



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1995 SENATE BILL 323**

March 28, 1996 – Offered by Representative GREEN.

1     **AN ACT** *to repeal* 48.296 (2) (b), 48.296 (3) (c) and (d) and 48.296 (4) (intro.); **to**  
2     *amend* 48.296 (2) (b), 48.296 (4) (intro.), 938.296 (2) (b), 938.296 (4) (intro.),  
3     968.38 (2) (a), 968.38 (3) (c) and 968.38 (4) (intro.); and **to create** 48.296 (3) (c)  
4     and (d), 938.296 (3) (c) and (d), 968.38 (3) (d) and 971.13 (4) of the statutes;  
5     **relating to:** testing criminal defendants who are found not competent to  
6     proceed or not guilty by reason of mental disease or defect for the presence of  
7     the human immunodeficiency virus and sexually transmitted diseases.

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

8     **SECTION 1.** 48.296 (2) (b) of the statutes is amended to read:  
9     48.296 (2) (b) The district attorney or corporation counsel has probable cause  
10    to believe that the child has significantly exposed the victim or alleged victim. If the  
11    child is adjudicated delinquent ~~or~~ is found to be in need of protection or services or  
12    is found not responsible by reason of mental disease or defect under s. 48.30 (5), this  
13    paragraph does not apply.

1           **SECTION 2.** 48.296 (2) (b) of the statutes, as affected by 1995 Wisconsin Act ...  
2 (this act), is repealed.

3           **SECTION 3.** 48.296 (3) (c) and (d) of the statutes are created to read:

4           48.296 (3) (c) At any time after the child is found not responsible by reason of  
5 mental disease or defect under s. 48.30 (5).

6           (d) If the court has determined that the child is not competent to proceed under  
7 s. 48.30 (5) and has suspended proceedings on the petition, at any time after the  
8 determination that the child is not competent to proceed.

9           **SECTION 4.** 48.296 (3) (c) and (d) of the statutes, as created by 1995 Wisconsin  
10 Act ... (this act), are repealed.

11           **SECTION 5.** 48.296 (4) (intro.) of the statutes is amended to read:

12           48.296 (4) (intro.) On receipt of an application for an order under sub. (2), the  
13 court shall set a time for a hearing on the application. If the child has been found  
14 not competent to proceed under s. 48.30 (5), the court may hold a hearing under this  
15 subsection only if the court first determines that the probable cause finding can be  
16 fairly made without the personal participation of the child. If, after hearing, the  
17 court finds probable cause to believe that the child has significantly exposed the  
18 victim or alleged victim, the court shall order the child to submit to a test or a series  
19 of tests administered by a health care professional to detect the presence of HIV,  
20 antigen or nonantigenic products of HIV, an antibody to HIV or a sexually  
21 transmitted disease. The court shall require the health care professional who  
22 performs the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), from  
23 making the test results part of the child's permanent medical record and to disclose  
24 the results of the test to any of the following:

1           **SECTION 6.** 48.296 (4) (intro.) of the statutes, as affected by 1995 Wisconsin Act  
2 .... (this act), is repealed.

3           **SECTION 7.** 938.296 (2) (b) of the statutes, as created by 1995 Wisconsin Act 77,  
4 is amended to read:

5           938.296 (2) (b) The district attorney or corporation counsel has probable cause  
6 to believe that the juvenile has significantly exposed the victim or alleged victim. If  
7 the juvenile is adjudicated delinquent ~~or~~, is found to be in need of protection or  
8 services or is found not responsible by reason of mental disease or defect under s.  
9 938.30 (5), this paragraph does not apply.

10          **SECTION 8.** 938.296 (3) (c) and (d) of the statutes are created to read:

11          938.296 (3) (c) At any time after the juvenile is found not responsible by reason  
12 of mental disease or defect under s. 938.30 (5).

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

16          **SECTION 9.** 938.296 (4) (intro.) of the statutes, as created by 1995 Wisconsin Act  
17 77, is amended to read:

18          938.296 (4) (intro.) On receipt of an application for an order under sub. (2), the  
19 court shall set a time for a hearing on the application. If the juvenile has been found  
20 not competent to proceed under s. 938.30 (5), the court may hold a hearing under this  
21 subsection only if the court first determines that the probable cause finding can be  
22 fairly made without the personal participation of the juvenile. If, after hearing, the  
23 court finds probable cause to believe that the juvenile has significantly exposed the  
24 victim or alleged victim, the court shall order the juvenile to submit to a test or a  
25 series of tests administered by a health care professional to detect the presence of

1 HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually  
2 transmitted disease. The court shall require the health care professional who  
3 performs the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), from  
4 making the test results part of the juvenile's permanent medical record and to  
5 disclose the results of the test to any of the following:

6 **SECTION 10.** 968.38 (2) (a) of the statutes is amended to read:

7 968.38 (2) (a) The district attorney has probable cause to believe that the  
8 defendant has significantly exposed the alleged victim or victim. If the defendant is  
9 convicted or found not guilty by reason of mental disease or defect, this paragraph  
10 does not apply.

11 **SECTION 11.** 968.38 (3) (c) of the statutes is amended to read:

12 968.38 (3) (c) At any time after the defendant is convicted or is found not guilty  
13 by reason of mental disease or defect.

14 **SECTION 12.** 968.38 (3) (d) of the statutes is created to read:

15 968.38 (3) (d) If the court has determined that the defendant is not competent  
16 to proceed under s. 971.14 (4) and suspended the criminal proceedings, at any time  
17 after the determination that the defendant is not competent to proceed.

18 **SECTION 13.** 968.38 (4) (intro.) of the statutes is amended to read:

19 968.38 (4) (intro.) The court shall set a time for a hearing on the matter under  
20 sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the  
21 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)  
22 applies; ~~or~~ after conviction or a finding of not guilty by reason of mental disease or  
23 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that  
24 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district  
25 attorney and the defendant notice of the hearing at least 72 hours prior to the

1 hearing. The defendant may have counsel at the hearing, and counsel may examine  
2 and cross-examine witnesses. If the court finds probable cause to believe that the  
3 defendant has significantly exposed the victim or alleged victim, the court shall order  
4 the defendant to submit to a test or a series of tests administered by a health care  
5 professional to detect the presence of HIV, antigen or nonantigenic products of HIV,  
6 an antibody to HIV or a sexually transmitted disease. The court shall require the  
7 health care professional who performs the test to disclose the test results to the  
8 defendant. The court shall require the health care professional who performs the  
9 test to refrain, notwithstanding s. 252.15 (4) (c), from making the test results part  
10 of the defendant's permanent medical record and to disclose the results of the test  
11 to any of the following:

12 **SECTION 14.** 971.13 (4) of the statutes is created to read:

13 971.13 (4) The fact that a defendant is not competent to proceed does not  
14 preclude a hearing under s. 968.38 (4) unless the probable cause finding required  
15 under s. 968.38 (4) cannot be fairly made without the personal participation of the  
16 defendant.

17 **SECTION 15. Initial applicability.**

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

21 **SECTION 16. Effective dates.** This act takes effect on the day after  
22 publication, except as follows:

