CHAPTER 972
CRIMINAL TRIALS

972.01 Jury; civil rules applicable. The summoning of jurors, the selection and qualifications of the jury, the challenge of jurors for cause and the duty of the court in charging the jury and giving instructions and discharging the jury when unable to agree shall be the same in criminal as in civil actions.

972.02 Jury trial; waiver. (1) Except as otherwise provided in this chapter, criminal cases shall be tried by a jury selected as prescribed by the court, unless the defendant waives a jury in writing or by statement in open court or under s. 967.08 (2) (b), on the record, with the approval of the court and the consent of the Nation.
(3) In a case tried without a jury the court shall make a general finding and may in addition find the facts specially.
(4) No member of the grand jury which found the indictment shall be a juror for the trial of the indictment.

972.03 Peremptory challenges. Each side is entitled to only 4 peremptory challenges except as otherwise provided in this section. If there is more than one defendant, the court shall divide the challenges as equally as practicable among them; and if their defenses are adverse and the court is satisfied that the protection of their rights so requires, the court may allow the defendants additional challenges. 6 challenges in other felony cases if there are only 2 defendants and 9 challenges if there are more than 2. In misdemeanor cases, the Nation is entitled to 3 peremptory challenges and the defendant is entitled to 3 peremptory challenges, except that if there are 2 defendants, the court shall allow the defense 4 peremptory challenges, and if there are more than 2 defendants, the court shall allow the defense 6 peremptory challenges. Each side shall be allowed one additional peremptory challenge if additional jurors are to be selected under s. 972.04 (1).

972.04 Exercise of challenges. (1) The number of jurors selected shall be 6. That number, plus the number of peremptory challenges available to all the parties, shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause until all jurors have been examined. The parties shall thereupon exercise in their order, the Nation beginning, the peremptory challenges available to them, and if any party declines to challenge, the challenge shall be made by the clerk by lot.

(2) A party may waive in advance any or all of its peremptory challenges and the number of jurors called pursuant to sub. (1) shall be reduced by this number.

972.06 View. The court may order a view by the jury.

972.07 Jeopardy. Jeopardy attaches:
(1) In a trial to the court without a jury when a witness is sworn;
(2) In a jury trial when the selection of the jury has been completed and the jury sworn.

972.08 Incriminating testimony compelled; immunity.
(1) (a) Whenever any person refuses to testify or to produce books, papers or documents when required to do so before any grand jury, in a proceeding under s. 968.26 or at a preliminary examination, criminal hearing or trial for the reason that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a forfeiture or penalty, the person may nevertheless be compelled to testify or produce the evidence by order of the court on motion of the tribal prosecutor. No person who testifies or produces evidence in obedience to the command of the court in that case may be liable to any forfeiture or penalty for or on account of testifying or producing evidence, but no person may be exempted from prosecution and punishment for perjury or false swearing committed in so testifying.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(2) Whenever a witness attending in any court trial or appearing before any grand jury or John Doe investigation under s. 968.26 fails or refuses without just cause to comply with an order of the court under this section to give testimony in response to a question or with respect to any matter, the court, upon such failure or refusal, or when such failure or refusal is duly brought to its attention, may summarily order the witness's confinement at a suitable place until such time as the witness is willing to give such testimony or until such trial, grand jury term, or John Doe investigation under s. 968.26 is concluded but in no case exceeding one year. No person confined under this section shall be admitted to bail pending the determination of an appeal taken by the person from the order of confinement.

972.085 Immunity; use standard. Immunity from criminal or forfeiture prosecution under ss. 968.26, 972.08 (1) and 979.07 (1) and s. 769, provides immunity only from the use of the compelled testimony or evidence in subsequent criminal or forfeiture proceedings, as well as immunity from the use of evidence derived from that compelled testimony or evidence.

972.09 Hostile witness in criminal cases. Where testimony of a witness at any preliminary examination, hearing or trial in a criminal action is inconsistent with a statement previously made by the witness, the witness may be regarded as a hostile witness and examined as an adverse

witness, and the party producing the witness may impeach the witness by evidence of such prior contradictory statement. When called by the defendant, a law enforcement officer who was involved in the seizure of evidence shall be regarded as a hostile witness and may be examined as an adverse witness at any hearing in which the legality of such seizure may properly be raised.

