CHAPTER 971
CRIMINAL PROCEDURE – PROCEEDINGS BEFORE AND AT TRIAL

971.01 Filing of the information.
971.02 Preliminary examination; when prerequisite to an information or indictment.
971.025 Forms.
971.03 Form of information.
971.04 Defendant to be present.
971.05 Arraignment.
971.06 Pleas.
971.07 Multiple defendants.
971.08 Pleas of guilty and no contest; withdrawal thereof.
971.095 Consultation with and notices to victim.
971.10 Speedy trial.
971.105 Child victims and witnesses; duty to expedite proceedings.
971.11 Prompt disposition of intrastate detainers.
971.12 Joinder of crimes and of defendants.
971.13 Competency.
971.14 Competency proceedings.
971.15 Mental responsibility of defendant.
971.16 Examination of defendant.
971.165 Trial of actions upon plea of not guilty by reason of mental disease or defect.
971.17 Commitment of persons found not guilty by reason of mental disease or mental defect.
971.18 Inadmissibility of statements for purposes of examination.
971.20 Substitution of judge.
971.23 Discovery and inspection.
971.26 Formal defects.
971.27 Lost information, complaint or indictment.
971.28 Pleading judgment.
971.29 Amending the charge.
971.30 Motion defined.
971.31 Motions before trial.
971.315 Inquiry upon dismissal.
971.32 Ownership, how alleged.
971.33 Possession of property, what sufficient.
971.34 Intent to defraud.
971.36 Theft; pleading and evidence; subsequent prosecutions.
971.365 Crimes involving certain controlled substances.
971.366 Use of another's personal identifying information: charges.
971.367 False statements to financial institutions: charges.
971.37 Deferred prosecution programs; domestic abuse.
971.375 Deferred prosecution agreements; sanctions.
971.38 Deferred prosecution program; community service work.
971.39 Deferred prosecution program; agreements with department.
971.40 Deferred prosecution agreement; placement with volunteers in probation program.
971.41 Deferred prosecution program; worthless checks.

971.01 Filing of the information. **(1)** The tribal prosecutor shall examine all facts and circumstances connected with any preliminary examination touching the commission of any crime if the defendant has been bound over for trial and, subject to s. 970.03 (10), shall file an information according to the evidence on such examination subscribing his or her name thereto.

(2) The information shall be filed with the clerk within 30 days after the completion of the preliminary examination or waiver thereof except that the tribal prosecutor may move the court wherein the information is to be filed for an order extending the period for filing such information for cause. Notice of such motion shall be given the defendant. Failure to file the information within such time shall entitle the defendant to have the action dismissed without prejudice.

971.02 Preliminary examination; when prerequisite to an information or indictment. **(1)** If the defendant is charged with a crime in any complaint, including a complaint issued under s. 968.26, or when the defendant has been returned to this Nation for prosecution through extradition proceedings under ch. 976, or any indictment, no information or indictment shall be filed until the defendant has had a preliminary examination, unless the defendant waives such examination in writing or in open court or unless the defendant is a corporation or limited liability company. The defendant may only waive the preliminary examination if the defendant's tribal enrollment status has been confirmed. The omission of the preliminary examination shall not invalidate any information unless the defendant moves to dismiss prior to the entry of a plea.

(2) Upon motion and for cause shown, the trial court may remand the case for a preliminary examination. "Cause" means:

(a) The preliminary examination was waived; and
(b) Defendant did not have advice of counsel prior to such waiver; and
(c) Defendant denies that probable cause exists to hold him or her for trial; and
(d) Defendant intends to plead not guilty.

971.025 Forms. **(1)** In all criminal actions in the trial court, the parties and court officials shall use the standard court forms, commencing the date on which the forms are adopted by the court.

(2) A party or court official may supplement a court form with additional material.

(3) A court may not dismiss a case, refuse a filing or strike a pleading for failure of a party to use a standard court form under sub. (1) or to follow format rules but shall require the party to submit, within 10 days, a corrected form and may impose statutory fees or costs or both.

(4) If a standard court form is not created for an action or pleading undertaken by a party or court official, the party or court official may use a format consistent with any statutory or court requirement for the action or pleading.

971.03 Form of information. The information may be in the following form:
HO-CHUNK NATION,
Trial Court,

The Ho-Chunk Nation
vs.
.... (Name of defendant).
I, ... tribal prosecutor for the Ho-Chunk Nation, hereby inform the court that on the .... day of ...., in the year .... (year), at said location the defendant did (state the crime) .... contrary to section .... of the statutes.
Dated ...., ... (year),
.... Tribal Prosecutor

971.04 Defendant to be present. (1) Except as provided in subs. (2) and (3), the defendant shall be present, either in person, telephone, or video conferencing:

(a) At the arraignment;
(b) At trial;
(c) During voir dire of the trial jury;
(d) At any evidentiary hearing;
(e) At any view by the jury;
(f) When the jury returns its verdict;
(g) At the pronouncement of judgment and the imposition of sentence;
(h) At any other proceeding when ordered by the court.

(2) A defendant charged with a misdemeanor may authorize his or her attorney in writing to act on his or her behalf in any manner, with leave of the court, and be excused from attendance at any or all proceedings.

(3) If the defendant is present at the beginning of the trial and thereafter, during the progress of the trial or before the verdict of the jury has been returned into court, voluntarily absents himself or herself from the presence of the court without leave of the court, the trial or return of verdict of the jury in the case shall not thereby be postponed or delayed, but the trial or submission of said case to the jury for verdict and the return of verdict thereon, if required, shall proceed in all respects as though the defendant were present in court at all times. A defendant need not be present at the pronouncement or entry of an order granting or denying relief under s. 974.02, 974.06, or 974.07. If the defendant is not present, the time for appeal from any order under ss. 974.02, 974.06, and 974.07 shall commence after a copy has been served upon the attorney representing the defendant, or upon the defendant if he or she appeared without counsel. Service of such an order shall be complete upon mailing. A defendant appearing without counsel shall supply the court with his or her current mailing address. If the defendant fails to supply the court with a current and accurate mailing address, failure to receive a copy of the order granting or denying relief shall not be a ground for tolling the time in which an appeal must be taken.

971.05 Arraignment. If the defendant is charged with a crime, the arraignment may be in the trial court or the court which conducted the preliminary examination or accepted the defendant's waiver of the preliminary examination. The arraignment shall be conducted in the following manner:

(1) The arraignment shall be in open court.

(2) If the defendant appears for arraignment without counsel, the court shall advise the defendant of the defendant's right to counsel as provided in s. 970.02.

(3) The tribal prosecutor shall deliver to the defendant a copy of the information in felony cases and in all cases shall read the information or complaint to the defendant unless the defendant waives such reading. Thereupon the court shall ask for the defendant's plea.

(4) The defendant then shall plead unless in accordance with s. 971.31 the defendant has filed a motion which requires determination before the entry of a plea. The court may extend the time for the filing of such motion.

971.06 Pleas. (1) A defendant charged with a criminal offense may plead as follows:

(a) Guilty.

(b) Not guilty.

(c) No contest, subject to the approval of the court.

(d) Not guilty by reason of mental disease or defect. This plea may be joined with a plea of not guilty. If it is not so joined, this plea admits that but for lack of mental capacity the defendant committed all the essential elements of the offense charged in the indictment, information or complaint.

(2) If a defendant stands mute or refuses to plead, the court shall direct the entry of a plea of not guilty on the defendant's behalf.

(3) At the time a defendant enters a plea, the court may not require the defendant to disclose his or her United States citizenship status.

971.07 Multiple defendants. Defendants who are jointly charged may be arraigned separately or together, in the discretion of the court.

971.08 Pleas of guilty and no contest; withdrawal thereof. (1) Before the court accepts a plea of guilty or no contest, it shall do all of the following:

(a) Address the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted.

(b) Make such inquiry as satisfies it that the defendant in fact committed the crime charged.

(d) Inquire of the tribal prosecutor whether he or she has complied with s. 971.095 (2).

(e) Inquire as to whether the defendant is an enrolled member of a federally recognized tribe.

(3) Any plea of guilty which is not accepted by the court or which is subsequently permitted to be withdrawn shall not be used against the defendant in a subsequent action.

971.095 Consultation with and notices to victim. (1) In this section:

(a) "Tribal prosecutor" has the meaning given in s. 950.02 (2m).

(b) "Victim" has the meaning given in s. 950.02 (4).

(2) In any case in which a defendant has been charged with a crime, the tribal prosecutor shall, as soon as practicable, offer all of the victims in the case who have requested an opportunity to confer with the tribal prosecutor concerning the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations. The duty to confer under this subsection does not limit the obligation of the tribal prosecutor to exercise his or her discretion concerning the handling of any criminal charge against the defendant.

(3) At the request of a victim, a tribal prosecutor shall make a reasonable attempt to provide the victim with notice of the date, time and place of scheduled court proceedings in a case involving the prosecution of a crime of which he or she is a victim and any changes in the date, time or place of a scheduled court proceeding for which the victim has received notice. This subsection does not apply to a proceeding held before the initial appearance to set conditions of release under ch. 969.

(4) If a person is arrested for a crime but the tribal prosecutor decides not to charge the person with a crime, the tribal prosecutor shall make a reasonable attempt to inform all of the victims of the act for which the person was arrested that the person will not be charged with a crime at that time.

(5) If a person is charged with committing a crime and the charge against the person is subsequently dismissed, the tribal prosecutor shall make a reasonable attempt to inform all of the victims of the crime with which the person was charged that the charge has been dismissed.

(6) A tribal prosecutor shall make a reasonable attempt to provide information concerning the disposition of a case involving a crime to any victim of the crime who requests the information.

971.10 Speedy trial. (1) In misdemeanor actions trial shall commence within 60 days from the date of the defendant's initial appearance in court.

(2) (a) The trial of a defendant charged with a felony shall commence within 90 days from the date trial is demanded by any party in writing or on the record. If the demand is made in writing, a copy shall be served upon the opposing party. The demand may not be made until after the filing of the information or indictment.

(b) If the court is unable to schedule a trial pursuant to par. (a), the court shall request assignment of another judge, if available.

(3) (a) A court may grant a continuance in a case, upon its own motion or the motion of any party, if the ends of justice served by taking action outweigh the best interest of the public and the defendant in a speedy trial. A continuance shall not be granted under this paragraph unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial.

(b) The factors, among others, which the court shall consider in determining whether to grant a continuance under par. (a) are:

1. Whether the failure to grant the continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice.

2. Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.

3. The interests of the victim, as defined in s. 950.02 (4).

(c) No continuance under par. (a) may be granted because of general congestion of the court's calendar or the lack of diligent preparation or the failure to obtain available witnesses on the part of the Nation.

(4) Every defendant not tried in accordance with this section shall be discharged from custody but the obligations of the bond or other conditions of release of a defendant shall continue until modified or until the bond is released or the conditions removed.

971.105 Child victims and witnesses; duty to expedite proceedings. In all criminal hearings involving a child victim or witness, as defined in s. 950.02, the court and the tribal prosecutor shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well−being of a child victim or witness.

971.11 Prompt disposition of intrastate detainers.

(2) If the crime charged is a felony, the tribal prosecutor shall either move to dismiss the pending case or arrange a date for preliminary examination as soon as convenient and notify the warden or superintendent of the prison thereof, unless such examination has already been held or has been waived. After the preliminary examination or upon waiver thereof, the tribal prosecutor shall file an information, unless it has already been filed, and mail a copy thereof to the warden or superintendent for service on the inmate. The tribal prosecutor shall bring the case on for trial within 120 days after receipt of the request subject to s. 971.10.

(3) If the crime charged is a misdemeanor, the tribal prosecutor shall either move to dismiss the charge or bring it on for trial within 90 days after receipt of the request.

(4) If the defendant desires to plead guilty or no contest to the complaint or to the information served upon him or her, the defendant shall notify the tribal prosecutor thereof. The tribal prosecutor shall thereupon arrange for the defendant's arraignment as soon as possible and the court may receive the plea and pronounce judgment.

(6) The prisoner shall be delivered into the custody Ho-Chunk Nation law enforcement, and the prisoner shall be retained in that custody during all proceedings under this section. Ho-Chunk Nation law enforcement shall return the prisoner to the prison upon the completion of the proceedings and during any adjournments or continuances and between the preliminary examination and the trial, except that if the department certifies a jail as being suitable to detain the prisoner, he or she may be detained there until the court disposes of the case.

(7) If the tribal prosecutor moves to dismiss any pending case or if it is not brought on for trial within the time specified in sub.(2) or (3) the case shall be dismissed unless the defendant has escaped or otherwise prevented the trial, in which case the request for disposition of the case shall be deemed withdrawn and of no further legal effect. Nothing in this section prevents a trial after the period specified in sub. (2) or (3) if a trial commenced within such period terminates in a mistrial or a new trial is granted.

971.12 Joinder of crimes and of defendants.
(1) JOINDER OF CRIMES. Two or more crimes may be charged in the same complaint, information or indictment in a separate count for each crime if the crimes charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan. When a misdemeanor is joined with a felony, the trial shall be in the court with jurisdiction to try the felony.

(2) JOINDER OF DEFENDANTS. Two or more defendants may be charged in the same complaint, information or indictment if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting one or more crimes. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

(3) RELIEF FROM PREJUDICIAL JOINDER. If it appears that a defendant or the Nation is prejudiced by a joinder of crimes or of defendants in a complaint, information or indictment or by such joinder for trial together, the court may order separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. The tribal prosecutor shall advise the court prior to trial if the tribal prosecutor intends to use the statement of a codefendant which implicates another defendant in the crime charged. Thereupon, the judge shall grant a severance as to any such defendant.

(4) TRIAL TOGETHER OF SEPARATE CHARGES. The court may order 2 or more complaints, informations or indictments to be tried together if the crimes and the defendants, if there is more than one, could have been joined in a single complaint, information or indictment. The procedure shall be the same as if the prosecution were under such single complaint, information or indictment.

971.13 Competency. (1) No person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

(2) A defendant shall not be determined incompetent to proceed solely because medication has been or is being administered to restore or maintain competency.

(3) The fact that a defendant is not competent to proceed does not preclude any legal objection to the prosecution under s. 971.31, which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

(4) The fact that a defendant is not competent to proceed does not preclude a hearing under s. 968.38 (4) or (5) unless the probable cause finding required to be made at the hearing cannot be fairly made without the personal participation of the defendant.

971.14 Competency proceedings. (1g) DEFINITION. In this section, "department" means the department of health.

(1r) PROCEEDINGS. (a) The court shall proceed under this section whenever there is reason to doubt a defendant's competency to proceed.

(b) If reason to doubt competency arises after the defendant has been bound over for trial after a preliminary examination, or after a finding of guilty has been rendered by the jury or made by the court, a probable cause determination shall not be required and the court shall proceed under sub. (2).

(c) Except as provided in par. (b), the court shall not proceed under sub. (2) until it has found that it is probable that the defendant committed the offense charged. The finding may be based upon the complaint or, if the defendant submits an affidavit alleging with particularity that the averments of the complaint are materially false, upon the complaint and the evidence presented at a hearing ordered by the court. The defendant may call and cross−examine witnesses at a hearing under this paragraph but the court shall limit the issues and witnesses to those required for determining probable cause. Testimony may be received into the record of the hearing by telephone or live audiovisual means. If the court finds that any charge lacks probable cause, it shall dismiss the charge without prejudice and release the defendant except as provided in s. 971.31 (6).

(2) EXAMINATION. (a) The court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant. If an inpatient examination is determined by the court to be necessary, the defendant may be committed to a suitable mental health facility for the examination period specified in par. (c), which shall be deemed days spent in custody under s. 973.155. If the examination is to be conducted by the department, the court shall order the individual to the facility designated by the department.

(am) Notwithstanding par. (a), if the court orders the defendant to be examined by the department or a department facility, the department shall determine where the examination will be conducted, who will conduct the examination and whether the examination will be conducted on an inpatient or outpatient basis. Any such outpatient examination shall be conducted in a jail or a locked unit of a facility. In any case under this paragraph in which the department determines that an inpatient examination is necessary, the 15−day period under par. (c) begins upon the arrival of the defendant at the inpatient facility. If an outpatient examination is begun by or through the department, and the department later determines that an inpatient examination is necessary, Ho-Chunk Nation law enforcement shall transport the defendant to the inpatient facility designated by the department, unless the defendant has been released on bail.

(b) If the defendant has been released on bail, the court may not order an involuntary inpatient examination unless the defendant fails to cooperate in the examination or the examiner informs the court that inpatient observation is necessary for an adequate examination.

(c) Inpatient examinations shall be completed and the report of examination filed within 15 days after the examination is ordered or as specified in par. (am), whichever is applicable, unless, for good cause, the facility or examiner appointed by the court cannot complete the

examination within this period and requests an extension. In that case, the court may allow one 15−day extension of the examination period. Outpatient examinations shall be completed and the report of examination filed within 30 days after the examination is ordered.

(d) If the court orders that the examination be conducted on an inpatient basis, Ho-Chunk law enforcement shall transport any defendant not free on bail to the examining facility within a reasonable time after the examination is ordered and shall transport the defendant to the jail within a reasonable time after Ho-Chunk Nation law enforcement and department of community programs of the county in which the defendant is jailed in receive notice from the examining facility that the examination has been completed.

(e) The examiner shall personally observe and examine the defendant and shall have access to his or her past or present treatment records, which include the registration and all other records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence and that are maintained by the department; by department within the Ho-Chunk Nation or county departments under Wisconsin Statute s. 51.42 or 51.437 and their staffs; by treatment facilities; or by psychologists licensed under Wisconsin Statute s. 455.04 (1) or licensed mental health professionals who are not affiliated with a county department or treatment facility. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under Wisconsin Statute s. 51.42 or 51.437, or a treatment facility, if the notes or records are not available to others

(f) A defendant ordered to undergo examination under this section may receive voluntary treatment appropriate to his or her medical needs. The defendant may refuse medication and treatment except in a situation where the medication or treatment is necessary to prevent physical harm to the defendant or others.

(g) The defendant may be examined for competency purposes at any stage of the competency proceedings by physicians or other experts chosen by the defendant or by the tribal prosecutor, who shall be permitted reasonable access to the defendant for purposes of the examination.

(3) REPORT. The examiner shall submit to the court a written report which shall include all of the following:

(a) A description of the nature of the examination and an identification of the persons interviewed, the specific records reviewed and any tests administered to the defendant.

(b) The clinical findings of the examiner.

(c) The examiner's opinion regarding the defendant's present mental capacity to understand the proceedings and assist in his or her defense.

(d) If the examiner reports that the defendant lacks competency, the examiner's opinion regarding the likelihood that the defendant, if provided treatment, may be restored to competency within the time period permitted under sub. (5) (a). The examiner shall provide an opinion as to whether the defendant's treatment should occur in an inpatient facility designated by the department, in a community−based treatment program under the supervision of the department, or in a jail or a locked unit of a facility that has entered into a voluntary agreement with the Nation to serve as a location for treatment.

(dm) If sufficient information is available to the examiner to reach an opinion, the examiner's opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment. The defendant is not competent to

refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

1. The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

2. The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(e) The facts and reasoning, in reasonable detail, upon which the findings and opinions under pars. (b) to (dm) are based.

(4) HEARING. (a) The court shall cause copies of the report to be delivered forthwith to the tribal prosecutor and the defense counsel, or the defendant personally if not represented by counsel. Upon the request of the chief of police or jailer charged with care and control of the jail in which the defendant is being held pending or during a trial or sentencing proceeding, the court shall cause a copy of the report to be delivered to the chief or police or jailer. The chief of police or jailer may provide a copy of the report to the person who is responsible for maintaining medical records for inmates of the jail, or to a licensed nurse or to a licensed physician or physician assistant who is a health care provider for the defendant or who is responsible for providing health care services to inmates of the jail. The report shall not be otherwise disclosed prior to the hearing under this subsection.

