



THE CRIMINAL JUSTICE SYSTEM IN WISCONSIN:  
AN OVERVIEW

STAFF BRIEF 78-5

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Wisconsin Legislative Council Staff  
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State Capitol  
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ACQUISITION

Wisconsin Legislative Council Staff

Madison, Wisconsin

Special Committee on Criminal Justice  
and the Physically and Developmentally  
Disabled

August 9, 1978

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INTRODUCTION

On July 27, 1978, the Legislative Council established the Special Committee on Criminal Justice and the Physically and Developmentally Disabled to study the subject matter of 1977 Assembly Joint Resolution 65. Assembly Joint Resolution 65 directs the Committee to study all phases of the Wisconsin criminal justice system, from initial interrogation through post-release programs, as it relates to the physically and developmentally disabled, and set forth the rights of the physically and developmentally disabled with respect to the criminal justice system and ensure these rights are made known. The Committee is to report its findings and recommendations to the Legislative Council for possible introduction in the 1979 Legislature.

Before discussing these problems, it is necessary to have an understanding of the various stages of Wisconsin procedures in this area. Therefore, this Staff Brief provides a basic overview of the principle stages in the criminal justice system. Although there is no specific emphasis on the difficulties a developmentally disabled or physically handicapped person might meet within the criminal process, this Brief also cites recent Wisconsin enactments which may help to alleviate these difficulties.

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\*This Staff Brief was prepared by Ronald Sklansky, Staff Attorney,  
Legislative Council Staff.

PART I

STAGES IN THE CRIMINAL JUSTICE SYSTEM

A. Complaint and Arrest

Formal criminal proceedings begin with the complaint. It is a written statement of the essential facts constituting the offense charged and is normally issued by the district attorney of the county where the crime is alleged to have been committed. The action commences when the complaint is filed with the judge. [Sections 968.01 and 968.02 (1) and (2), Wis. Stats.]

The complaint may be issued and filed before, after or without a formal arrest. In some cases, a prosecutor may prepare a complaint based on the statements of citizens and seek an arrest warrant from a local judge. In other cases, a prosecutor may prepare the complaint following a warrantless arrest and file the complaint in court at the defendant's initial appearance. In still other cases, after informal meetings between the prosecutor and defendant, the latter may voluntarily appear in court at which time the complaint will be filed. [Sections 968.02 (2) and 968.04 (1), Wis. Stats.; see also Defense of Criminal Cases in Wisconsin, Knoppke-Wetzel (1974), hereafter cited as Criminal Cases.]

An arrest warrant may be issued on the basis of a complaint. A judge must also issue a warrant for a defendant named in an indictment by a grand jury. Finally, an arrest may be made without a warrant when a law enforcement officer:

1. Believes, on reasonable grounds, that a warrant for the person's arrest has been issued in Wisconsin.
2. Believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state.
3. Finds that there are reasonable grounds to believe that the person is committing or has committed a crime. [Sections 968.06 and 968.07, Wis. Stats.]

B. Search and Seizure

Generally, searches and seizures may take place in connection with a lawful arrest, under a valid search warrant, as part of temporary questioning or with the consent of the person searched. All necessary force may be used to execute a search warrant, and a person executing a warrant may reasonably detain and search any person on the premises at the time to protect himself from attack or to prevent the disposal of property. [Sections 968.10, 968.14 and 968.16, Wis. Stats.]

In a more informal setting, a police officer may stop a person for questioning in a public place when the officer reasonably expects that the person is committing, is about to commit or has committed a crime and may demand the name and address of the person and an explanation of his or her conduct. The officer may also search a person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. [Sections 968.24 and 968.25, Wis. Stats.]

#### C. John Doe Proceedings

A John Doe proceeding is a special method of issuing a complaint and restraining a defendant. Based on a citizen's complaint, a judge has the discretion to initiate a secret proceeding in order to determine whether a crime has been committed. If the judge determines that it appears probable from testimony at the proceeding that a crime has been committed and that a certain person committed the crime, a complaint and an arrest warrant shall be issued. [Section 968.26, Wis. Stats.]

#### D. Bail

The right to bail and release from custody can be an issue during many stages of a criminal proceeding. However, of great importance to any defendant is the opportunity to deposit bail immediately after arrest.

Bail, in misdemeanors and felonies, may be set by a judge. Further, the Wisconsin Supreme Court is required to adopt, by rule, a schedule of cash bail for all misdemeanors. When the amount of cash bail and other bail conditions have been set, any law enforcement officer may take the cash bail and release the defendant to appear in accordance with set conditions. However, nothing requires the release of a defendant from custody when an officer is of the opinion that the defendant is not in a fit condition to care for his or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others. If such a defendant is not released, he or she may apply to an appropriate judge for release on bail. [Sections 969.02, 969.03, 969.06 and 969.07, Wis. Stats., as affected by Ch. 449, Laws of 1977.]

#### E. The Initial Appearance

The initial appearance before a judge in a criminal proceeding is also very important to a defendant. At the initial appearance, the judge has the following duties:

1. The judge must inform the defendant of the charge and furnish the defendant with a copy of the complaint. In the case

of a felony, the judge shall also inform the defendant of the penalties for the charged felony.

2. The judge must inform the defendant of his or her right to counsel and that an attorney may be appointed if the defendant is unable to afford one.

3. The judge must inform the defendant that, if charged with a felony, he or she is entitled to a preliminary examination unless it is waived.

4. The judge must set bail.

5. Upon request of the defendant charged with a misdemeanor, the judge must set a date for trial. [Section 970.02, Wis. Stats., as affected by Chs. 29 and 449, Laws of 1977.]

#### F. Preliminary Examination

A preliminary examination is a hearing before a court for the purpose of determining whether probable cause exists to believe a felony has been committed by the defendant. If the court finds such probable cause, it binds the defendant over for trial. However, if the court does not find probable cause, it orders the defendant discharged immediately. The discharge does not prevent the district attorney from filing another complaint if he or she has or discovers additional evidence. [Sections 970.03 and 970.04, Wis. Stats., as affected by Ch. 449, Laws of 1977.]

#### G. Arraignment

The purpose of an arraignment is to obtain the defendant's plea and, if the plea is not guilty or not guilty by reason of mental disease or defect, to determine whether the trial should be by jury or by the court. The proceeding takes place in the trial court where the district attorney delivers to the defendant a copy of the charges. The charges are read by the prosecutor unless the defendant waives the reading. If the defendant appears for arraignment without counsel, the court must advise the defendant of the right to counsel. [Section 971.05, Wis. Stats., and Criminal Cases, Ch. 10.]

At the arraignment the defendant may plead guilty, not guilty, no contest or not guilty by reason of mental disease or defect. The defendant also may stand mute or refuse to plead, in which case the court must enter a plea of not guilty on the defendant's behalf. On a plea of guilty or no contest, the court must question the defendant to determine that the plea is made voluntarily with an understanding of the nature of the charge and of the potential punishment if

convicted. The court also must make such inquiry as satisfies it that the defendant in fact committed the crime charged. [Sections 971.06 and 971.08, Wis. Stats.]

#### H. Competency to Stand Trial

The question of competency is normally an issue raised at the outset of the process, although it may be raised at any time in a criminal proceeding. No person, who as a result of mental disease or defect is unable to understand the proceedings against him or her or to assist in the defense, can be tried, convicted, sentenced or committed for the commission of an offense so long as the incapacity endures. The issue of competency involves the defendant's mental state at the time of trial and is independent of the issue of his or her mental state at the time of the commission of the offense. [Section 971.13, Wis. Stats., and Criminal Cases, Ch. 7.]

If it has been shown that the defendant has probably committed the crime charged and the issue of the defendant's competency has been raised, the court must appoint at least one physician to examine and report upon the condition of the defendant. The court also has the option to commit the defendant to a state or county mental health facility for the purpose of examination for a specified period not to exceed 60 days. Upon receipt of medical reports, the defendant's competency to proceed must be promptly determined by the court. [Section 971.14 (1), (2) and (3), Wis. Stats.]

If the court determines that the defendant lacks competency to proceed, he or she shall be committed to the custody of the Department of Health and Social Services and placed in an appropriate institution. The defendant must be periodically reexamined and the competency of the defendant periodically redetermined by the court. If it is determined that the defendant has regained competency to proceed, the proceeding will be resumed. If it is determined that the defendant is not regaining competency or has not regained competency within 24 months of commitment, the court must order the defendant discharged from the commitment subject to the right of the Department or any other person to institute civil, involuntary commitment proceedings against the defendant. [Section 971.14 (5), Wis. Stats.]

#### I. Trial

This portion of the criminal process is not presented in detail in this paper since it is known by members of the general public. The proceedings normally include opening statements, presentation of evidence, motions and closing arguments by the defendant's legal counsel and the prosecutor, rulings on motions and instructions to the jury by the judge and verdict and judgment by the jury and court. The

procedure in court during the trial of a criminal matter is, for the most part, the same procedure as used in the trial of a civil matter. [Section 972.02, Wis. Stats.]

### J. Sentencing

Upon conviction, a defendant must be sentenced. Generally, the judge may impose a fine on the defendant, place the defendant on probation, imprison the defendant or, for misdemeanors, impose imprisonment coupled with a work-release program. If imprisoned, a defendant is faced with various legal questions such as reduction of sentence for "good time," parole hearings, grievances within the state institutions or civil matters affecting the defendant and his family. [Chapter 973, Wis. Stats.]

After conviction and incarceration, prisoners continue to have a wide range of needs for legal assistance. They may be dissatisfied with their conviction or sentencing and wish to assert some defect in these procedures. They may have pressing civil legal problems -- domestic relations, wage claims, support orders, licenses, bankruptcy -- which are worrisome. And they may feel wronged by decisions made concerning them by correctional personnel -- work assignments, transfer, discipline, meal restrictions, parole. [Criminal Cases, Chs. 12 and 17.]

PART II

WHEN THE PRESENCE OF THE DEFENDANT IS REQUIRED

The required presence of a defendant in various stages of the criminal process may be of importance to the developmentally disabled or physically handicapped person. Section 971.04, Wis. Stats., generally provides that the defendant must be present at:

- a. The arraignment.
- b. The Trial.
- c. All proceedings when the jury is being selected.
- d. Any evidentiary hearing.
- e. Any viewing of a scene by the jury.
- f. The returning of the verdict by the jury.
- g. The pronouncing of judgment and the imposition of sentence.
- h. Any other proceeding when ordered by the court.

If authorized by the defendant in writing, and with the permission of the court, the defendant's attorney may act in a misdemeanor case without the presence of the defendant. Further, if the defendant is present at the beginning of a trial and voluntarily leaves without the permission of the court, the trial must continue.

PART III

RECENT WISCONSIN ENACTMENTS

In the 1977 Session, the Wisconsin Legislature took a number of actions relating to the problems of the developmentally disabled and the physically handicapped. Of these actions, two legislative enactments relate to easing the difficulties faced by disabled persons when they are participants in the criminal process.

Section 47.20, Wis. Stats., was created by SECTION 567m, Ch. 29, Laws of 1977. The statute provides that the Wisconsin Service Bureau for the Deaf may, at the request of deaf persons, provide funds for payment, in whole or in part, of fees charged by interpreters for the deaf. However, the payments may only be made in cases of demonstrated financial need where funds from other sources are unavailable. The statute also establishes the following priority system in the funding of interpreters' services:

- a. Interpreters for medical, psychiatric, psychological and other counseling services.
- b. Interpreters for legal services and civil court proceedings.
- c. Interpreters for dealing with law enforcement personnel.
- d. Interpreters for meetings of unions or professional associations or groups.
- e. Interpreters for dealings with any agency or office of the federal, state, county or municipal government.

[It should also be noted that an existing statute, s. 885.37, Wis. Stats., provides that in specified trials and examinations in which the rights of a person unable to speak or hear adequately are being determined, the body conducting the matter shall appoint an interpreter. The necessary expense of furnishing the interpreter must be paid by the unit of government requiring the proceeding if satisfactory proof is offered that the person is unable to pay.]

In limited situations, hearing and speech impaired persons now are able to receive teletypewriter services in emergencies. [Section 59.07 (42m), Wis. Stats., as created by Ch. 82, Laws of 1977.] The statute provides that in any county having a population of 200,000 or more, the county board shall install in the sheriff's department a teletypewriter which must be available to receive calls from hearing and speech impaired persons seeking emergency services. In cities having a population of 30,000 or more which are not contained in such a county, the city shall install a teletypewriter in either the police or fire department. If two or more cities having a population

of 30,000 or more are contained in one county, the county board shall install the teletypewriter in the sheriff's department and no other teletypewriter shall be required in the cities.

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