972.10 Order of trial. (1) (a) After the selection of a jury, the court shall determine if the jurors may take notes of the proceedings:

1. If the court authorizes note–taking, the court shall instruct the jurors that they may make written notes of the proceedings, except the opening statements and closing arguments, if they so desire and that the court will provide materials for that purpose if they so request. The court shall stress the confidentiality of the notes to the jurors. The jurors may refer to their notes during the proceedings and deliberation. The notes may not be the basis for or the object of any motion by any party. After the jury has rendered its verdict, the court shall ensure that the notes are promptly collected and destroyed.

2. If the court does not authorize note–taking, the court shall state the reasons for the determination on the record.

(b) The court may give additional preliminary instructions to assist the jury in understanding its duty and the evidence it will hear. The preliminary instructions may include, without limitation, the elements of any offense charged, what constitutes evidence and what does not, guidance regarding the burden of proof and the credibility of witnesses, and directions not to discuss the case until deliberations begin. The additional instructions shall be disclosed to the parties before they are given and either party may object to any specific instruction or propose instructions of its own to be given prior to trial.

(2) In a trial where the issue is mental responsibility of a defendant, the defendant may make an opening statement on such issue prior to the defendant's offer of evidence. The Nation may make its opening statement on such issue prior to the defendant's offer of evidence or reserve the right to make such statement until after the defendant has rested.

(3) The Nation first offers evidence in support of the prosecution. The defendant may offer evidence after the Nation has rested. If the Nation and defendant have offered evidence upon the original case, the parties may then respectively offer rebuttal testimony only, unless the court in its discretion permits them to offer evidence upon their original case.

(4) At the close of the Nation's case and at the conclusion of the entire case, the defendant may move on the record for a dismissal.

(5) When the evidence is concluded and the testimony closed, if either party desires special instructions to be given to the jury, the instructions shall be reduced to writing, signed by the party or his or her attorney and filed with the clerk, unless the court otherwise directs. Counsel for the parties, or the defendant if he or she is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and to present and argue to the court objections to the adoption or rejection of any instructions requested by counsel. The court shall advise the parties of the instructions to be given. No instruction regarding the failure to call a witness at the trial shall be made or given if the sole basis for such instruction is the fact the name of the witness appears upon a list furnished pursuant to s. 971.23. Counsel, or the defendant if he or she is not represented

by counsel, shall specify and state the particular ground on which the instruction is objected to, and it shall not be sufficient to object generally that the instruction does not state the law, or is against the law, but the objection shall specify with particularity how the instruction is insufficient or does not state the law or to what particular language there is an objection. All objections shall be on the record. The court shall provide the jury with one complete set of written instructions providing the burden of proof and the substantive law to be applied to the case to be decided.

(6) In closing argument, the Nation on the issue of guilt and the defendant on the issue of mental responsibility shall commence and may conclude the argument.

(7) If additional jurors have been selected under s. 972.04 (1) and the number remains more than required at final submission of the cause, the court shall determine by lot which jurors shall not participate in deliberations and discharge them.

972.11 Evidence and practice; civil rules applicable.

(1) Except as provided in subs. (2) to (4), the rules of evidence and practice in civil actions shall be applicable in all criminal proceedings unless the context of a section or rule manifestly require a different construction. No guardian ad litem need be appointed for a defendant in a criminal action.

(2) (a) In this subsection, "sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual intercourse or sexual contact, use of contraceptives, living arrangement and life–style.

(b) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, 948.09, 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, any evidence concerning the complaining witness's prior sexual conduct or opinions of the witness's prior sexual conduct and reputation as to prior sexual conduct shall not be admitted into evidence during the course of the hearing or trial, nor shall any reference to such conduct be made in the presence of the jury, except the following, subject to s. 971.31 (11):

1. Evidence of the complaining witness's past conduct with the defendant.

2. Evidence of specific instances of sexual conduct showing the source or origin of semen, pregnancy or disease, for use in determining the degree of sexual assault or the extent of injury suffered.

3. Evidence of prior untruthful allegations of sexual assault made by the complaining witness.

(c) Notwithstanding limitations on the admission of evidence of or reference to the prior sexual conduct of the complaining witness in par. (b) applies regardless of the purpose of the admission or reference unless the admission is expressly permitted under par. (b) 1., 2. or 3.

(d) 1. If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, evidence of the manner of dress of the complaining witness at the time when the crime occurred is admissible only if it is relevant to a contested issue at trial and its probative value substantially outweighs all of the following:

a. The danger of unfair prejudice, confusion of the issues or misleading the jury.

b. The considerations of undue delay, waste of time or needless presentation of cumulative evidence.

2. The court shall determine the admissibility of evidence under subd. 1. upon pretrial motion before it may be introduced at trial.

(2m) (a) At a trial in any criminal prosecution, the court may, on its own motion or on the motion of any party, order that the testimony of any child witness be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed–circuit audiovisual equipment if all of the following apply:

1. The court finds all of the following:

a. That the presence of the defendant during the taking of the child's testimony will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

b. That taking the testimony of the child in a room other than the courtroom and simultaneously televising the testimony in the courtroom by means of closed–circuit audiovisual equipment is necessary to minimize the trauma to the child of testifying in the courtroom setting and to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.

2. The trial in which the child may be called as a witness will commence:

a. Prior to the child's 12th birthday; or

b. Prior to the child's 16th birthday and, in addition to its finding under subd. 1., the court finds that the interests of justice warrant that the child's testimony be taken in a room other than the courtroom and simultaneously televised in the courtroom by means of closed–circuit audiovisual equipment.

(b) Among the factors which the court may consider in determining the interests of justice under par. (a) 2. b. are any of the following:

1. The child's chronological age, level of development and capacity to comprehend the significance of the events and to verbalize about them.

2. The child's general physical and mental health.

3. Whether the events about which the child will testify constituted criminal or antisocial conduct against the child or a person with whom the child had a close emotional relationship and, if the conduct constituted a battery or a sexual assault, its duration and the extent of physical or emotional injury thereby caused.

4. The child's custodial situation and the attitude of other household members to the events about which the child will testify and to the underlying proceeding.

5. The child's familial or emotional relationship to those involved in the underlying proceeding.

6. The child's behavior at or reaction to previous interviews concerning the events involved.

7. Whether the child blames himself or herself for the events involved or has ever been told by any person not to disclose them; whether the child's prior reports to associates or authorities of the events have been disbelieved or not acted upon; and the child's subjective belief regarding what consequences to himself or herself, or persons with whom the child has a close emotional relationship, will ensue from providing testimony.

8. Whether the child manifests or has manifested symptoms associated with posttraumatic stress disorder or other mental disorders, including, without limitation, reexperiencing the events, fear of their repetition, withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis, lack of self–esteem, mood changes, compulsive behaviors,

school problems, delinquent or antisocial behavior, phobias or changes in interpersonal relationships.

9. The number of separate investigative, administrative and judicial proceedings at which the child's testimony may be required.

(bm) If a court orders the testimony of a child to be taken under par. (a), the court shall do all of the following:

1. To the extent it is practical and subject to s. 972.10 (3), schedule the testimony on a date when the child's recollection is likely to be fresh and at a time of day when the child's energy and attention span are likely to be greatest.

2. Provide a room for the child to testify from that provides adequate privacy, freedom from distractions, informality and comfort appropriate to the child's developmental level.

3. Order a recess whenever the energy, comfort or attention span of the child or other circumstances so warrant.

4. Determine that the child understands that it is wrong to tell a lie and will testify truthfully if the child's developmental level or verbal skills are such that administration of an oath or affirmation in the usual form would be inappropriate.

5. Before questioning by the parties begins, attempt to place the child at ease, explain to the child the purpose of the testimony and identify all persons attending.

6. Supervise the spatial arrangements of the room and the location, movement and deportment of all persons in attendance.

7. Allow the child to testify while sitting on the floor, on a platform or on an appropriately sized chair, or while moving about the room within range of the visual and audio recording equipment.

8. Bar or terminate the attendance of any person whose behavior is disruptive or unduly stressful to the child.

(c) Only the following persons may be present in the room in which the child is giving testimony under par. (a):

1m. Any person necessary to operate the closed–circuit audiovisual equipment.

2m. The parents of the child, the guardian or legal custodian of the child or, if no parent, guardian or legal custodian is available or the legal custodian is an agency, one individual whose presence would contribute to the welfare and well–being of the child.

3m. One person designated by the attorney for the Nation and approved by the court and one person designated by either the defendant or the attorney for the defendant and approved by the court.

(3) (a) In a prosecution under s. 940.22 involving a therapist and a patient or client, evidence of the patient's or client's personal or medical history is not admissible except if:

1. The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the evidence; and

2. The court finds that the evidence is relevant and that its probative value outweighs its prejudicial nature.

(b) The court shall limit the evidence admitted under par. (a) to relevant evidence which pertains to specific information or examples of conduct. The court's order shall specify the information or conduct that is admissible and no other evidence of the patient's or client's personal or medical history may be introduced.

