



State of Wisconsin  
2005 - 2006 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 261**

March 30, 2005 - Offered by Representative KLEEFISCH.

1     **AN ACT to amend** 48.293 (3), 48.31 (2), 302.113 (9) (e), 302.114 (9) (d), 304.06 (3),  
2           304.06 (3d), 908.08 (title), 908.08 (1), 908.08 (2) (a), 908.08 (2) (b), 908.08 (3)  
3           (intro.), 908.08 (3) (a) (intro.), 908.08 (3) (b), 908.08 (4) (intro.), 908.08 (4) (i),  
4           908.08 (5) (a), 908.08 (5) (b), 908.08 (6), 908.08 (7), 938.293 (3), 938.31 (2),  
5           950.055 (2) (b), 967.04 (7) (a) (intro.), 967.04 (7) (b) 10., 967.04 (8) (a), 967.04 (8)  
6           (b) (intro.), 967.04 (9), 967.04 (10), 970.03 (14) (b), 971.23 (1) (e), 973.10 (2g) and  
7           973.10 (2m) of the statutes; **relating to:** use of and access to audiovisual  
8           recordings of a child's statement in certain court and administrative  
9           proceedings.

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

10           **SECTION 1.** 48.293 (3) of the statutes is amended to read:  
11           48.293 (3) Upon request prior to the fact-finding hearing, counsel for the  
12           interests of the public shall disclose to the child, through his or her counsel or

1 guardian ad litem, or to the unborn child, through the unborn child's guardian ad  
2 litem, the existence of any ~~videotaped~~ audiovisual recording of an oral statement of  
3 a child under s. 908.08 which is within the possession, custody or control of the state  
4 and shall make reasonable arrangements for the requesting person to view the  
5 ~~videotaped oral~~ statement. If, ~~subsequent to~~ after compliance with this subsection,  
6 the state obtains possession, custody or control of such a ~~videotaped~~ statement,  
7 counsel for the interests of the public shall promptly notify the requesting person of  
8 that fact and make reasonable arrangements for the requesting person to view the  
9 ~~videotaped oral~~ statement.

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

11 48.31 (2) The hearing shall be to the court unless the child, the child's parent,  
12 guardian, or legal custodian, the unborn child by the unborn child's guardian ad  
13 litem, or the expectant mother of the unborn child exercises the right to a jury trial  
14 by demanding a jury trial at any time before or during the plea hearing. If a jury trial  
15 is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6  
16 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall  
17 consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and  
18 805 shall govern the selection of jurors. If the hearing involves a child victim or  
19 witness, as defined in s. 950.02, the court may order ~~the taking~~ that a deposition be  
20 taken by audiovisual means and allow the use of a ~~videotaped~~ recorded deposition  
21 under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s.  
22 971.105. At the conclusion of the hearing, the court or jury shall make a  
23 determination of the facts, except that in a case alleging a child or an unborn child  
24 to be in need of protection or services under s. 48.13 or 48.133, the court shall make  
25 the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or

1 unborn child is in need of protection or services that can be ordered by the court. If  
2 the court finds that the child or unborn child is not within the jurisdiction of the court  
3 or, in a case alleging a child or an unborn child to be in need of protection or services  
4 under s. 48.13 or 48.133, that the child or unborn child is not in need of protection  
5 or services that can be ordered by the court or if the court or jury finds that the facts  
6 alleged in the petition have not been proved, the court shall dismiss the petition with  
7 prejudice.

8 **SECTION 3.** 302.113 (9) (e) of the statutes is amended to read:

9 302.113 (9) (e) If a hearing is to be held under par. (am) before the division of  
10 hearings and appeals in the department of administration, the hearing examiner  
11 may order ~~the taking~~ that a deposition be taken by audiovisual means and allow the  
12 use of a ~~videotaped~~ recorded deposition under s. 967.04 (7) to (10).

13 **SECTION 4.** 302.114 (9) (d) of the statutes is amended to read:

14 302.114 (9) (d) If a hearing is to be held under par. (am) before the division of  
15 hearings and appeals in the department of administration, the hearing examiner  
16 may order ~~the taking~~ that a deposition be taken by audiovisual means and allow the  
17 use of a ~~videotaped~~ recorded deposition under s. 967.04 (7) to (10).