(b) If the tribal prosecutor, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall promptly determine the defendant's competency and, if at issue, competency to refuse medication or treatment for the defendant's mental condition on the basis of the report filed under sub. (3) or (5). In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Testimony may be received into the record of the hearing by telephone or live audiovisual means. At the commencement of the hearing, the judge shall ask the defendant whether he or she claims to be competent or incompetent. If the defendant stands mute or claims to be incompetent, the defendant shall be found incompetent unless the Nation proves by the greater weight of the credible evidence that the defendant is competent. If the defendant claims to be competent, the defendant shall be found competent unless the Nation proves by evidence that is clear and convincing that the defendant is incompetent. If the defendant is found incompetent and if the Nation proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in sub. (3) (dm), the court shall make a determination without a jury and issue an order that the defendant is not competent to refuse medication or treatment for the defendant's mental condition and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

(c) If the court determines that the defendant is competent, the criminal proceeding shall be resumed.

(d) If the court determines that the defendant is not competent and not likely to become competent within the time period provided in sub. (5) (a), the proceedings shall be suspended and the defendant released, except as provided in sub. (6) (b).

(5) COMMITMENT. (a) 1. If the court determines that the defendant is not competent but is likely to become competent within the period specified in this paragraph if provided with appropriate treatment, the court shall suspend the proceedings and commit the defendant to the custody of the department for treatment for a period not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. The department shall determine whether the defendant will receive treatment in an appropriate institution designated by the department, while under the supervision of the department in a community–based treatment program under contract with the department, or in a jail or a locked unit of a facility that has entered into a voluntary agreement with the state to serve as a location for treatment. The chief of police shall transport the defendant to the institution, program, jail, or facility, as determined by the department.

2. If, under subd. 1., the department commences services to a defendant in jail or in a locked unit, the department shall, as soon as possible, transfer the defendant to an institution or provide services to the defendant in a community–based treatment program consistent with this subsection.

3. Days spent in commitment under this paragraph are considered days spent in custody under s. 973.155.

4. A defendant under the supervision of the department placed under this paragraph in a community–based treatment program is in the custody and control of the department, subject to any conditions set by the department. If the department believes that the defendant under supervision has violated a condition, or that permitting the defendant to remain in the community jeopardizes the safety of the defendant or another person, the department may designate an institution at which the treatment shall occur and may request that the court reinstate the proceedings, order the defendant transported by Ho-Chunk Nation law enforcement to the designated institution, and suspend proceedings consistent with subd. 1.

(am) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the department determines that the defendant should be subject to such a court order, the department may file with the court, with notice to the counsel for the defendant, the defendant, and the tribal prosecutor, a motion for a hearing, under the standard specified in sub. (3) (dm), on whether the defendant is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall, under the procedures and standards specified in sub. (4) (b), determine the defendant's competency to refuse medication or treatment for the defendant's mental condition. At the request of the defendant, the defendant's counsel, or the tribal prosecutor, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph.

(b) The defendant shall be periodically reexamined by the department examiners. Written reports of examination shall be furnished to the court 3 months after commitment, 6 months after commitment, 9 months after commitment and within 30 days prior to the expiration of commitment. Each report shall indicate either that the defendant has become competent, that the defendant remains incompetent but that attainment of competency is likely within the remaining

commitment period, or that the defendant has not made such progress that attainment of competency is likely within the remaining commitment period. Any report indicating such a lack of sufficient progress shall include the examiner's opinion regarding whether the defendant is mentally ill, alcoholic, drug dependent, developmentally disabled or infirm because of aging or other like incapacities.

(c) Upon receiving a report under par. (b) indicating the defendant has regained competency or is not competent and unlikely to become competent in the remaining commitment period, the court shall hold a hearing within 14 days of receipt of the report and the court shall proceed under sub. (4). If the court determines that the defendant has become competent, the defendant shall be discharged from commitment and the criminal proceeding shall be resumed. If the court determines that the defendant is making sufficient progress toward becoming competent, the commitment shall continue.

(d) If the defendant is receiving medication the court may make appropriate orders for the continued administration of the medication in order to maintain the competence of the defendant for the duration of the proceedings. If a defendant who has been restored to competency thereafter again becomes incompetent, the maximum commitment period under par. (a) shall be 18 months minus the days spent in previous commitments under this subsection, or 12 months, whichever is less.

(6) DISCHARGE; CIVIL PROCEEDINGS. (a) If the court determines that it is unlikely that the defendant will become competent within the remaining commitment period, it shall discharge the defendant from the commitment and release him or her, except as provided in par. (b). The court may order the defendant to appear in court at specified intervals for redetermination of his or her competency to proceed.

(b) When the court discharges a defendant from commitment under par. (a), it may order that the tribal prosecutor work with the local county to have the defendant be taken immediately into custody by a law enforcement official and promptly delivered to a facility specified in Wisconsin Statute s. 51.15 (2), an approved public treatment facility under Wisconsin Statute s. 51.45 (2) (c), or an appropriate medical or protective placement facility. Thereafter, detention of the defendant shall be governed by Wisconsin Statute s. 51.15, 51.45 (11), or 55.135, as appropriate. The tribal prosecutor working with the county district attorney or corporation counsel may prepare a statement meeting the requirements of Wisconsin Statute s. 51.15 (4) or (5), 51.45 (13) (a), or 55.135 based on the allegations of the criminal complaint and the evidence in the case. This statement shall be given to the director of the facility to which the defendant is delivered and filed with the court assigned to exercise criminal jurisdiction, where it shall suffice, without corroboration by other petitioners, as a petition for commitment under Wisconsin Statute s. 51.20 or 51.45 (13) or a petition for protective placement under Wisconsin Statute s. 55.075. Days spent in commitment or protective placement pursuant to a petition under this paragraph shall not be deemed days spent in custody under s. 973.155.

(c) If a person is committed under Wisconsin Statute s. 51.20 pursuant to a petition under par. (b), the county department under Wisconsin statute s. 51.42 or 51.437 to whose care and custody the person is committed shall notify the court which discharged the person under par. (a), the tribal prosecutor, the district attorney for the county in which that court is located and the person's attorney of record in the prior criminal proceeding at least 14 days prior to transferring or discharging the defendant from an inpatient treatment facility and at least 14 days prior to the

expiration of the order of commitment or any subsequent consecutive order, unless the county department or the local department of health services has applied for an extension.

(d) Counsel who have received notice under par. (c) or who otherwise obtain information that a defendant discharged under par. (a) may have become competent may move the court to order that the defendant undergo a competency examination under sub. (2). If the court so orders, a report shall be filed under sub. (3) and a hearing held under sub. (4). If the court determines that the defendant is competent, the criminal proceeding shall be resumed. If the court determines that the defendant is not competent, it shall release him or her but may impose such reasonable nonmonetary conditions as will protect the public and enable the court and district attorney to discover whether the person subsequently becomes competent.

971.15 Mental responsibility of defendant. (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law.

(2) As used in this chapter, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence.

971.16 Examination of defendant. (1) In this section:

(a) "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the medical examining board.

(b) "Psychologist" means a person holding a valid license.

(2) If the defendant has entered a plea of not guilty by reason of mental disease or defect or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the case, the court may appoint at least one physician or at least one psychologist, but not more than 3 physicians or psychologists or combination thereof, to examine the defendant and to testify at the trial. The compensation of the physicians or psychologists shall be fixed by the court and paid by the Nation upon the order of the court as part of the costs of the action. The receipt by any physician or psychologist summoned under this section of any other compensation than that so fixed by the court and paid by the Nation, or the offer or promise by any person to pay such other compensation, is unlawful and punishable as contempt of court. The fact that the physician or psychologist has been appointed by the court shall be made known to the jury and the physician or psychologist shall be subject to cross-examination by both parties.

(3) Not less than 10 days before trial, or at any other time that the court directs, any physician or psychologist appointed under sub. (2) shall file a report of his or her examination of the defendant with the judge, who shall cause copies to be transmitted to the tribal prosecutor and to counsel for the defendant. The contents of the report shall be confidential until the physician or psychologist has testified or at the completion of the trial. The report shall contain an opinion regarding the ability of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform

the defendant's conduct with the requirements of law at the time of the commission of the criminal offense charged and, if sufficient information is available to the physician or psychologist to reach an opinion, his or her opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment. The defendant is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

(a) The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

(b) The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(4) If the defendant wishes to be examined by a physician, psychologist or other expert of his or her own choice, the examiner shall be permitted to have reasonable access to the defendant for the purposes of examination. No testimony regarding the mental condition of the defendant shall be received from a physician, psychologist or expert witness summoned by the defendant unless not less than 15 days before trial a report of the examination has been transmitted to the tribal prosecutor and unless the prosecution has been afforded an opportunity to examine and observe the defendant if the opportunity has been seasonably demanded. The Nation may summon a physician, psychologist or other expert to testify, but that witness shall not give testimony unless not less than 15 days before trial a written report of his or her examination of the defendant has been transmitted to counsel for the defendant.

(5) If a physician, psychologist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he or she shall be permitted to make a statement as to the nature of his or her examination, his or her diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, his or her opinion as to the ability of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform to the requirements of law and, if sufficient information is available to the physician, psychologist or expert to reach an opinion, his or her opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment for the defendant's mental condition. Testimony concerning the defendant's need for medication or treatment and competence to refuse medication or treatment may not be presented before the jury that is determining the ability of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct with the requirements of law at the time of the commission of the criminal offense charged. The physician, psychologist or other expert shall be permitted to make an explanation reasonably serving to clarify his or her diagnosis and opinion and may be cross-examined as to any matter bearing on his or her competency or credibility or the validity of his or her diagnosis or opinion.

(6) Nothing in this section shall require the attendance at the trial of any physician, psychologist or other expert witness for any purpose other than the giving of his or her testimony.

971.165 Trial of actions upon plea of not guilty by reason of mental disease or defect. (1) If a defendant couples a plea of not guilty with a plea of not guilty by reason of mental disease or defect:

(a) There shall be a separation of the issues with a sequential order of proof in a continuous trial. The plea of not guilty shall be determined first and the plea of not guilty by reason of mental disease or defect shall be determined second.

