

## TITLE XLVII.

## Criminal Procedure.

## CHAPTER 967

## GENERAL PROVISIONS

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**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, arrest warrants or search 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.

History: 1971 c 298

**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.

**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.

**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.

**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 compensation 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.

Upon appointment the trial court is directed to inform counsel that his obligation to defendant continues after trial until a decision is made to appeal or forego an appeal and until relieved by the trial court. *Whitmore v. State*, 56 W (2d) 706, 203 NW (2d) 56.

County board may retain, at monthly salaries, attorneys to represent indigent defendants 60 Atty Gen 180

In counties having a corporation counsel it is better to have him participate in any proceeding before the court to set fees to be paid counsel for indigents; the district attorney may be allowed to appear 60 Atty. Gen. 393.