18 **SECTION 5.** 304.06 (3) of the statutes is amended to read:

19 304.06 (3) Every paroled prisoner remains in the legal custody of the  
20 department unless otherwise provided by the department. If the department alleges  
21 that any condition or rule of parole has been violated by the prisoner, the department  
22 may take physical custody of the prisoner for the investigation of the alleged  
23 violation. If the department is satisfied that any condition or rule of parole has been  
24 violated it shall afford the prisoner such administrative hearings as are required by  
25 law. Unless waived by the parolee, the final administrative hearing shall be held

1 before a hearing examiner from the division of hearings and appeals in the  
2 department of administration who is licensed to practice law in this state. The  
3 hearing examiner shall enter an order revoking or not revoking parole. Upon request  
4 by either party, the administrator of the division of hearings and appeals shall review  
5 the order. The hearing examiner may order ~~the taking that a deposition be taken by~~  
6 audiovisual means and allow the use of a ~~videotaped~~ recorded deposition under s.  
7 967.04 (7) to (10). If the parolee waives the final administrative hearing, the  
8 secretary of corrections shall enter an order revoking or not revoking parole. If the  
9 examiner, the administrator upon review, or the secretary in the case of a waiver  
10 finds that the prisoner has violated the rules or conditions of parole, the examiner,  
11 the administrator upon review, or the secretary in the case of a waiver, may order the  
12 prisoner returned to prison to continue serving his or her sentence, or to continue on  
13 parole. If the prisoner claims or appears to be indigent, the department shall refer  
14 the prisoner to the authority for indigency determinations specified under s. 977.07  
15 (1).

16 **SECTION 6.** 304.06 (3d) of the statutes is amended to read:

17 304.06 (3d) Upon demand prior to a revocation hearing under sub. (3), the  
18 district attorney shall disclose to a defendant the existence of any ~~videotaped~~  
19 audiovisual recording of an oral statement of a child under s. 908.08 which is within  
20 the possession, custody or control of the state and shall make reasonable  
21 arrangements for the defendant and defense counsel to view the ~~videotaped~~  
22 statement. ~~If, subsequent to~~ after compliance with this subsection, the state obtains  
23 possession, custody or control of such a ~~videotaped~~ statement, the district attorney  
24 shall promptly notify the defendant of that fact and make reasonable arrangements  
25 for the defendant and defense counsel to view the ~~videotaped~~ statement.

1           **SECTION 7.** 908.08 (title) of the statutes is amended to read:

2           **908.08** (title) **Videotaped Audiovisual recordings of statements of**  
3 **children.**

4           **SECTION 8.** 908.08 (1) of the statutes is amended to read:

5           908.08 (1) In any criminal trial or hearing, juvenile fact-finding hearing under  
6 s. 48.31 or 938.31 or revocation hearing under s. 302.113 (9) (am), 302.114 (9) (am),  
7 304.06 (3), or 973.10 (2), the court or hearing examiner may admit into evidence the  
8 ~~videotaped~~ audiovisual recording of an oral statement of a child who is available to  
9 testify, as provided in this section.

10          **SECTION 9.** 908.08 (2) (a) of the statutes is amended to read:

11          908.08 (2) (a) Not less than 10 days ~~prior to~~ before the trial or hearing, or such  
12 later time as the court or hearing examiner permits upon cause shown, the party  
13 offering the statement shall file with the court or hearing officer an offer of proof  
14 showing the caption of the case, the name and present age of the child who has given  
15 the statement, the date, time and place of the statement and the name and business  
16 address of the ~~videotape~~ camera operator. That party shall give notice of the offer  
17 of proof to all other parties, including notice of reasonable opportunity for them to  
18 view the ~~videotape prior to~~ statement before the hearing under par. (b).

19          **SECTION 10.** 908.08 (2) (b) of the statutes is amended to read:

20          908.08 (2) (b) ~~Prior to~~ Before the trial or hearing in which the statement is  
21 offered and upon notice to all parties, the court or hearing examiner shall conduct  
22 a hearing on the statement's admissibility. At or ~~prior to~~ before the hearing, the court  
23 shall view the ~~videotape~~ statement. At the hearing, the court or hearing examiner  
24 shall rule on objections to the statement's admissibility in whole or in part. If the trial

1 is to be tried by a jury, the court shall enter an order for editing as provided in s.  
2 885.44 (12).

3 **SECTION 11.** 908.08 (3) (intro.) of the statutes is amended to read:

4 908.08 (3) (intro.) The court or hearing examiner shall admit the videotape  
5 statement recording upon finding all of the following:

6 **SECTION 12.** 908.08 (3) (a) (intro.) of the statutes is amended to read:

7 908.08 (3) (a) (intro.) That the trial or hearing in which the videotape statement  
8 recording is offered will commence:

9 **SECTION 13.** 908.08 (3) (b) of the statutes is amended to read:

10 908.08 (3) (b) That the videotape recording is accurate and free from excision,  
11 alteration and visual or audio distortion.

