officers who shall be subordinate to the chief. He may also appoint a deputy chief probation officer to perform the duties of the chief during his absence or inability to perform them. Except as otherwise provided, probation officers shall have power to arrest and shall execute the orders of the courts affecting their probationers.

(5) Probation violators whether sentenced or not, shall be taken before the court for a hearing.

(6) Probation officers shall receive the salaries and necessary expenses as determined by the county board. The county board shall provide quarters and supplies for the adequate administration of probation under this section.

(7) Municipal and district court probation officers having civil service status in such counties on December 31, 1961, shall continue in such status for the criminal branches of the circuit court and the misdemeanor traffic branches of the county court on and after January 1, 1962.

NOTE: This is a restatement of s. 57.025 and is designed, with s. 973.09, to provide the same powers to probation officers in all counties of the state.

973.12 SENTENCE OF A REPEATER. (1) Whenever a person charged with a crime will be a repeater as defined in s. 939.62 if convicted, any prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea. The court may, upon motion of the district attorney, grant a reasonable time to investigate possible prior convictions before accepting a plea. If such prior convictions are admitted by the defendant or proved by the state, he shall be subject to sentence under s. 939.62 unless he establishes that he was pardoned on grounds of innocence for any crime necessary to constitute him a repeater. An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been served for such period of time as is shown or is consistent with the report. The court shall take judicial notice of the statutes of the United States and foreign states in determining whether the prior conviction was for a felony or a misdemeanor.

(2) In every case of sentence under s. 939.62, the sentence shall be imposed for the present conviction, but if the court indicates in passing sentence how much thereof is imposed because the defendant is a repeater, it shall not constitute reversible error, but the combined terms shall be construed as a single sentence for the present conviction.

NOTE: Sub. (1) is present s. 959.12 (1).

Sub. (2) is present s. 959.12 (2).

973.13 EXCESSIVE SENTENCE, ERRORS CURED. In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings.

NOTE: New. There is similar language in the present statutes which applies to repeaters only [see s. 959.12 (2)]. Obviously this corrective provision should apply to all sentences. It provides speedy administrative procedure for terminating illegally excessive sentences without burdening the courts. The section does not preclude a prisoner from seeking relief under ch. 974.

973.14 SENTENCE TO HOUSE OF CORRECTION. (1) In addition to the authority in ss. 53.18 and 56.18, prisoners sentenced to a county jail may be transferred by the sheriff to the house of correction without court approval except that prisoners to whom the privileges of s. 56.08 have been granted may not be transferred without court approval.

(2) Prisoners confined in the house of correction may be transferred by the superintendent of the house of correction to the county jail without court approval.

(3) A prisoner sentenced to a county jail or the house of correction being held in a county jail awaiting trial on another charge shall be deemed

to be serving such county jail or house of correction sentence and shall be given credit on such sentence as provided in s. 53.43 or 56.19.

NOTE: This section is designed to permit the administrative transfer of prisoners between local institutions within a county without the requirement of court proceedings.

973.15 SENTENCE, TERMS, ESCAPES. (1) All sentences to the Wisconsin state prisons shall be for one year or more, except as provided in s. 973.01 (4). Except as otherwise provided in this section, all sentences commence at noon on the day of sentence, but time which elapses after sentence while the defendant is in the county jail or is at large on bail shall not be computed as any part of his term of imprisonment. The court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent or that it shall commence at the expiration of any other sentence; and if the defendant is then serving a sentence, the present sentence may provide that it shall commence at the expiration of the previous sentence. If a convict escapes, the time during which he is unlawfully absent from the prison after such escape shall not be computed as part of his term. Courts may impose sentences to be served in whole or in part concurrently with a sentence being served in a federal institution or an institution of another state.

(2) When a court orders a sentence to the Wisconsin state prisons to be served in whole or in part concurrently with a sentence being served in a federal institution or an institution of another state, the trial and commitment records required under s. 973.08 shall be delivered immediately to the warden or superintendent of the Wisconsin institution designated as the reception center to receive the prisoner when he becomes available to Wisconsin authorities.

(3) Sections 53.11 and 57.06 are applicable to an inmate serving a sentence to the Wisconsin state prisons but confined in a federal institution or an institution in another state. Section 53.12 applies only during that portion of the sentence served in actual residence in a Wisconsin institution.

NOTE: Present s. 959.07.

973.16 TIME OUT. If an order or judgment releasing a prisoner on habeas corpus is reversed, the time during which he was at liberty thereunder shall not be counted as part of his term.

NOTE: Present s. 959.08.

973.17 JUDGMENT AGAINST A CORPORATION. (1) If a corporation fails to appear within the time required by the summons, the default of such corporation may be recorded and the charge against it taken as true, and judgment shall be rendered accordingly.

(2) Upon default of the defendant corporation or upon conviction, judgment for the amount of the fine shall be entered.