(b) If the plea of not guilty is tried to a jury, the jury shall be informed of the 2 pleas and that a verdict will be taken upon the plea of not guilty before the introduction of evidence on the plea of not guilty by reason of mental disease or defect. No verdict on the first plea may be valid or received unless agreed to by all jurors.

(c) If both pleas are tried to a jury, that jury shall be the same, except that:

1. If one or more jurors who participated in determining the first plea become unable to serve, the remaining jurors shall determine the 2nd plea.

2. If the jury is discharged prior to reaching a verdict on the 2nd plea, the defendant shall not solely on that account be entitled to a redetermination of the first plea and a different jury may be selected to determine the 2nd plea only.

3. If the appellate court reverses a judgment as to the 2nd plea but not as to the first plea and remands for further proceedings, or if the trial court vacates the judgment as to the 2nd plea but not as to the first plea, the 2nd plea may be determined by a different jury selected for this purpose.

(d) If the defendant is found not guilty, the court shall enter a judgment of acquittal and discharge the defendant. If the defendant is found guilty, the court shall withhold entry of judgment pending determination of the 2nd plea.

(2) If the plea of not guilty by reason of mental disease or defect is tried to a jury, the court shall inform the jury that the effect of a verdict of not guilty by reason of mental disease or defect is that, in lieu of criminal sentence or probation, the defendant may be committed to the custody of the department of health and will be placed in an appropriate institution unless the court determines that the defendant would not pose a danger to himself or herself or to others if released under conditions ordered by the court. No verdict on the plea of not guilty by reason of mental disease or defect may be valid or received unless agreed to by at least five–sixths of the jurors.

(3) (a) If a defendant is not found not guilty by reason of mental disease or defect, the court shall enter a judgment of conviction and shall either impose or withhold sentence under s. 972.13 (2).

(b) If a defendant is found not guilty by reason of mental disease or defect, the court shall enter a judgment of not guilty by reason of mental disease or defect. The court shall thereupon proceed under s. 971.17. A judgment entered under this paragraph is interlocutory to the commitment order entered under s. 971.17 and reviewable upon appeal therefrom.

971.17 Commitment of persons found not guilty by reason of mental disease or mental defect. (1) COMMITMENTPERIOD

(b) *Felonies.* Except as provided in par. (c), when a defendant is found not guilty by reason of mental disease or mental defect of a felony, the court may commit the person to the department of health for a specified period not exceeding the maximum term of confinement in prison that could be imposed on an offender convicted of the same felony, plus imprisonment authorized by any applicable penalty enhancement statutes, subject to the credit provisions of s. 973.155.

(d) *Misdemeanors.* When a defendant is found not guilty by reason of mental disease or mental defect of a misdemeanor, the court may commit the person to the department of health for a specified period not exceeding two−thirds of the maximum term of imprisonment that could be imposed against an offender convicted of the same misdemeanor, including imprisonment authorized by any applicable penalty enhancement statutes, subject to the credit provisions of s. 973.155.

(1g) NOTICE OF RESTRICTION ON FIREARM POSSESSION. If the defendant under sub. (1) is found not guilty of a felony by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.29.

(1h) NOTICE OF RESTRICTIONS ON POSSESSION OF BODY ARMOR. If the defendant under sub. (1) is found not guilty of a violent felony, as defined in s. 941.291 (1) (b), by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.291.

(1j) SEXUAL ASSAULT; LIFETIME SUPERVISION. (a) In this subsection, "serious sex offense" has the meaning given in s. 939.615 (1) (b).

(b) If a person is found not guilty by reason of mental disease or defect of a serious sex offense, the court may, in addition to committing the person to the department of health under sub. (1), place the person on lifetime supervision under s. 939.615 if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

(1m) SEXUAL ASSAULT; REGISTRATION AND TESTING. (a) 1. If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a felony or of s. 940.225 (3m), 941.20 (1), 944.20, 944.30(1m), 944.31, 944.33 or 948.10 (1) (b), the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. The judge shall inform the person that he or she may request expungement where: all charges are later dismissed, the defendant is found not guilty after final disposition of the violent crime, the matter is reversed on appeal, or if after one year and the defendant has not committed any other violent crimes.

2. Biological specimens required under subd. 1. shall be obtained and submitted as specified by the state crime lab.

(b) 1m. a. Except as provided in subd. 2m., if the defendant under sub. (1) is found not guilty by reason of mental disease or defect for any violation, or for the solicitation, conspiracy, or attempt to commit any violation, of ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the defendant to comply with the reporting requirements for sex offenders when promulgated by the Nation, if the court determines that the underlying conduct was sexually motivated, meaning that one of the purposes for an act is for the actor's sexual arousal or gratification or for the sexual humiliation or degradation of the victim, and that it would be in the interest of public protection to have the defendant report.

b. If a court under subd. 1m. a. orders a person to comply with the reporting requirements under s. 301.45 in connection with a finding of not guilty by reason of mental disease or defect for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09 and the person was under the age of 21 when he

or she committed the offense, the court may provide that upon termination of the commitment order under sub. (5) or expiration of the order under sub. (6) the person be released from the requirement to comply with the reporting requirements.

2m. If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the defendant was not the victim's parent, the court shall require the defendant to comply with the any enacted reporting requirements unless the court determines, after a hearing on a motion made by the defendant, that the defendant is not required to comply.

3. In determining under subd. 1m. a. whether it would be in the interest of public protection to have the defendant report, the court may consider any of the following:

a. The ages, at the time of the violation, of the defendant and the victim of the violation.

b. The relationship between the defendant and the victim of the violation.

c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

e. The probability that the defendant will commit other violations in the future.

g. Any other factor that the court determines may be relevant to the particular case.

4. If the court orders a defendant to comply with the enacted reporting requirements, the court may order the defendant to continue to comply with the reporting requirements until his or her death.

5. If the court orders a defendant to comply with the enacted reporting requirements, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding of not guilty by reason of mental disease or defect on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding has been reversed, set aside or vacated.

(2) INVESTIGATION AND EXAMINATION. (a) The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment of not guilty by reason of mental disease or mental defect is entered. If the court lacks sufficient information to make the determination required by sub. (3) immediately after trial, it may adjourn

the hearing and order the department of health services to conduct a predisposition investigation using the procedure in s. 972.15 or a supplementary mental examination or both, to assist the court in framing the commitment order.

(b) If a supplementary mental examination is ordered under par. (a), the court may appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the person. In lieu thereof, the court may commit the person to an appropriate mental health facility for the period specified in par. (c), which shall count as days spent in custody under s. 973.155.

(c) An examiner shall complete an inpatient examination under par. (b) and file the report within 15 days after the examination is ordered unless, for good cause, the examiner cannot complete the examination and requests an extension. In that case, the court may allow one 15–day extension of the examination period. An examiner shall complete an outpatient examination and file the report of examination within 15 days after the examination is ordered.

(d) If the court orders an inpatient examination under par. (b), it shall arrange for the transportation of the person to the examining facility within a reasonable time after the examination is ordered and for the person to be returned to the jail or court within a reasonable time after the examination has been completed.

(e) The examiner appointed under par. (b) shall personally observe and examine the person. The examiner or facility shall have access to the person's past or present treatment records, available through the department of health. If the examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(f) The costs of an examination ordered under par. (a) shall be paid by the Nation upon the order of the court as part of the costs of the action.

(g) Within 10 days after the examiner's report is filed under par. (c), the court shall hold a hearing to determine whether commitment shall take the form of institutional care or conditional release.

(3) COMMITMENT ORDER. (a) An order for commitment under this section shall specify either institutional care or conditional release. The court shall order institutional care if it finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage. If the court does not make this finding, it shall order conditional release. In determining whether commitment shall be for institutional care or conditional release, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(b) If the Nation proves by clear and convincing evidence that the person is not competent to refuse medication or treatment for the person's mental condition, under the standard specified in s. 971.16 (3), the court shall issue, as part of the commitment order, an order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(c) If the court order specifies institutional care, the department of health services shall work with the local county to place the person in an institution under Wisconsin State Statute s.

51.37 (3) that the department considers appropriate in light of the rehabilitative services required by the person and the protection of public safety. If the person is not subject to a court order determining the person to be not competent to refuse medication or treatment for the person's mental condition and if the institution in which the person is placed determines that the person should be subject to such a court order, the institution may file with the court, with notice to the person and his or her counsel and the tribal prosecutor, a motion for a hearing, under the standard specified in s. 971.16 (3), on whether the person is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the person needs medication or treatment and that the person is not competent to refuse medication or treatment, based on an examination of the person by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall determine the person's competency to refuse medication or treatment for the person's mental condition. At the request of the person, his or her counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph. If the tribal prosecutor, the person and his or her counsel waive their respective opportunities to present other evidence on the issue, the court shall determine the person's competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. If the Nation proves by evidence that is clear and convincing that the person is not competent to refuse medication or treatment, under the standard specified in s. 971.16 (3), the court shall order that the person is not competent to refuse medication or treatment for the person's mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(d) If the court finds that the person is appropriate for conditional release, the court shall notify the department of health. The department of health and the county department under Wisconsin State Statute s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health may contract with a county department, under Wisconsin State Statute s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department of health may arrange for another county or agency to prepare the plan if that county or agency agrees to prepare the plan and if the individual will be living in that county.

(e) An order for conditional release places the person in the custody and control of the department of health. A conditionally released person is subject to the conditions set by the court and to the rules of the department of health. Before a person is conditionally released by the court under this subsection, the court shall so notify the Ho-Chunk Nation police department, the local municipal police department and the local county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal department or county sheriff submits to the court a written statement waiving the right to be

notified. If the department of health services alleges that a released person has violated any condition or rule, or that the safety of the person or others requires that conditional release be revoked, he or she may be taken into custody under the rules of the department. The department of health shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the public defender responsible for handling cases in the Nation where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays, and legal holidays. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department of health services may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2). The Nation has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution under Wisconsin State Statute s. 51.37 (3) until the expiration of the commitment or until again conditionally released under this section.

(4) PETITION FOR CONDITIONAL RELEASE. (a) Any person who is committed for institutional care may petition the committing court to modify its order by authorizing conditional release if at least 6 months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this paragraph on the person's behalf at any time.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the tribal prosecutor and, subject to sub. (7) (b), refer the matter to the for determination of indigency and appointment of counsel under ss. 977.301 thru 977.307. If the person petitions through counsel, his or her attorney shall serve the tribal prosecutor.

(c) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records. If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(d) The court, without a jury, shall hear the petition within 30 days after the report of the court–appointed examiner is filed with the court, unless the petitioner waives this time limit. The court shall grant the petition unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(e) 1. If the court finds that the person is appropriate for conditional release, the court shall notify the department of health. Subject to subd. 2. and 3., the department of health and the local

county department under Wisconsin State Statute s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health may contract with a county department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health and person to be released request additional time to develop the plan.

2. If the county department of the person's county of residence declines to prepare a plan, the department of health may arrange for any other county or agency to prepare the plan if that county or agency agrees to prepare the plan and if the person will be living in that county. This subdivision does not apply if the person was found not guilty of a sex offense, by reason of mental disease or defect. "Sex offense" means a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the person who committed the violation was not the victim's parent.

3. If the county department for the person's county of residence declines to prepare a plan for a person who was found not guilty of a sex offense, as defined in subsec. 2 above, by reason of mental disease or defect, the department may arrange for any of the following counties to prepare a plan if the county agrees to do so:

a. The county in which the person was found not guilty by reason of mental disease or defect, if the person will be living in that county.

b. A county in which a treatment facility for sex offenders is located, if the person will be living in that facility.

c. Any other agency serving the area in which the person will be living.

(4m) NOTICE ABOUT CONDITIONAL RELEASE. (a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1).

2. "Member of the family" means spouse, domestic partner, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court conditionally releases a defendant under this section, the tribal prosecutor shall do all of the following in accordance with par. (c):

1. Make a reasonable attempt to notify the victim of the crime committed by the defendant or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

2. Notify the probation and parole.

(c) The notice under par. (b) shall inform the department of corrections and the person under par. (b) 1. of the defendant's name and conditional release date. The tribal prosecutor shall send the notice, postmarked no later than 7 days after the court orders the conditional release under this section, to probation and parole and to the last–known address of the person under par. (b) 1.

(d) Upon request, the department of health shall assist tribal prosecutor in obtaining information regarding persons specified in par. (b) 1.

(5) PETITION FOR TERMINATION. A person on conditional release, or the department of health on his or her behalf, may petition the committing court to terminate the order of commitment. If the person files a timely petition without counsel, the court shall serve a copy of the petition on the tribal prosecutor and, subject to sub. (7) (b), refer the matter to the for determination of indigency and appointment of counsel under ss. 977.301 thru 977.307. If the person petitions through counsel, his or her attorney shall serve the tribal prosecutor. The petition shall be determined as promptly as practicable by the court without a jury. The court shall terminate the order of commitment unless it finds by clear and convincing evidence that further supervision is necessary to prevent a significant risk of bodily harm to the person or to others or of serious property damage. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the person's mental history and current mental condition, the person's behavior while on conditional release, and plans for the person's living arrangements, support, treatment and other required services after termination of the commitment order. A petition under this subsection may not be filed unless at least 6 months have elapsed since the person was last placed on conditional release or since the most recent petition under this subsection was denied.

(6) EXPIRATION OF COMMITMENT ORDER. (a) At least 60 days prior to the expiration of a commitment order under sub. (1), the department of health shall notify all of the following:

1. The court that committed the person.

2. The tribal prosecutor and district attorney of the county in which the commitment order was entered.

3. The appropriate county department under Wisconsin State Statute s. 51.42 or 51.437.

(b) Upon the expiration of a commitment order under sub. (1), the court shall discharge the person, subject to the right of the department of health or the appropriate county department under Wisconsin State Statute s. 51.42 or 51.437 to proceed against the person under Wisconsin Statute ch. 51 or 55. If none of those departments proceeds against the person under Wisconsin Statute ch. 51 or 55, the court may order the proceeding.

(6m) NOTICE ABOUT TERMINATION OR DISCHARGE. (a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1).

2. "Member of the family" means spouse, domestic partner, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court orders that the defendant's commitment is terminated under sub. (5) or that the defendant be discharged under sub. (6), the department of health shall do all of the following in accordance with par. (c):

1. If the person has submitted a card under par. (d) requesting notification, make a reasonable attempt to notify the victim of the crime committed by the defendant, or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian.

2. Notify probation and parole.

(c) The notice under par. (b) shall inform the probation and parole and the person under par. (b) 1. of the defendant's name and termination or discharge date. The department of health shall send the notice, postmarked at least 7 days before the defendant's termination or discharge date, to probation and parole and to the last–known address of the person under par. (b) 1.

(d) The department of health shall design and prepare cards for persons specified in par. (b) 1. to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the applicable defendant and any other information the department determines is necessary. The department shall provide the cards, without charge, to tribal prosecutor. Tribal prosecutors shall provide the cards, without charge, to persons specified in par. (b) 1. These persons may send completed cards to the department. All departmental records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying, only pursuant to the HO-CHUNK NATION DISCOVERY ACT.

(7) HEARINGS AND RIGHTS. (a) The committing court shall conduct all hearings under this section. The person shall be given reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(b) Without limitation by enumeration, at any hearing under this section, the person has the right to:

1. Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under ss. 977.301 to 977.307.
2. Remain silent.
3. Present and cross–examine witnesses.
4. Have the hearing recorded by a court reporter.

(c) If the person wishes to be examined by a physician, as defined in s. 971.16 (1) (a), or a psychologist, as defined in s. 971.16 (1) (b), or other expert of his or her choice, the procedure under s. 971.16 (4) shall apply. Upon motion of an indigent person, the court shall appoint a qualified and available examiner for the person at public expense. Examiners for the person or the tribal prosecutor shall have reasonable access to the person for purposes of examination, and to the person's past and present treatment records, and patient health care records as provided under.

(d) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

(7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) A motion for postdisposition relief from a final order or judgment by a person subject to this section shall be made in the time and manner provided in the *Rules of Appellate Procedure*. An appeal by a person subject to this section from a final order or judgment under this section or from an order denying a motion for postdisposition relief shall be taken in the time and manner provided in the rules. The person shall file a motion for postdisposition relief in the trial court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(b) An appeal by the Nation from a final judgment or order under this section may be taken to the supreme court within the time specified in the *Rules of Appellate Proceure* and in the manner provided for civil appeals under the rules.

971.18 Inadmissibility of statements for purposes of examination. A statement made by a person subjected to psychiatric examination or treatment pursuant to this chapter for the purposes of such examination or treatment shall not be admissible in evidence against the person in any criminal proceeding on any issue other than that of the person's mental condition.

971.20 Substitution of judge. (1) DEFINITION. In this section, "action" means all proceedings before a court from the filing of a complaint to final disposition at the trial level.

(2) ONE SUBSTITUTION. In any criminal action, the defendant has a right to only one substitution of a judge, except under sub. (7). The right of substitution shall be exercised as provided in this section.

(3) SUBSTITUTION OF JUDGE ASSIGNED TO PRELIMINARY EXAMINATION. (a) In this subsection, "judge" includes a court commissioner who is assigned to conduct the preliminary examination.

(b) A written request for the substitution of a different judge for the judge assigned to preside at the preliminary examination may be filed with the clerk, or with the court at the initial appearance. If filed with the clerk, the request must be filed at least 5 days before the preliminary examination unless the court otherwise permits. Substitution of a judge assigned to a preliminary examination under this subsection exhausts the right to substitution for the duration of the action, except under sub. (7).

(4) SUBSTITUTION OF TRIAL JUDGE ORIGINALLY ASSIGNED. A written request for the substitution of a different judge for the judge originally assigned to the trial of the action may be filed with the clerk before making any motions to the trial court and before arraignment.

(5) SUBSTITUTION OF TRIAL JUDGE SUBSEQUENTLY ASSIGNED. If a new judge is assigned to the trial of an action and the defendant has not exercised the right to substitute an assigned judge, a written request for the substitution of the new judge may be filed with the clerk within 15 days of the clerk's giving actual notice or sending notice of the assignment to the defendant or the defendant's attorney. If the notification occurs within 20 days of the date set for trial, the request shall be filed within 48 hours of the clerk's giving actual notice or sending notice of the assignment. If the notification occurs within 48 hours of the trial or if there has been no notification, the defendant may make an oral or written request for substitution prior to the commencement of the proceedings.

(6) SUBSTITUTION OF JUDGE IN MULTIPLE DEFENDANT ACTIONS. In actions involving more than one defendant, the request for substitution shall be made jointly by all defendants. If severance has been granted and the right to substitute has not been exercised prior to the granting of severance, the defendant or defendants in each action may request a substitution under this section.

(7) SUBSTITUTION OF JUDGE FOLLOWING APPEAL. If an appellate court orders a new trial or sentencing proceeding, a request under this section may be filed within 20 days after the filing of the remittitur by the supreme court, whether or not a request for substitution was made prior to the time the appeal was taken.

(8) PROCEDURES FOR CLERK. Upon receiving a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge for the determination and reassignment of the action as necessary.

(9) JUDGE'S AUTHORITY TO ACT. Upon the filing of a request for substitution in proper form and within the proper time, the judge whose substitution has been requested has no authority to act further in the action except to conduct the initial appearance, accept pleas and set bail.

(10) FORM OF REQUEST. A request for substitution of a judge may be made in the following form:

HO-CHUNK NATION
TRIAL COURT

Ho-Chunk Nation
vs.
....(Defendant)
Pursuant to s. 971.20 the defendant (or defendants) request (s)
a substitution for the Hon. .... as judge in the above entitled action.
Dated ...., ... (year)
....(Signature of defendant or defendant's attorney)

(11) RETURN OF ACTION TO SUBSTITUTED JUDGE. Upon the filing of an agreement signed by the defendant or defendant's attorney and by the prosecuting attorney, the substituted judge and the substituting judge, the criminal action and all pertinent records shall be transferred back to the substituted judge.

971.23 Discovery and inspection. (1) WHAT A TRIBAL PROSECUTOR MUST DISCLOSE TO A DEFENDANT. Upon demand, the tribal prosecutor shall, within a reasonable time before trial, disclose to the defendant or his or her attorney and permit the defendant or his or her attorney to inspect and copy or photograph all of the following materials and information, if it is within the possession, custody or control of the Nation's Department of Justice:

(a) Any written or recorded statement concerning the alleged crime made by the defendant, including the testimony of the defendant in a secret proceeding under s. 968.26 or before a grand jury, and the names of witnesses to the defendant's written statements.

(b) A written summary of all oral statements of the defendant which the tribal prosecutor plans to use in the course of the trial and the names of witnesses to the defendant's oral statements.

(bm) Evidence obtained in the manner described under s. 968.31 (2) (b), if the prosecutor intends to use the evidence at trial.

(c) A copy of the defendant's criminal record.

(d) A list of all witnesses and their addresses whom the tribal prosecutor intends to call at the trial. This paragraph does not apply to rebuttal witnesses or those called for impeachment only.

(e) Any relevant written or recorded statements of a witness named on a list under par. (d), including any audiovisual recording of an oral statement of a child, any reports or statements of experts made in connection with the case or, if an expert does not prepare a report or statement, a written summary of the expert's findings or the subject matter of his or her testimony, and the results of any physical or mental examination, scientific test, experiment or comparison that the district attorney intends to offer in evidence at trial.

(f) The criminal record of a prosecution witness which is known to the tribal prosecutor.

(g) Any physical evidence that the district attorney intends to offer in evidence at the trial.

(h) Any exculpatory evidence.

(2m) WHAT A DEFENDANT MUST DISCLOSE TO THE TRIBAL PROSECUTOR. Upon demand, the defendant or his or her attorney shall, within a reasonable time before trial, disclose to the tribal prosecutor and permit the tribal prosecutor to inspect and copy or photograph all of the following materials and information, if it is within the possession, custody or control of the defendant:

(a) A list of all witnesses, other than the defendant, whom the defendant intends to call at trial, together with their addresses. This paragraph does not apply to rebuttal witnesses or those called for impeachment only.

(am) Any relevant written or recorded statements of a witness named on a list under par. (a), including any reports or statements of experts made in connection with the case or, if an expert does not prepare a report or statement, a written summary of the expert's findings or the subject matter of his or her testimony, and including the results of any physical or mental examination, scientific test, experiment or comparison that the defendant intends to offer in evidence at trial.

(b) The criminal record of a defense witness, other than the defendant, which is known to the tribal prosecutor.

(c) Any physical evidence that the defendant intends to offer in evidence at the trial.

(3) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS. No comment or instruction regarding the failure to call a witness at the trial shall be made or given if the sole basis for such comment or instruction is the fact the name of the witness appears upon a list furnished pursuant to this section.

(5) SCIENTIFIC TESTING. On motion of a party subject to s. 971.31 (5), the court may order the production of any item of physical evidence which is intended to be introduced at the trial for scientific analysis under such terms and conditions as the court prescribes.

(5c) PSYCHIATRIC TESTING OF VICTIMS OR WITNESSES. In a prosecution of s. 940.225, 948.02, or 948.025 or of any other crime if the court determines that the underlying conduct was sexually motivated, as defined in s. 971.17(1m)b, the court may not order any witness or victim, as a condition of allowing testimony, to submit to a psychiatric or psychological examination to assess his or her credibility.

(6) PROTECTIVE ORDER. Upon motion of a party, the court may at any time order that discovery, inspection or the listing of witnesses required under this section be denied, restricted or deferred, or make other appropriate orders. If the tribal prosecutor or defense counsel certifies that to list a witness may subject the witness or others to physical or economic harm or coercion, the

court may order that the deposition of the witness be taken pursuant to s. 967.04 (2) to (6). The name of the witness need not be divulged prior to the taking of such deposition. If the witness becomes unavailable or changes his or her testimony, the deposition shall be admissible at trial as substantive evidence.

(6c) INTERVIEWS OF VICTIMS BY DEFENSE. Except as provided in s. 967.04, the defendant or his or her attorney may not compel a victim of a crime to submit to a pretrial interview or deposition.

(6m) IN CAMERA PROCEEDINGS. Either party may move for an in camera inspection by the court of any document required to be disclosed under sub. (1) or (2m) for the purpose of masking or deleting any material which is not relevant to the case being tried. The court shall mask or delete any irrelevant material.

(7) CONTINUING DUTY TO DISCLOSE. If, subsequent to compliance with a requirement of this section, and prior to or during trial, a party discovers additional material or the names of additional witnesses requested which are subject to discovery, inspection or production under this section, the party shall promptly notify the other party of the existence of the additional material or names.

(7m) SANCTIONS FOR FAILURE TO COMPLY. (a) The court shall exclude any witness not listed or evidence not presented for inspection or copying required by this section, unless good cause is shown for failure to comply. The court may in appropriate cases grant the opposing party a recess or a continuance.

(b) In addition to or in lieu of any sanction specified in par. (a), a court may, subject to sub. (3), advise the jury of any failure or refusal to disclose material or information required to be disclosed under sub. (1) or (2m), or of any untimely disclosure of material or information required to be disclosed under sub. (1) or (2m).

(8) NOTICE OF ALIBI. (a) If the defendant intends to rely upon an alibi as a defense, the defendant shall give notice to the tribal prosecutor at the arraignment or at least 30 days before trial stating particularly the place where the defendant claims to have been when the crime is alleged to have been committed together with the names and addresses of witnesses to the alibi, if known. If at the close of the Nation's case the defendant withdraws the alibi or if at the close of the defendant's case the defendant does not call some or any of the alibi witnesses, the Nation shall not comment on the defendant's withdrawal or on the failure to call some or any of the alibi witnesses. The Nation shall not call any alibi witnesses not called by the defendant for the purpose of impeaching the defendant's credibility with regard to the alibi notice. Nothing in this section may prohibit the state from calling said alibi witnesses for any other purpose.

(b) In default of such notice, no evidence of the alibi shall be received unless the court, for cause, orders otherwise.

(c) The court may enlarge the time for filing a notice of alibi as provided in par. (a) for cause.

(d) Within 20 days after receipt of the notice of alibi, or such other time as the court orders, the tribal prosecutor shall furnish the defendant notice in writing of the names and addresses, if known, of any witnesses whom the Nation proposes to offer in rebuttal to discredit the defendant's

alibi. In default of such notice, no rebuttal evidence on the alibi issue shall be received unless the court, for cause, orders otherwise.

(e) A witness list required under par. (a) or (d) shall be provided in addition to a witness list required under sub. (1) (d) or (2m) (a), and a witness disclosed on a list under sub. (1) (d) or (2m) (a) shall be included on a list under par. (a) or (d) if the witness is required to be disclosed under par. (a) or (d).

(9) DEOXYRIBONUCLEIC ACID EVIDENCE. (a) In this subsection "deoxyribonucleic acid profile" has the meaning given in s. 939.74 (2d) (a).

(b) Notwithstanding sub. (1) (e) or (2m) (am), if either party intends to submit deoxyribonucleic acid profile evidence at a trial to prove or disprove the identity of a person, the party seeking to introduce the evidence shall notify the other party of the intent to introduce the evidence in writing by mail at least 45 days before the date set for trial; and shall provide the other party, within 15 days of request, the material identified under sub. (1) (e) or (2m) (am), whichever is appropriate, that relates to the evidence.

(c) The court shall exclude deoxyribonucleic acid profile evidence at trial, if the notice and production deadlines under par. (b) are not met, except the court may waive the 45 day notice requirement or may extend the 15 day production requirement upon stipulation of the parties, or for good cause, if the court finds that no party will be prejudiced by the waiver or extension. The court may in appropriate cases grant the opposing party a recess or continuance.

(10) PAYMENT OF COPYING COSTS IN CASES INVOLVING INDIGENT DEFENDANTS. When an attorney is appointed under ch. 977 requests copies, in any format, of any item that is discoverable under this section, if the person providing copies under this section charges the appointed attorney a fee for the copies, the fee may not exceed the applicable maximum fee for copies of discoverable materials that is established by rule under s. 977.702.

(11) CHILD PORNOGRAPHY RECORDINGS. (a) In this subsection:

1. "Defense" means the defendant, his or her attorney, and any individual retained by the defendant or his or her attorney for the purpose of providing testimony if the testimony is expert testimony that relates to an item or material included under par. (b).

2. "Reasonably available" means sufficient opportunity for inspection, viewing, and examination at a law enforcement or government facility.

3. "Sexually explicit conduct" has the meaning given in s. 948.01 (7).

(b) Any undeveloped film, photographic negative, photograph, motion picture, videotape, or recording, which includes any item or material that would be included under s. 948.01 (3r), or any copy of the foregoing, that is of a person who has not attained the age of 18 and who is engaged in sexually explicit conduct and that is in the possession, custody, and control of the Nation shall remain in the possession, custody, and control of a law enforcement agency or a court but shall be made reasonably available to the defense.

(c) 1. Notwithstanding sub. (1) (e) and (g), a court shall deny any request by the defense to provide, and a tribal prosecutor or law enforcement agency may not provide to the defense, any item or material required in par. (b) to remain in the possession, custody, and control of a law enforcement agency or court, except that a court may order that a copy of an item or material included under par. (b) be provided to the defense if that court finds that a copy of the item or

material has not been made reasonably available to the defense. The defense shall have the burden to establish that the item or material has not been made reasonably available.

2. If a court orders under subd. 1. a copy of an item or material included under par. (b) to be provided to the defense, the court shall enter a protective order under sub. (6) that includes an order that the copy provided to the defense may not be copied, printed, or disseminated by the defense and shall be returned to the court or law enforcement agency, whichever is appropriate, at the completion of the trial.

