

State of Wisconsin



1997 Assembly Bill 284

Date of enactment: April 27, 1998
Date of publication*: May 11, 1998

1997 WISCONSIN ACT 182

AN ACT to amend 938.296 (2) (b), 938.296 (4) (intro.), 968.38 (2) (a), 968.38 (3) (c) and 968.38 (4) (intro.); and to create 938.296 (3) (c) and (d), 968.38 (3) (d) and 971.13 (4) of the statutes; relating to: testing for the presence of the human immunodeficiency virus and sexually transmitted diseases in criminal defendants and juveniles alleged to be delinquent or in need of protection or services who are found not competent to proceed or not guilty by reason of mental disease or defect.

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

SECTION 1. 938.296 (2) (b) of the statutes is amended to read:

938.296 (2) (b) The district attorney or corporation counsel has probable cause to believe that the juvenile has significantly exposed the victim or alleged victim. If the juvenile is adjudicated delinquent ~~or is~~ found to be in need of protection or services or is found not responsible by reason of mental disease or defect under s. 938.30 (5), this paragraph does not apply.

SECTION 2. 938.296 (3) (c) and (d) of the statutes are created to read:

938.296 (3) (c) At any time after the juvenile is found not responsible by reason of mental disease or defect under s. 938.30 (5).

(d) If the court has determined that the juvenile is not competent to proceed under s. 938.30 (5) and has suspended proceedings on the petition, at any time after the determination that the juvenile is not competent to proceed.

SECTION 3. 938.296 (4) (intro.) of the statutes is amended to read:

938.296 (4) (intro.) On receipt of an application for an order under sub. (2), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the juvenile has significantly exposed the victim or alleged victim, the court shall order the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease. The court shall require the health care professional who performs the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), from making the test results part of the juvenile's permanent medical record and to disclose the results of the test to any of the following:

SECTION 4. 968.38 (2) (a) of the statutes is amended to read:

968.38 (2) (a) The district attorney has probable cause to believe that the defendant has significantly exposed the alleged victim or victim. If the defendant is

* Section 991.11, WISCONSIN STATUTES 1995-96: 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 as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

convicted or found not guilty by reason of mental disease or defect, this paragraph does not apply.

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

968.38 (3) (c) At any time after the defendant is convicted or is found not guilty by reason of mental disease or defect.

SECTION 6. 968.38 (3) (d) of the statutes is created to read:

968.38 (3) (d) If the court has determined that the defendant is not competent to proceed under s. 971.14 (4) and suspended the criminal proceedings, at any time after the determination that the defendant is not competent to proceed.

SECTION 7. 968.38 (4) (intro.) of the statutes is amended to read:

968.38 (4) (intro.) The court shall set a time for a hearing on the matter under sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; ~~or~~ 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 coun-

sel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the defendant has significantly exposed the victim or alleged victim, 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 HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease. 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, notwithstanding s. 252.15 (4) (c), 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 8. 971.13 (4) of the statutes is created to read:

971.13 (4) The fact that a defendant is not competent to proceed does not preclude a hearing under s. 968.38 (4) unless the probable cause finding required under s. 968.38 (4) cannot be fairly made without the personal participation of the defendant.

SECTION 9. Initial applicability.

(1) This act first applies to a person who is alleged to have committed a violation of section 940.225, 948.02, 948.025, 948.05, 948.06 or 948.095 of the statutes on the effective date of this subsection.