(3) A judgment against a corporation shall be collected in the same manner as in civil actions.

NOTE: Sub. (1) is present s. 959.10 restated.

Sub. (2) is language found in s. 954.017 except that this section is applicable to felonies as well as misdemeanors.

Sub. (3) is present s. 959.11.

CHAPTER 974.

APPEALS, NEW TRIALS AND WRITS OF ERROR.

974.01 MISDEMEANOR APPEALS FROM COUNTY COURT. (1) Appeals in misdemeanor cases are to the circuit court for the county on the record.

(2) Within 15 days after judgment or entry of the order appealed from, appeal may be taken to the circuit court by filing a notice of appeal with the clerk of the trial court and by serving notice of appeal on the opposing party or his attorney. If a motion for a new trial has been made within the 15-day period, an appeal from a judgment of conviction may be taken within 15 days after entry of the order denying the motion or within 15 days after such motion is deemed overruled.

(3) Within 40 days after notice of appeal is filed the appellant shall file with the clerk either a transcript of the reporter's notes of the trial or an agreed statement on appeal, or a statement that his appeal can be supported by the case file without the transcript. The appellant shall pay the costs of preparing the transcript. The county shall in all cases where required by the U.S. or Wisconsin constitution pay the costs of preparing the transcript if the defendant is financially unable to pay the costs.

(4) Within 10 days after the transcript, or agreed statement pursuant to sub. (5), or statement that the appeal can be supported by the case file without the transcript is filed with the clerk, the clerk shall return the case file, and any transcript or agreed statement, or statement as to the appeal being supported by the case file alone, which has been filed with him to the circuit court and shall notify the parties of such filing in the circuit court.

(5) In lieu of a transcript on appeal, the oral proceedings may be presented in an agreed statement signed by all the parties to the appeal. This shall be a condensed statement in narrative form of all of such portions of the oral proceedings as are necessary to determination of the question on appeal.

(6) On appeal, the circuit court has power similar to that of the supreme court under ch. 274 to review and to affirm, reverse or modify the judgment appealed from, and in addition it may order a new trial in whole or in part, which shall be in the circuit court.

(7) At any time after the filing in the circuit court of the return on appeal, any party to the action or proceeding, upon notice under s. 269.31, may move that the judgment appealed from be affirmed, or modified and affirmed as modified, or that the appeal be dismissed, or may move for a new trial or a reversal. This motion shall state concisely the grounds upon which it is made and shall be heard on the record.

(8) Appeals by the state are subject to the limitations of s. 974.05.

NOTE: This section conforms the practice on misdemeanor appeals to that found in s. 299.30 which governs appeals in small claims and municipal ordinance violations. The trial de novo provision of the present misdemeanor appeals statute is eliminated.

974.02 NEW TRIAL. (1) A defendant may move in writing or with the consent of the state on the record to set aside a judgment of conviction and for a new trial in the interest of justice, or because of error in the trial or because of error in the jury instructions, or because the judgment of conviction is not supported by the evidence or is contrary to law; but such motion must be made, heard and decided within 90 days after the judgment of conviction is entered, unless the court by order made before its expiration extends such time for cause. Such motion, if not decided within the time allowed therefor, shall be deemed overruled. Filing of a motion for a new trial shall not prevent the trial court from imposing sentence.

(2) If the trial judge is disabled or no longer in office, his successor or another judge may hear and determine the motion.

(3) Every order granting a new trial shall specify the grounds therefor. In the absence of such specification, the order shall be deemed granted for error on the trial. No order granting a new trial in the interests of justice shall be valid or effective, unless the reasons that prompted the court to make such order are set forth in detail therein or the memorandum decision setting forth such reasons incorporated by reference in such order.

(4) A new trial shall proceed in all respects as if there had been no former trial. On the new trial the defendant may be convicted of any crime charged in the indictment or information irrespective of the verdict or finding on the former trial. The former verdict or finding shall not be used or referred to on the new trial.

(5) A motion for a new trial is not necessary to review errors on a trial to the court without a jury.

NOTE: This section governs new trials and is designed to conform the practice in criminal proceedings with that in the civil law. (See s. 270.49.)

Sub. (1) provides that a motion for a new trial must be heard and decided within 90 days after conviction unless the court extends the time. If the motion is not decided within this period, it is deemed overruled.

Sub. (5) makes it clear that in trials to a judge without a jury a motion for a new trial is not necessary to review errors.

974.03 APPEALS TO SUPREME COURT; TIME FOR TAKING. In lieu of prosecuting a writ of error, either party may appeal to the supreme court in the manner provided in civil cases. The service of a notice of appeal or the issuance of a writ of error shall be made within 90 days after the entry of judgment or order appealed from. If a motion for a new trial has been made within the 90-day period, an appeal from a judgment of conviction may be taken within 90 days after entry of the order denying the motion or within 90 days after such motion is deemed overruled.

NOTE: This is basically present s. 958.13 except that the time for taking an appeal or procuring a writ of error is reduced from one year to 90 days.

974.04 TRANSCRIPTS. The statutes relating to serving and approving transcripts in civil actions shall apply to criminal cases, but the time for serving a proposed transcript shall be 3 months from service of notice of appeal or 3 months from the issuance of a writ of error.

NOTE: Present s. 958.115.

974.05 STATE'S APPEAL. (1) A writ of error or appeal may be taken by the state from any:

(a) Final order or judgment adverse to the state made before jeopardy has attached or after waiver thereof.

(b) Order granting a new trial.

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

(d) Order or judgment the substantive effect of which results in:

1. Quashing an arrest warrant;
2. Suppressing evidence; or
3. Suppressing a confession or admission.

(e) Judgment adverse to the state, upon questions of law arising upon the trial, in the same manner and with the same effect as if taken by the defendant.

(2) Whenever the defendant appeals or prosecutes a writ of error, the state may move to review rulings of which it complains, as provided by s. 274.12.

(3) Permission of the trial court is not required for the state to appeal, but the district attorney shall serve notice of such appeal or of the procurement of a writ of error upon the defendant or his attorney.

NOTE: With one exception, this is present s. 958.12. That exception which is a major change in existing law is sub. (1) (d) which permits the state to appeal from an order suppressing evidence, a confession or an arrest warrant. Since these matters normally determine the successful outcome of prosecutions, it is believed the state should be able to take an immediate appeal rather than wasting the time of the court with a hollow trial where the result is preordained by the ruling on the suppression question. For defendant's right in this area, see s. 971.31 (10).

974.06 POST-CONVICTION PROCEDURE. (1) A prisoner in custody under sentence of a court claiming 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 jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(2) A motion for such relief is a 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) Unless the motion and the files and records of the action conclusively show that the prisoner is entitled to no relief, the court shall:

(a) Cause a copy of the notice to be served upon the district attorney who shall file a written response within the time prescribed by the court.

(b) Appoint counsel pursuant to s. 971.01 (6), if, upon the files, records of the action and the response of the district attorney it appears that counsel is necessary.

(c) Grant a prompt hearing.

(d) Determine the issues and make findings of fact and conclusions of law. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(4) All grounds for relief available to a prisoner under this section must be raised in his original, supplemental or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the prisoner has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

(5) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(6) Proceedings under this section shall be considered civil in nature, and the burden of proof shall be upon the prisoner.

(7) An appeal may be taken from the order entered on the motion as from a final judgment subject to ss. 974.03 and 974.05.

(8) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

NOTE: This represents the first Wisconsin attempt at a comprehensive post-conviction statute which will afford an all encompassing remedy for defendants challenging their convictions. It is taken directly from Title 28, USC, s. 2255. The section is designed to supplant habeas corpus and other special writs.

Sub. (2) provides that the remedy is envoked by a defendant bringing the motion as a part of the original criminal case.

Sub. (3) requires the appointment of counsel, the written response of the district attorney to the motion, a hearing and a determination of issues by the court except where the motion and the files and records conclusively show the prisoner is entitled to no relief. This contemplates that motions may be summarily denied if they show no arguable merit. Appointment of counsel and hearings are automatic.

Sub. (4) is taken from the Uniform Post-Conviction Procedure Act and is designed to compel a prisoner to raise all questions available to him in one motion.

Sub. (5) provides that the presence of the prisoner is not necessary, although he certainly must be produced at an evidentiary hearing.

Sub. (8) provides that if this section is not utilized or if relief is sought and denied, habeas corpus is not available. This provision has been held not to be an abridgement of a defendant's right to habeas corpus. (See *Stirone v. Markley*, 345 F. 2d 473 cert. den. 382 U.S. 829, 86 S. Ct. 67.)

CHAPTER 975.

SEX CRIMES LAW.

NOTE: Chapter 975 is a restatement of s. 959.15, the Sex Crimes Law. Aside from some language clarification there are few changes. Section 975.06 incorporates the decision of the supreme court in *Huebner v. State*, 33 Wis. 2d 505; 147 NW 2d 646, requiring that a defendant be afforded a hearing on the issue of the need for specialized treatment.

The hearing will be to the court without a jury. To prevent harassment of officials who have no knowledge of a particular case, s. 975.06 (5) designates the person who is to be subpoenaed to obtain department records. Section 975.12 broadens the existing law to afford persons committed as sex deviates the same rights as other prisoners in earning "good time" for parole eligibility.

975.01 MANDATORY COMMITMENT FOR PRESENTENCE EXAMINATION. If a person is convicted under s. 944.01, 944.02 or 944.11 or under s. 939.32 for attempting to violate s. 944.01 or 944.02, the court shall commit him to the department of health and social services for a presentence social, physical and mental examination. The court and all public officials shall make available to the department upon its request all data in their possession in respect to the case.

975.02 DISCRETIONARY COMMITMENT. If a person is convicted of any sex crime other than those specified, the court may commit him to the department for such a presentence examination, if the department certifies that it has adequate facilities for making such examination and is willing to accept such commitment. The court and all public officials shall make available to the department upon its request all data in their possession in respect to the case. "Sex crime" as used in this subsection includes any crime except homicide or attempted homicide if the court finds that the defendant was probably directly motivated by a desire for sexual excitement in the commission of the crime; and for that purpose the court may in its discretion take testimony after conviction if necessary to determine that issue.

975.03 TRANSPORTATION. When the court commits a person to the department as provided above for presentence examination, the court shall order him conveyed by the proper county authorities at the sole expense of the county, to some place of detention or examination approved or established by the department.

975.04 REPORT OF EXAMINATION. (1) Upon completion of the examination, but not later than 60 days after the date of the commitment order, a report of the results of the examination and the recommendations of the department shall be sent to the court.

(2) Commitments to the department under this chapter for pre-sentence examination are terminated when the court orders the defendant returned to court by the proper county authorities and the department gives custody of him to such authorities or when following receipt by the court of the department's report and recommendations, he is brought before the court for any reason; or when during the presentence examination he absconds and the court issues a warrant for his arrest.

975.05 SENTENCE IMPOSED. If the department does not recommend specialized treatment for his mental and physical aberrations, the court shall sentence the defendant as provided by law.

975.06 COMMITMENT TO THE DEPARTMENT. (1) If the department recommends specialized treatment for his mental or physical aberrations, the court shall order a hearing on the issue of the need for specialized treatment unless such hearing is expressly waived by him. The hearing shall be conducted by the court without a jury. The court may consider any department rule established in accordance with ch. 227 establishing criteria for recommending specialized treatment. The defendant shall be afforded the opportunity to appear with counsel; process to compel the attendance of witnesses and the production of evidence; and a physician, or clinical psychologist of his own choosing to examine him and testify in his behalf. If he is unable to provide his own counsel or expert witness, the court shall appoint such to represent or examine him.

(2) If, upon completion of the hearing as required in sub. (1), the court finds that the defendant is in need of specialized treatment the

court shall commit him to the department. The court may stay execution of the commitment and place him on probation under ch. 973 with a condition of probation that he receive treatment in a manner to be prescribed by the court. If he is not placed on probation, the court shall order him conveyed by the proper county authorities, at county expense, to the sex crimes law facility designated by the department.

(3) Probation under sub. (2) shall be construed as a commitment to the department for the purposes of continuation of control as provided in this chapter.

(4) If, upon the completion of the hearing required in sub. (1), the court finds that he is not in need of such specialized treatment the court shall sentence him as provided in ch. 973.

(5) If records of the department are required for any hearing under this chapter, they shall be made available upon a subpoena directed to the coordinator of the special review board of the department, who may respond in person or designate an agent to produce the records of the department.

975.07 THE EFFECT OF APPEAL FROM A JUDGMENT OF CONVICTION. (1) The right of a defendant to appeal from the judgment of conviction is not affected by this chapter.

(2) If a person who has been convicted and committed to the department appeals from a conviction, the execution of the commitment to the department shall not be stayed by the appeal except as provided in sub. (3).

(3) If the committing court is of the opinion that the appeal was taken in good faith and that the question raised merits review by the appellate court, or when there has been filed with the court a certificate that a judge of an appellate court is of the opinion that questions have been raised that merit review, the judge of the court in which the person was convicted, or in the case of his incapacity to act, the judge by whom the certificate was filed, may direct that such person be released on bond under such conditions as, in the judge's opinion, will insure his submission to the control of the department at the proper time if it is determined on the appeal that the department is entitled to custody.

975.08 NOTICE OF COMMITMENTS; TREATMENT, TRANSFER, USE OF OTHER FACILITIES. (1) If a court commits a person to the department under s. 975.06 it shall at once notify the department of such action in writing.

(2) The department shall then arrange for his treatment in the institution best suited in its judgment to care for him. It may transfer him to or from any institution to provide for him according to his needs and to protect the public. The department may irrespective of his consent require participation by him in vocational, physical, educational and correctional training and activities; may require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public; and may make use of other methods of treatment and any treatment conducive to the correction of the person and to the prevention of future violations of law by him.

(3) The department may make use of law enforcement, detention, parole, medical, psychiatric, psychological, educational, correctional, segregative and other resources, institutions and agencies, public or private, within the state. The department may enter into agreements with public officials for separate care and special treatment (in existing institutions) of persons subject to the control of the department under this chapter. Nothing herein contained shall give the department control over existing institutions or agencies not already under its control, or give it power to make use of any private agency or institution without its consent.

(4) Placement of a person by the department in any institution or agency, not operated by the department, or his discharge by such institution or agency, shall not terminate the control of the department over him. No person placed in such institution or agency may be released therefrom except to the department or after approval of such release by the department.