(d) Any item or material that is required under par. (b) to remain in possession, custody, and control of a law enforcement agency or court is not subject to the right of inspection or copying under s. 19.35 (1).

971.26 Formal defects. No indictment, information, complaint or warrant shall be invalid, nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant.

971.27 Lost information, complaint or indictment. In the case of the loss or destruction of an information or complaint, the tribal prosecutor may file a copy, and the prosecution shall proceed without delay from that cause. In the case of the loss or destruction of an indictment, an information may be filed.

971.28 Pleading judgment. In pleading a judgment or other determination of or proceeding before any court or officer, it shall be sufficient to state that the judgment or determination was duly rendered or made or the proceeding duly had.

971.29 Amending the charge. (1) A complaint or information may be amended at any time prior to arraignment without leave of the court.

(2) At the trial, the court may allow amendment of the complaint, indictment or information to conform to the proof where such amendment is not prejudicial to the defendant. After verdict the pleading shall be deemed amended to conform to the proof if no objection to the relevance of the evidence was timely raised upon the trial.

(3) Upon allowing an amendment to the complaint or indictment or information, the court may direct other amendments thereby rendered necessary and may proceed with or postpone the trial.

971.30 Motion defined. (1) "Motion" means an application for an order.

(2) Unless otherwise provided or ordered by the court, all motions shall meet the following criteria:

(a) Be in writing.

(b) Contain a caption setting forth the name of the court, the venue, the title of the action, the file number, a denomination of the party seeking the order or relief and a brief description of the type of order or relief sought.

(c) State with particularity the grounds for the motion and the order or relief sought.

971.31 Motions before trial. (1) Any motion which is capable of determination without the trial of the general issue may be made before trial.

(2) Except as provided in sub. (5), defenses and objections based on defects in the institution of the proceedings, insufficiency of the complaint, information or indictment, invalidity in whole or in part of the statute on which the prosecution is founded, or the use of illegal means to secure evidence shall be raised before trial by motion or be deemed waived. The court may, however, entertain such motion at the trial, in which case the defendant waives any jeopardy that may have attached. The motion to suppress evidence shall be so entertained with waiver of jeopardy when it appears that the defendant is surprised by the Nation's possession of such evidence.

(3) The admissibility of any statement of the defendant shall be determined at the trial by the court in an evidentiary hearing out of the presence of the jury, unless the defendant, by motion, challenges the admissibility of such statement before trial.

(4) Except as provided in sub. (3), a motion shall be determined before trial of the general issue unless the court orders that it be deferred for determination at the trial. All issues of fact arising out of such motion shall be tried by the court without a jury.

(5) (a) Motions before trial shall be served and filed within 10 days after the initial appearance of the defendant in a misdemeanor action or 10 days after arraignment in a felony action unless the court otherwise permits.

(b) In felony actions, motions to suppress evidence or motions under s. 971.23 or objections to the admissibility of statements of a defendant shall not be made at a preliminary examination and not until an information has been filed.

(c) In felony actions, objections based on the insufficiency of the complaint shall be made prior to the preliminary examination or waiver thereof or be deemed waived.

(6) If the court grants a motion to dismiss based upon a defect in the indictment, information or complaint, or in the institution of the proceedings, it may order that the defendant be held in custody or that the defendant's bail be continued for not more than 72 hours pending issuance of a new summons or warrant or the filing of a new indictment, information or complaint.

(7) If the motion to dismiss is based upon a misnomer, the court shall forthwith amend the indictment, information or complaint in that respect, and require the defendant to plead thereto.

(8) No complaint, indictment, information, process, return or other proceeding shall be dismissed or reversed for any error or mistake where the case and the identity of the defendant may be readily understood by the court; and the court may order an amendment curing such defects.

(9) A motion required to be served on a defendant may be served upon the defendant's attorney of record.

(10) An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest to the information or criminal complaint.

(11) In actions under s. 940.225, 948.02, 948.025, 948.051, 948.085, or 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually motivated, as defined in s. 971.17(1m)b, evidence which is admissible under s. 972.11 (2) must be determined by the court upon pretrial motion to be material to a fact at issue in the case and of sufficient probative value to outweigh its inflammatory and prejudicial nature before it may be introduced at trial.

(12) In actions under s. 940.22, the court may determine the admissibility of evidence under s. 972.11 only upon a pretrial motion.

971.315 Inquiry upon dismissal. Before a court dismisses a criminal charge against a person, the court shall inquire of the tribal prosecutor whether he or she has complied with s. 971.095 (2).

971.32 Ownership, how alleged. In an indictment, information or complaint for a crime committed in relation to property, it shall be sufficient to state the name of any one of several co-owners, or of any officer or manager of any corporation, limited liability company or association owning the same.

971.33 Possession of property, what sufficient. In the prosecution of a crime committed upon or in relation to or in any way affecting real property or any crime committed by stealing, damaging or fraudulently receiving or concealing personal property, it is sufficient if it is proved that at the time the crime was committed either the actual or constructive possession or the general or special property in any part of such property was in the person alleged to be the owner thereof.

971.34 Intent to defraud. Where the intent to defraud is necessary to constitute the crime it is sufficient to allege the intent generally; and on the trial it shall be sufficient if there appears to be an intent to defraud the Nation, United States or any state or any person.

971.36 Theft; pleading and evidence; subsequent prosecutions.
(1) In any criminal pleading for theft, it is sufficient to charge that the defendant did steal the property (describing it) of the owner (naming the owner) of the value of (stating the value in money).

(2) Any criminal pleading for theft may contain a count for receiving the same property and the jury may find all or any of the persons charged guilty of either of the crimes.

(3) In any case of theft involving more than one theft, all thefts may be prosecuted as a single crime if:

(a) The property belonged to the same owner and the thefts were committed pursuant to a single intent and design or in execution of a single deceptive scheme;

(b) The property belonged to the same owner and was stolen by a person in possession of it; or

(c) The property belonged to more than one owner and was stolen from the same place pursuant to a single intent and design.

(4) In any case of theft involving more than one theft but prosecuted as a single crime, it is sufficient to allege generally a theft of property to a certain value committed between certain dates,

without specifying any particulars. On the trial, evidence may be given of any such theft committed on or between the dates alleged; and it is sufficient to maintain the charge and is not a variance if it is proved that any property was stolen during such period. But an acquittal or conviction in any such case does not bar a subsequent prosecution for any acts of theft on which no evidence was received at the trial of the original charge. In case of a conviction on the original charge on a plea of guilty or no contest, the district attorney may, at any time before sentence, file a bill of particulars or other written statement specifying what particular acts of theft are included in the charge and in that event conviction does not bar a subsequent prosecution for any other acts of theft.

971.365 Crimes involving certain controlled substances.
(1) (a) In any case under s. 961.41 (1) (cm), (d), (e), (f), (g) or (h) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

(2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 961.41 (1) (cm), (d), (e), (f), (g), or (h), (1m) (cm), (d), (e), (f), (g), or (h) or (3g) (am), (c), (d), (e), or (g) on which no evidence was received at the trial on the original charge.

971.366 Use of another's personal identifying information: charges. In any case under s. 943.201 or 943.203 involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

971.367 False statements to financial institutions: charges. In any case under s. 946.79 involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

971.37 Deferred prosecution programs; domestic abuse. (1) In this section, "child sexual abuse" means an alleged violation of s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095 if the alleged victim is a minor and the person accused of, or charged with, the violation:

(a) Lives with or has lived with the minor;
(b) Is nearer of kin to the alleged victim than a 2nd cousin;
(c) Is a guardian or legal custodian of the minor; or
(d) Is or appears to be in a position of power or control over the minor.

(1m) (a) The tribal prosecutor may enter into a deferred prosecution agreement under this section with any of the following:

1. A person accused of or charged with child sexual abuse.

2. An adult accused of or charged with a criminal violation of s. 940.19, 940.20 (1m), 940.201, 940.225, 940.23, 940.285, 940.30, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01 (1), 947.012 or 947.0125 and the conduct constituting the violation involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child.

3. A person accused of or charged with a violation of 4 HCC § 5.38.

4. A person accused of or charged with a first offense criminal violation.

(b) The agreement shall provide that the prosecution will be suspended for a specified period if the person complies with conditions specified in the agreement. The agreement shall be in writing, signed by the district attorney or his or her designee and the person, and shall provide that the person waives his or her right to a speedy trial and that the agreement will toll any applicable civil or criminal statute of limitations during the period of the agreement, and, furthermore, that the person shall file with the district attorney a monthly written report certifying his or her compliance with the conditions specified in the agreement. The tribal prosecutor shall provide the spouse of the accused person and the alleged victim or the parent or guardian of the alleged victim with a copy of the agreement.

(c) 1. The agreement may provide as one of its conditions that a person covered under sub. (1) (b) or (c) pay the domestic abuse surcharge under s. 973.055 and, if applicable, the global positioning system tracking surcharge under s. 973.057. If the agreement requires the person to pay the global positioning system tracking surcharge under s. 973.057, the agreement shall also require the person to pay the domestic abuse surcharge under s. 973.055. Payments and collections of the domestic abuse surcharge and the global positioning system tracking surcharge under this subdivision are subject to s. 973.055 (2) to (4) or to s. 973.057 (2) and (3), respectively, except as follows:

a. The tribal prosecutor shall determine the amount due. The tribal prosecutor may authorize less than a full surcharge if he or she believes that full payment would have a negative impact on the offender's family. The tribal prosecutor shall provide the clerk of court with the information necessary to comply with subd. 1. b.

b. The clerk of court shall collect the amount due from the person and transmit it to the treasurer.

2. If the prosecution is resumed under sub. (2) and the person is subsequently convicted, a court shall give the person credit under s. 973.055 and, if applicable, s. 973.057 for any amount paid under subd. 1.

(2) The written agreement shall be terminated and the prosecution may resume upon written notice by either the person or the tribal prosecutor to the other prior to completion of the period of the agreement.