12 **SECTION 14.** 908.08 (4) (intro.) of the statutes is amended to read:

13 908.08 (4) (intro.) In determining whether the interests of justice warrant the  
14 admission of ~~a videotape~~ an audiovisual recording of a statement of a child who is  
15 at least 12 years of age but younger than 16 years of age, among the factors which  
16 the court or hearing examiner may consider are any of the following:

17 **SECTION 15.** 908.08 (4) (i) of the statutes is amended to read:

18 908.08 (4) (i) Whether admission of the videotape statement recording would  
19 reduce the mental or emotional strain of testifying or reduce the number of times the  
20 child will be required to testify.

21 **SECTION 16.** 908.08 (5) (a) of the statutes is amended to read:

22 908.08 (5) (a) If the court or hearing examiner admits a videotape recorded  
23 statement under this section, the party who has offered the statement into evidence  
24 may nonetheless call the child to testify immediately after the videotape statement  
25 is shown to the trier of fact. Except as provided in par. (b), if that party does not call

1 the child, the court or hearing examiner, upon request by any other party, shall order  
2 that the child be produced immediately following the showing of the videotape  
3 statement to the trier of fact for cross-examination.

4 **SECTION 17.** 908.08 (5) (b) of the statutes is amended to read:

5 908.08 (5) (b) If a ~~videotape~~ recorded statement under this section is shown at  
6 a preliminary examination under s. 970.03 and the party who offers the statement  
7 does not call the child to testify, the court may not order under par. (a) that the child  
8 be produced for cross-examination at the preliminary examination.

9 **SECTION 18.** 908.08 (6) of the statutes is amended to read:

10 908.08 (6) ~~Videotaped~~ Recorded oral statements of children under this section  
11 in the possession, custody or control of the state are discoverable under ss. 48.293 (3),  
12 304.06 (3d), 971.23 (1) (e) and 973.10 (2g).

13 **SECTION 19.** 908.08 (7) of the statutes is amended to read:

14 908.08 (7) At a trial or hearing under sub. (1), a court or a hearing examiner  
15 may also admit into evidence ~~a videotape~~ an audiovisual recording of an oral  
16 statement of a child that is hearsay and is admissible under this chapter as an  
17 exception to the hearsay rule.

18 **SECTION 20.** 938.293 (3) of the statutes is amended to read:

19 938.293 (3) Upon request prior to the fact-finding hearing, the district  
20 attorney shall disclose to the juvenile, and to the juvenile's counsel or guardian ad  
21 litem, the existence of any ~~videotaped~~ audiovisual recording of an oral statement of  
22 a ~~juvenile~~ child under s. 908.08 which is within the possession, custody or control of  
23 the state and shall make reasonable arrangements for the requesting person to view  
24 the ~~videotaped~~ oral statement. If, ~~subsequent to~~ after compliance with this  
25 subsection, the state obtains possession, custody or control of such a ~~videotaped~~

1 statement, the district attorney shall promptly notify the requesting person of that  
2 fact and make reasonable arrangements for the requesting person to view the  
3 ~~videotaped oral~~ statement.

4 **SECTION 21.** 938.31 (2) of the statutes is amended to read:

5 938.31 (2) The hearing shall be to the court. If the hearing involves a child  
6 victim, as defined in s. 938.02 (20m) (a) 1., or a child witness, as defined in s. 950.02  
7 (5), the court may order ~~the taking that~~ a deposition be taken by audiovisual means  
8 and allow the use of a ~~videotaped~~ recorded deposition under s. 967.04 (7) to (10) and,  
9 with the district attorney, shall comply with s. 971.105. At the conclusion of the  
10 hearing, the court shall make a determination of the facts. If the court finds that the  
11 juvenile is not within the jurisdiction of the court or the court finds that the facts  
12 alleged in the petition or citation have not been proved, the court shall dismiss the  
13 petition or citation with prejudice.

14 **SECTION 22.** 950.055 (2) (b) of the statutes is amended to read:

15 950.055 (2) (b) Advice to the judge, when appropriate and as a friend of the  
16 court, regarding the child's ability to understand proceedings and questions. The  
17 services may include providing assistance in determinations concerning the taking  
18 of ~~videotaped~~ depositions by audiovisual means under s. 908.08 or 967.04 (7) and (8)  
19 and the duty to expedite proceedings under s. 971.105.