975.09 PERIODIC EXAMINATION. The department shall make periodic examinations of all persons within its control under s. 975.06 for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding one year. The department shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under its control. Failure of the department to examine a person committed to it or to make periodic examination shall not entitle him to a discharge from the control of the department, but shall entitle him to petition the committing court for an order of discharge, and the court shall discharge him unless it appears in accordance with s. 975.13 that there is necessity for further control.

975.10 PAROLE. Any person committed as provided in this chapter may be paroled if it appears to the satisfaction of the department after recommendation by a special review board, appointed by the department, a majority of whose members shall not be connected with the department, that he is capable of making an acceptable adjustment in society.

975.11 DURATION OF CONTROL. The department shall keep every person committed to it under s. 975.06 under its control and shall retain him, subject to the limitations of s. 975.12 under supervision and control, so long as in its judgment such control is necessary for the protection of the public. The department shall discharge any such person as soon as in its opinion there is reasonable probability that he can be given full liberty without danger to the public, but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to 2 years after the date of his commitment.

975.12 TERMINATION OF CONTROL. (1) Every person committed to the department under this chapter who has not been discharged as provided herein shall be discharged at the expiration of one year or the expiration of the maximum term prescribed by the law for the offense for which he was committed subject to sub. (2) whichever is greater, unless the department shall have acted uder s. 975.13 to continue him subject to its control. For the purpose of this subsection, sentence shall begin at noon of the day of the commitment by the court to the department.

(2) All commitments under s. 975.06 for offenses committed after July 1, 1970, shall be subject to ss. 53.11 and 53.12. If the department is of the opinion that release on parole pursuant to s. 53.11 (7) (a) would be dangerous to the public, it shall either make an order directing that the person remain subject to its control or make an order suspending the provisions of s. 53.11 (7) (a) and in either case shall make application to the committing court for a review of that order proceeding as provided in this chapter.

975.13 CONTINUANCE OF CONTROL; ORDER AND APPLICATION FOR REVIEW BY THE COMMITTING COURT. If the department is of the opinion that discharge of a person from its control at the time provided above would be dangerous to the public for reasons set forth in s. 975.14, it shall make an order directing that he remain subject to its control beyond that period; and shall make application to the committing court for a review of that order at least 90 days before the time of discharge stated.

975.14 ACTION OF COMMITTING COURT UPON APPLICATION

FOR REVIEW; REASONS FOR CONTINUANCE OF CONTROL BY THE DEPARTMENT. (1) If the department applies to the committing court for the review of an order as provided in s. 975.13 the court shall notify the person whose liberty is involved, and, if he be not sui juris, has parent or guardian as practicable, of the application, and shall afford him opportunity to appear in court with counsel and of process to compel the attendance of witnesses and the production of evidence. He may have a physician or clinical psychologist of his own choosing examine him and his medical records in the institution to which he is confined or at some suitable place designated by the department. If he is unable to provide his own counsel, the court shall appoint counsel to represent him. He shall not be entitled to a trial by jury.

(2) If, after a hearing, the court finds that discharge from the control of the department of the person to whom the order applies would be dangerous to the public because of the person's mental or physicial deficiency, disorder or abnormality the court shall confirm the order. If the court finds that discharge from the control of the department would not be dangerous to the public for the causes stated, the court shall order that he be discharged from the control of the department at the time stated in the original commitment.

975.15 REVIEW BY COURT OF SUBSEQUENT ORDERS OF THE DEPARTMENT. (1) When an order of the department is confirmed as provided in s. 975.14 the control of the department over the person shall continue, but unless he is previously discharged, the department shall within 5 years after the date of such confirmation make a new order and a new application for review thereof in accordance with this chapter, subject to s. 57.072. Such orders and applications may be repeated as often as in the opinion of the department it may be necessary for the protection of the public.

(2) Every person shall be discharged from the control of the department at the termination of the periods stated in sub. (1) unless the department has previously acted therein as required, and shall be discharged if the court fails to confirm the order as provided in s. 975.14.

(3) During any such period of extended control, but not oftener than semiannually, a person may apply to the court for a reexamination of his mental condition and the court shall fix a time for hearing the same. The proceeding shall be as provided in s. 975.14.

975.16 APPEAL FROM JUDGMENT OF COMMITTING COURT. (1) If, under this chapter the court affirms an order of the department, the person whose liberty is involved may appeal to the proper appellate court for a reversal or modification of the order. The appeal shall be taken as provided by law for appeals to said court from the judgment of an inferior court.

(2) At the hearing of an appeal the appellate court may base its judgment upon the record, or it may upon its own motion or at the request of either the appellant or the department refer the matter back for the taking of additional evidence.

(3) The appellate court may confirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged.

(4) Pending appeal the appellant shall remain under the control of the department.

