

State of Wisconsin



2021 Senate Bill 99

Date of enactment: **June 22, 2021**
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2021 WISCONSIN ACT 54

AN ACT to amend 968.38 (2m) (intro.), 968.38 (2m) (a) and 968.38 (5) (intro.) of the statutes; relating to: throwing or expelling a bodily substance at a public safety worker or prosecutor.

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

SECTION 1. 968.38 (2m) (intro.) of the statutes is amended to read:

968.38 (2m) (intro.) In a criminal action under s. 941.375 (2) or 946.43 (2m), the district attorney shall apply to the circuit court for his or her county for an order requiring the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

SECTION 2. 968.38 (2m) (a) of the statutes is amended to read:

968.38 (2m) (a) The district attorney has probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 941.375 (2) or 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant.

SECTION 3. 968.38 (5) (intro.) of the statutes is amended to read:

968.38 (5) (intro.) The court shall set a time for a hearing on the matter under sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the defend-

ant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 941.375 (2) or 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant, the court shall order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the defendant. The court shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."