(3) Upon completion of the period of the agreement, if the agreement has not been terminated under sub. (2), the court shall dismiss, with prejudice, any charge or charges against the person in connection with the crime specified in sub. (1m), or if no such charges have been filed, none may be filed.

(4) Consent to a deferred prosecution under this section is not an admission of guilt and the consent may not be admitted in evidence in a trial for the crime specified in sub. (1m), except if relevant to questions concerning the statute of limitations or lack of speedy trial. No statement relating to the crime, made by the person in connection with any discussions concerning deferred prosecution or to any person involved in a program in which the person must participate as a condition of the agreement, is admissible in a trial for the crime specified in sub. (1m).

(5) This section does not preclude use of deferred prosecution agreements for any alleged violations not subject to this section.

971.375 Deferred prosecution agreements; sanctions.
The tribal prosecutor may subject a defendant to sanctions as developed by a system of short-term sanctions for violations of conditions of deferred prosecution agreements that sets forth a list of sanctions to be imposed for the most common violations, if the defendant violates a condition of a deferred prosecution agreement.

971.38 Deferred prosecution program; community service work. (1) Except as provided in s. 967.055 (3), the tribal prosecutor may require as a condition of any deferred prosecution program for any crime that the defendant perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the alleged offense. An order may only apply if agreed to by the defendant and the organization or agency. The tribal prosecutor shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

971.39 Deferred prosecution program; agreements with probation and parole. (1) If a defendant is charged with a crime, the tribal prosecutor, probation and parole, and a defendant may all enter into a deferred prosecution agreement which includes, but is not limited to, the following conditions:

(a) The agreement shall be in writing, signed by the tribal prosecutor or his or her designee, a representative of the department and the defendant.

(b) The defendant admits, in writing, all of the elements of the crime charged.

(c) The defendant agrees to participate in therapy or in community programs and to abide by any conditions imposed under the therapy or programs.

(d) Probation and parole or their designee monitors compliance with the deferred prosecution agreement.

(e) The tribal prosecutor may resume prosecution upon the defendant's failure to meet or comply with any condition of a deferred prosecution agreement.

(f) The court shall dismiss, with prejudice, any charge which is subject to the agreement upon the completion of the period of the agreement, unless prosecution has been resumed under par. (e).

(2) Any written admission under sub. (1) (b) and any statement relating to the crime under sub. (1) (intro.), made by the person in connection with any discussions concerning deferred prosecution or to any person involved in a program in which the person must participate as a condition of the agreement, are not admissible in a trial for the crime.

971.40 Deferred prosecution agreement; placement with volunteers in probation program.
The court, tribal prosecutor and defendant may enter into a deferred prosecution agreement for the defendant to be placed with a volunteers in probation program under s. 973.11. The agreement must include the requirement that the defendant comply with the court's order under s. 973.11 (1).

971.41 Deferred prosecution program; worthless checks. (1) DEFINITION. In this section, "offender" means a person charged with, or for whom probable cause exists to charge the person with, a violation of s. 943.24.

(2) ESTABLISHMENT OF PROGRAM; ELIGIBILITY CRITERIA. A tribal prosecutor may create within his or her office a worthless check deferred prosecution program for offenders who agree to participate in it as an alternative to prosecution. The tribal prosecutor may establish criteria for determining an offender's eligibility for the program. Among the factors that the program may use in determining eligibility are the following:

(a) The face value of any check or order that was involved in the offense.

(b) If applicable, the reason why the check or order was dishonored by a financial institution.

(c) Other evidence presented to the tribal prosecutor regarding the facts and circumstances of the offense.

(d) The offender's criminal history.

(e) Prior referrals of the offender to the program.

(f) Whether other charges under s. 943.24 are pending against the offender.

(3) CONDITIONS OF PROGRAM. A deferred prosecution agreement to which this section applies may require an offender to do any of the following:

(a) Pay money owed for the worthless check or other order issued in violation of s. 943.24 to the tribal prosecutor for remittance to the payee of the worthless check or order.

(b) Make other payments for restitution for the offense, including payments to reimburse any person for fees assessed by a financial institution in connection with the person attempting to present the worthless check or other order.

(c) Pay administrative fees assessed under sub. (7).

(d) Pay for and successfully complete a class or counseling regarding financial management.

4) OFFENSES COVERED. The deferred prosecution agreement shall specify the offenses for which prosecution is being deferred and shall describe the checks involved in the transactions. The tribal prosecutor shall agree not to prosecute those offenses while the agreement remains in effect or afterward if the offender successfully completes the deferred prosecution program.

(5) PRIVATE CONTRACTOR OPERATION OF PROGRAM. (a) A tribal prosecutor who establishes a deferred prosecution program under this section may contract with a private entity to operate or administer all or part of the program under the supervision, direction, and control the tribal prosecutor.

(b) A private entity acting under this subsection shall maintain insurance, financial accounting controls, and fund disbursement procedures as required by the tribal prosecutor. The tribal prosecutor shall audit the accounts of the private entity, but only after providing written notice.

(c) If an offender who is the subject of a deferred prosecution agreement under this section is represented by an attorney, a private entity acting under this subsection may communicate directly with the offender if any of the following apply:

1. The attorney has not informed the private entity of his or her representation in writing.

2. The attorney has authorized the communication.

3. The private entity has requested authorization for the communication from the attorney, but the attorney has failed to respond to that request within a reasonable period of time.

(d) A tribal prosecutor may cancel a contract entered into with a private entity under this subsection if any of the following occur:

1. The private entity or a principal of the private entity is convicted of any of the following:

a. A felony under any tribal, state or federal law.

b. A misdemeanor under any tribal, state or federal law if proof of the defendant's dishonesty is an essential element of the offense or if the offense relates to debt collection.

2. The private entity uses or threatens to use force or violence against an offender, a member of his or her family, or his or her property.

3. The private entity threatens the seizure, attachment, or sale of an offender's property without disclosing that prior court proceedings are required.

4. The private entity, with knowledge that the statement is false, makes or threatens to make a statement to a 3rd party that adversely affects an offender's reputation for creditworthiness.

5. The private entity initiates or threatens to initiate communication with an offender's employer. This subdivision does not apply if the communication is authorized under a court order or federal law or if all of the following apply:

a. An offender's payment is 30 or more days past due.

b. The private entity has provided written notice to the offender at his or her last known address, at least 5 days beforehand, of its intent to communicate with the employer.

6. The private entity harasses an offender, including by doing any of the following:

a. Communicating with the offender or a member of his or her family at any unusual time or place or at a time or place that the private entity knows or has reason to know is inconvenient to the offender or the family member. In the absence of evidence to the contrary, the private entity shall be presumed to know that communicating with an offender or a member of his or her family at his or her residence before 8:00 a.m. or after 9:00 p.m. is inconvenient to the offender or the family member.

b. Publishing or threatening to publish the offender's name on a list of offenders who allegedly refuse to pay restitution. This subd. 6. b. does not apply if the tribal prosecutor authorizes the publication of the offender's name in such a manner.

c. Advertising or threatening to advertise the sale of financial information regarding the offender in order to coerce the offender to pay restitution.

d. Disclosing or threatening to disclose information concerning the alleged violation of s. 943.24 without disclosing or agreeing to disclose the fact that the offender disputes the allegations. This subd. 6. d. applies only if the private entity knows that the offender reasonably disputes the allegations.

e. Disclosing or threatening to disclose information relating to an offender's case to any person other than the victim, the district attorney, or persons to whom the tribal prosecutor has properly authorized disclosure.

f. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the number called.

g. Using profane, obscene, or abusive language in communicating with an offender, a member of his or her family, or others.

h. Engaging in any conduct which the tribal prosecutor finds was intended to cause and did cause mental or physical illness to the offender or a member of his or her family.

i. Attempting or threatening to enforce a claimed right or remedy with knowledge or reason to know that the claimed right or remedy does not exist.

j. Except as authorized by the tribal prosecutor, engaging in any form of communication that simulates legal or judicial process or that conveys the impression that the communication is being made, is authorized, or is approved by a governmental agency or official or by an attorney when it is not.

k. Using any badge, uniform, or other thing to indicate that the person is a government employee or official, except as authorized by law or by the tribal prosecutor.

l. Conducting business under a particular name or implying that the business has a particular name if the use of the name has not been authorized by the tribal prosecutor.

m. Misrepresenting the amount of restitution alleged to be owed by an offender.

n. Except as authorized by the tribal prosecutor representing that an existing restitution amount may be increased by the addition of attorney fees, investigation fees, or any other fees or charges when those fees or charges may not legally be added.

o. Except as authorized by the tribal prosecutor, representing that the private entity is an attorney or an agent for an attorney if the entity is not.

p. Recovering or attempting to recover any interest or other charge or fee in excess of the actual restitution or claim unless the interest or other charge or fee is expressly authorized under the contract with the district attorney.

q. Communicating or threatening to communicate directly with an offender who is represented by an attorney. This subd. 6.q. does not apply to communications permitted under par. (c).

r. Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

s. Communicating with an offender or a member of his or her family at a time of day or night, with such frequency, or in such a manner as to constitute harassment of the offender or his or her family member.

(6) CONFIDENTIALITY. Records relating to programs established under this section are not subject to inspection or copying, unless authorized pursuant to 2 HCC § 3. A tribal prosecutor may disclose information relating to persons participating in the program only to a private entity

operating or administering such a program, to another district attorney or tribal prosecutor, to a court, or to a law enforcement agency. A private entity operating or administering such a program may disclose information relating to such persons only as permitted under sub. (5) (d) 6. or to the tribal prosecutor or, with the tribal prosecutor's consent, to another district attorney, tribal prosecutor or law enforcement agency.

(7) FEES. Notwithstanding s. 978.06 (1), a tribal prosecutor or a private entity acting under sub. (5) may charge a defendant who is a party to a deferred prosecution agreement under this section a fee to cover his, her, or its costs under the agreement. The tribal prosecutor may require that the fee be paid directly to the tribal prosecutor's office or to the private entity. The tribal prosecutor, or the tribal prosecutor and the private entity, may establish guidelines on when fees may be waived for an offender due to hardship and may authorize extended payment plans of not more than 6 months in length.