975.17 VOLUNTARY ADMISSION TO DIAGNOSTIC INSTITUTIONS; TREATMENT. Any person believing himself to be afflicted by a physical or mental condition which may result in sexual action dangerous to the public may apply upon forms prescribed by the department for voluntary admission to some institution which provides diagnosis for such persons. If the application is approved and he is admitted by the

department, he shall be given a complete physical and mental examination. If it appears upon the examination that he is afflicted by a physical or mental condition that may prove dangerous to the public, such fact shall be certified to him and to the department. If he desires treatment he may apply for admission to an institution designated by the department and upon approval of his application, he may be received in the designated institution and shall there receive the treatment indicated by his condition. If he is able to defray all or a part of the cost of his care and treatment, he shall be required to do that. If he desires to leave the institution he shall give 5 days' written notice to the superintendent of the institution of his intention to leave. The department may provide outpatient treatment for him at his expense.

975.18 ESTABLISHMENT OF REGULATIONS. The department may promulgate rules concerning parole, revocation of parole, supervision of parolees, and any other matters necessary for the administration of this chapter.

CHAPTER 976.

UNIFORM ACTS IN CRIMINAL PROCEEDINGS.

NOTE: Ch. 976 contains 5 uniform acts, 4 of which are currently found in the statutes. The agreement on detainers, s. 976.05, is new. It is a model act of the Council of State Government and has been adopted by 19 other states including Iowa, Minnesota and Michigan. This section provides a method of disposing of cases pending in Wisconsin against a defendant who is serving a term of imprisonment in another jurisdiction or who is imprisoned in Wisconsin and has a charge pending elsewhere. It should cut down delay in disposing of criminal charges. Its adoption was recommended by the American Bar Association Project on Minimum Standards for Criminal Justice in their report on "Speedy Trial".

976.01 UNIFORM ACT FOR THE EXTRADITION OF PRISONERS AS WITNESSES. (1) DEFINITIONS. As used in this section:

(a) "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(b) "Penal institutions" includes a jail, prison, penitentiary, house of correction or other place of penal detention.

(2) SUMMONING WITNESS IN THIS STATE TO TESTIFY IN ANOTHER STATE. A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify a) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, b) that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation or action, and c) that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

(3) COURT ORDER. If at the hearing the judge determines a) that the witness may be material and necessary, b) that his attending and testify-

ing are not adverse to the interests of this state or to the health or legal rights of the witness, c) that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order, and d) that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached, directing the witness to attend and testify, directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and prescribing such conditions as the judge determines.

(4) TERMS AND CONDITIONS. The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

(5) EXCEPTIONS. This act does not apply to any person in this state confined as insane or mentally ill or as a defective delinquent.

(6) PRISONER FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE. If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify a) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, b) that a person who is confined in a penal institution in the other state may be a material witness in the proceeding, investigation or action, and c) that his presence will be required during a specified time. The certificate shall be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

(7) COMPLIANCE. The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

(8) EXEMPTION FROM ARREST AND SERVICE OF PROCESS. If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, he shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this state under the order.

(9) UNIFORMITY OF INTERPRETATION. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

976.02 UNIFORM ACT FOR THE EXTRADITION OF WITNESSES IN CRIMINAL ACTIONS. (1) DEFINITIONS. "Witness" as used in this section includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. "State" includes any territory of the United States and the District of Columbia. "Summons" includes a subpoena order or other notice requiring the appearance of a witness.

(2) SUMMONING WITNESS IN THIS STATE TO TESTIFY IN ANOTHER STATE. (a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and

testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within the state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished as provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

(3) WITNESS FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE. (a) If a person in any state, which by its laws has mode provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in this state he shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the summons shall not be required to remain within this state a longer period of time than otherwise

ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished as provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

(4) EXEMPTION FROM ARREST AND SERVICE OF PROCESS. (a) If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(b) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance to this state under the summons.

(5) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted as to make uniform the law of the states which enact it.

976.03 UNIFORM CRIMINAL EXTRADITION ACT. (1) DEFINITIONS. In this section, "governor" includes any person performing the functions of governor by authority of the law of this state. "Executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and "state" referring to a state other than this state refers to any other state or territory organized or unorganized of the United States of America.

(2) CRIMINALS TO BE DELIVERED UPON REQUISITION. Subject to the qualifications of this section, and the provisions of the U. S. constitution controlling, and acts of congress in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.

(3) FORM OF DEMAND. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under sub. (6), that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

(4) GOVERNOR MAY INVESTIGATE CASE. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with a crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

(5) EXTRADITION OF PERSONS IMPRISONED OR AWAITING TRIAL IN ANOTHER STATE OR WHO HAVE LEFT THE DEMANDING STATE UNDER COMPULSION. (a) When it is desired to have returned to this state a person charged in

this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(b) The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in sub. (23) with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(6) EXTRADITION OF PERSONS CHARGED WITH HAVING COMMITTED A CRIME IN THE DEMANDING STATE BY ACTS DONE IN THIS OR SOME OTHER STATE. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state as provided in sub. (3) with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand; and the provisions of this section not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

(7) ISSUE OF GOVERNOR'S WARRANT OF ARREST; ITS RECITALS. If the governor shall decide that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to a sheriff, marshal, coroner or other person whom he may think fit to entrust with the execution thereof; and the warrant must substantially recite the facts necessary to the validity of its issue.