20 **SECTION 23.** 967.04 (7) (a) (intro.) of the statutes is amended to read:

21 967.04 (7) (a) (intro.) In any criminal prosecution or any proceeding under ch.  
22 48 or 938, any party may move the court to order ~~the taking of that~~ a ~~videotaped~~  
23 deposition of a child who has been or is likely to be called as a witness be taken by  
24 audiovisual means. Upon notice and hearing, the court may issue an order for such  
25 a deposition if the trial or hearing in which the child may be called will commence:



1           **SECTION 24.** 967.04 (7) (b) 10. of the statutes is amended to read:

2           967.04 (7) (b) 10. Whether the use of a videotaped recorded deposition would  
3 reduce the mental or emotional strain of testifying and whether the deposition could  
4 be used to reduce the number of times the child will be required to testify.

5           **SECTION 25.** 967.04 (8) (a) of the statutes is amended to read:

6           967.04 (8) (a) If the court orders a deposition under sub. (7), the judge shall  
7 preside at the taking of the deposition and enforce compliance with the applicable  
8 provisions of ss. 885.44 to 885.47. Notwithstanding s. 885.44 (5), counsel may make  
9 objections and the judge shall make rulings thereon as at trial. The clerk of court  
10 shall keep the certified original ~~videotape~~ recording of a deposition taken under sub.  
11 (7) in a secure place. No person may inspect or copy the deposition except by order  
12 of the court upon a showing that inspection or copying is required for editing under  
13 s. 885.44 (12) or for the investigation, prosecution or defense of the action in which  
14 it was authorized or the provision of services to the child.

15           **SECTION 26.** 967.04 (8) (b) (intro.) of the statutes is amended to read:

16           967.04 (8) (b) (intro.) If the court orders that a videotape deposition be taken  
17 by audiovisual means under sub. (7), the court shall do all of the following:

18           **SECTION 27.** 967.04 (9) of the statutes is amended to read:

19           967.04 (9) In any criminal prosecution or juvenile fact-finding hearing under  
20 s. 48.31 or 938.31, the court may admit into evidence a ~~videotaped~~ recorded  
21 deposition taken under subs. (7) and (8) without an additional hearing under s.  
22 908.08. In any proceeding under s. 302.113 (9) (am), 302.114 (9) (am), 304.06 (3), or  
23 973.10 (2), the hearing examiner may order that a deposition be taken by audiovisual  
24 means and preside at the taking of ~~a the videotaped~~ deposition using the procedure

1 provided in subs. (7) and (8) and may admit the ~~videotaped~~ recorded deposition into  
2 evidence without an additional hearing under s. 908.08.

3 **SECTION 28.** 967.04 (10) of the statutes is amended to read:

4 967.04 (10) If a court or hearing examiner admits a ~~videotaped~~ recorded  
5 deposition into evidence under sub. (9), the child may not be called as a witness at  
6 the proceeding in which it was admitted unless the court or hearing examiner so  
7 orders upon a showing that additional testimony by the child is required in the  
8 interest of fairness for reasons neither known nor with reasonable diligence  
9 discoverable at the time of the deposition by the party seeking to call the child. The  
10 testimony of a child who is required to testify under this subsection may be taken in  
11 accordance with s. 972.11 (2m), if applicable.

12 **SECTION 29.** 970.03 (14) (b) of the statutes is amended to read:

13 970.03 (14) (b) At any preliminary examination, the court shall admit  
14 ~~videotape~~ an audiovisual recording of a statement under s. 908.08 upon making the  
15 findings required under s. 908.08 (3). The child who makes the statement need not  
16 be called as a witness and, under the circumstances specified in s. 908.08 (5) (b), may  
17 not be compelled to undergo cross-examination.

18 **SECTION 30.** 971.23 (1) (e) of the statutes is amended to read:

19 971.23 (1) (e) Any relevant written or recorded statements of a witness named  
20 on a list under par. (d), including any ~~videotaped~~ audiovisual recording of an oral  
21 statement of a child under s. 908.08, any reports or statements of experts made in  
22 connection with the case or, if an expert does not prepare a report or statement, a  
23 written summary of the expert's findings or the subject matter of his or her testimony,  
24 and the results of any physical or mental examination, scientific test, experiment or  
25 comparison that the district attorney intends to offer in evidence at trial.