(8) MANNER AND PLACE OF EXECUTION. The warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the state and to command the aid of all sheriffs and other peace officers in the execution of the warrant, and to deliver the accused subject to this section, to the duly authorized agent of the demanding state.

(9) AUTHORITY OF ARRESTING OFFICER. Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein, as sheriffs and other officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance.

(10) RIGHTS OF ACCUSED; APPLICATION FOR WRIT OF HABEAS CORPUS. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

(11) PENALTY FOR NONCOMPLIANCE WITH PRECEDING SECTION. Any Officer who delivers to the agent for extradition of the demanding state a person in his custody under the governor's warrant in disobedience to s. 964.10 shall be guilty of a misdemeanor, and on conviction shall be fined not more than $1,000, or be imprisoned not more than 6 months or both.

(12) CONFINEMENT IN JAIL WHEN NECESSARY. (a) The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may when necessary confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

(13) ARREST PRIOR TO REQUISITION. Whenever any person within this state shall be charged on the oath of any credible person before any judge of this state with the commission of any crime in any other state and, except in cases arising under sub. (6), with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under sub. (6), has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit; and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(14) ARREST WITHOUT A WARRANT. The arrest of a person may be lawfully made also by an officer or a private citizen without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year; but when so arrested the accused must be taken before a judge with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in sub. (13); and thereafter his answer shall be heard as if he had been arrested on a warrant.

(15) COMMITMENT TO AWAIT REQUISITION; BAIL. If from the examination before the judge it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under sub. (6), that he has fled from justice, the judge must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition

of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in s. 964.16, or until he shall be legally discharged.

(16) BAIL; IN WHAT CASES; CONDITIONS OF BOND. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

(17) EXTENSION OF TIME OF COMMITMENT; ADJOURNMENT. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge may discharge him or may recommit him for a further period not to exceed 60 days, or may again take bail for his appearance and surrender, as provided in sub. (16), but within a period not to exceed 60 days after the date of such new bond.

(18) FORFEITURE OF BAIL. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

(19) IF A PROSECUTION HAS ALREADY BEEN INSTITUTED IN THIS STATE. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor at his discretion either may surrender him on the demand of the executive authority of another state, or may hold him until he has been tried and discharged, or convicted and punished in this state.

(20) GUILT OR INNOCENCE OF ACCUSED, WHEN INQUIRED INTO. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

(21) GOVERNOR MAY RECALL WARRANT OR ISSUE ALIAS. The governor may recall his warrant of arrest, or may issue another warrant whenever he deems proper.

(22) FUGITIVES FROM THIS STATE, DUTY OF GOVERNOR. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state from the executive authority of any other state, or from the chief justice or an associate justice of the district court of the United States for the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

(23) MANNER OF APPLYING FOR REQUISITION. (a) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, and the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require

the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the secretary of health and social services, or the warden of the institution or sheriff of the county from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by 2 certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to a judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by indorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

(24) EXPENSES OF EXTRADITION. The compensation of the agent of the demanding state shall be $8 per day for the time necessarily devoted to the performance of his duties, and his actual and necessary expenses, which compensation and expenses shall be allowed by the county board of the county in which the crime was committed, upon presentation to said board of a verified account, stating the number of days he was engaged and the items of expense incurred while acting as such agent.

(25) ASSISTANTS TO AGENT RETURNING FUGITIVE. If the district attorney certifies in writing that it is necessary or desirable, one or more peace officers may accompany said agent and shall be entitled to compensation at the rate of $5 per day, unless the county board by resolution establishes a different rate, and to their actual and necessary expenses. Such compensation and expenses shall be claimed and allowed as provided in sub. (24) and the said certificate of the district attorney shall be attached to the verified account of such officer for such services. While so engaged, said officer shall be deemed an officer of this state and shall use all proper means to assist the agent to retain the custody of the prisoner.

(26) EXEMPTION FROM CIVIL PROCESS. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

(27) WRITTEN WAIVER OF EXTRADITION PROCEEDINGS. (a) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in ss. 964.07 and 964.08 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which

states that he consents to return to the demanding state; however, before such waiver shall be executed or subscribed by such person the judge shall inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided in sub. (10).

(b) If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent. Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

(28) NONWAIVER BY THIS STATE. Nothing in this section shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this section which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

(29) NO RIGHT OF ASYLUM. After a person has been brought back to this state by, or after waiver of, extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.

(30) INTERPRETATION. This section shall be so interpreted as to make uniform the law of those states which enact it.

976.04 UNIFORM ACT ON CLOSE PURSUIT. (1) Any member of a duly organized state, county or municipal peace unit of another state of of the United States who enters this state in close pursuit, and continues within this state such close pursuit, of a person in order to arrest him on the grounds that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold in custody such person, as members of a duly organized state, county or municipal peace unit of this state have, to arrest and hold in custody a person on the grounds that he has committed a felony in this state.

(2) If an arrest is made in this state by an officer of another state in accordance with sub. (1), he shall without unnecessary delay take the person arrested before a judge of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit him to bail for such purpose. If the judge determines that the arrest was unlawful he shall discharge the person arrested.

(3) Subsection (1) shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

(4) For the purpose of this section, "state" includes the District of Columbia.

(5) "Close pursuit" as used in this section includes fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It also includes the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if

there are reasonable grounds for believing that a felony has been committed. Close pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(6) This section shall be cited as the "Uniform Act on Close Pursuit".

976.05 AGREEMENT ON DETAINERS. (1) The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I. The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II. As used in this agreement:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(b) "Sending state" means a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" means the state in which trial is to be had on an indictment, information or complaint pursuant to article III or IV hereof.

ARTICLE III. (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he has caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the department relating to the prisoner.

(b) The written notice and request for final disposition referred to in par. (a) of this article shall be given or sent by the prisoner to the department, or warden, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The department, or warden, or other official having custody of

the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to par. (a) of this article shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition specifically directed. The department, or warden, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the cerificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to par. (a) of this article shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of par. (d) of this article, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in par. (a) of this article shall void the request.

ARTICLE IV. (a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: provided that the court having jurisdiction of such indictment, information or complaint has duly approved, recorded and transmitted the request: and that there shall be a period of 30 days after receipt by the appropriate authorities before the request is honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in par. (a) of this article, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who lodged detainers against the prisoner with similar cer-

tificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect to any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in par. (a) of this article, but such delivery may not be opposed or denied on the grounds that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V. (a) In response to a request made under article III or IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

1. Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

2. A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority refuses or fails to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agree-

ment, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence allows.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state received custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. This paragraph shall govern unless the states concerned have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI. (a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTCLE VII. Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII. This agreement shall enter into full force as to a party state when such state has enacted the same into law. A state party to this agreement may, withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX. This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force as to the remaining states and in full force as to the state affected as to all severable matters.

(2) In this section:

(a) "Appropriate court" shall, with reference to the courts of this state, mean either the circuit or county court.

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

(3) All courts, departments, agencies, officers and employes of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other parties in enforcing the agreement and effectuating its purpose.

(4) Nothing in this section or in the agreement on detainers shall be construed to require the application of s. 939.62 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

(5) Any prisoner who while in another state as a result of the application of the agreement on detainers escapes from lawful custody shall be punished as though such escape had occurred within this state.

(6) The department shall give over the person of any inmate of any penal or correctional institution under its jurisdiction whenever so required by the operation of the agreement on detainers. The central administrator of and information agent for the agreement on detainers shall be the administrator of the division of corrections of the department.

(7) Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the secretary of state of the United States, and the council of state governments.

SECTION 64. In sections 51.16 (2), 52.25, 53.34, 165.04 (3) and 256.15 of the statutes, substitute "judge" or "judges" for "magistrate" or "magistrates", respectively.

SECTION 65. In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

A Statute sections	B Old Cross references	C New cross references
15.731	954.44	345.61
20.625 (2) (a)	957.26 (1m)	256.65
20.680 (3) (a)	957.265	256.67
30.76 (6) (a)	959.055	973.05
30.76 (6) (b)	954.02	968.04
46.043	959.15 (1), (2)	ch. 975
49.19 (4) (d) 4	959.15	ch. 975
51.11 (1)	957.11, 957.13	971.14, 971.17
51.12 (3)	957.11, 957.13	971.14, 971.17
51.13 (2)	957.11, 957.13	971.14, 971.17
51.21 (1), (6)	957.11, 957.13	971.14, 971.17
52.06	ch. 954	ch. 968
52.25	954.02	968.04
52.26	960.07. 960.08	ch. 969
54.36	ch. 964	ch. 976
57.072	57.025	973.11
59.456 (6)	957.13	971.14
66.12	954.02	968.04
66.12 (1) (a)	954.03, 954.034	968.07, ch. 969
66.122 (1), as ren.	963.11	66.123
66.123 (intro.)	963.10	66.122
69.41	966.20	979.20
102.13 (2)	ch. 966	ch. 979
161.28 (3)	959.12 (1)	973.12
256.55 (5)	957.26 (2)	970.02 (1) (b)
274.05	954.13	970.03
319.11	957.26	256.48
891.39 (1) (b)	957.26	256.65

SECTION 66. This act shall take effect July 1, 1970.
Approved November 25, 1969.