(c) Violation of the terms of the order is grounds for a mistrial but does not prevent the retrial of the defendant.

(3m) A court may not exclude evidence in any criminal action or traffic forfeiture action or a local ordinance in conformity with, on the ground that the evidence existed or was obtained outside of this Nation.

(4) Upon the motion of any party or its own motion, a court may order that any exhibit or evidence be delivered to the party or the owner prior to the final determination of the action or proceeding if all of the following requirements are met:

(a) There is a written stipulation by all the parties agreeing to the order.

(b) No party will be prejudiced by the order.

(c) A complete photographic or other record is made of any exhibits or evidence so released.

972.115 Admissibility of defendant's statement. (1) In this section:

(a) "Custodial interrogation" has the meaning given in s. 968.073 (1) (a).

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the Nation, state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Law enforcement officer" means any person employed by the Nation, state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.

(d) "Statement" means an oral, written, sign language, or nonverbal communication.

(2) (a) If a statement made by a defendant during a custodial interrogation is admitted into evidence in a trial for a felony before a jury and if an audio or audio and visual recording of the interrogation is not available, upon a request made by the defendant as provided in s. 972.10 (5) and unless the Nation asserts and the court finds that one of the following conditions applies or that good cause exists for not providing an instruction, the court shall instruct the jury that it is the policy of this state to make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony and that the jury may consider the absence of an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement in the case:

1. The person refused to respond or cooperate in the interrogation if an audio or audio and visual recording was made of the interrogation so long as a law enforcement officer or agent of a law enforcement agency made a contemporaneous audio or audio and visual recording or written record of the subject's refusal.

2. The statement was made in response to a question asked as part of the routine processing of the person.

3. The law enforcement officer or agent of a law enforcement agency conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer or agent

inadvertently failed to operate the equipment properly, or, without the officer's or agent's knowledge, the equipment malfunctioned or stopped operating.

4. The statement was made spontaneously and not in response to a question by a law enforcement officer or agent of a law enforcement agency.

5. Exigent public safety circumstances existed that prevented the making of an audio or audio and visual recording or rendered the making of such a recording infeasible.

6. The law enforcement officer conducting the interrogation or the law enforcement officer responsible for observing an interrogation conducted by an agent of a law enforcement agency reasonably believed at the commencement of the interrogation that the offense for which the person was taken into custody or for which the person was being investigated, was not a felony.

(b) If a statement made by a defendant during a custodial interrogation is admitted into evidence in a proceeding heard by the court without a jury in a felony case and if an audio or audio and visual recording of the interrogation is not available, the court may consider the absence of an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement unless the court determines that one of the conditions under par. (a) 1. to 6. applies.

(4) Notwithstanding ss. 968.28 to 968.37, a defendant's lack of consent to having an audio or audio and visual recording made of a custodial interrogation does not affect the admissibility in evidence of an audio or audio and visual recording of a statement made by the defendant during the interrogation.

(5) An audio or audio and visual recording of a custodial interrogation shall not be open to public inspection before one of the following occurs:

(a) The person interrogated is convicted or acquitted of an offense that is a subject of the interrogation.

(b) All criminal investigations and prosecutions to which the interrogation relates are concluded.

972.12 Sequestration of jurors. The court may direct that the jurors sworn be kept together or be permitted to separate. The court may appoint an officer of the court to keep the jurors together and to prevent communication between the jurors and others.

972.13 Judgment. (1) A judgment of conviction shall be entered upon a verdict of guilty by the jury, a finding of guilty by the court in cases where a jury is waived, or a plea of guilty or no contest.

(2) Except in cases where ch. 975 is applicable, upon a judgment of conviction the court shall proceed under ch. 973. The court may adjourn the case from time to time for the purpose of pronouncing sentence.

(3) A judgment of conviction shall set forth the plea, the verdict or finding, the adjudication and sentence, and a finding as to the specific number of days for which sentence credit is to be granted under s. 973.155. If the defendant is acquitted, judgment shall be entered accordingly.

(4) Judgments shall be in writing and signed by the judge or clerk.

(5) A copy of the judgment shall constitute authority for the sheriff to execute the sentence.

(6) The following forms may be used for judgments:
HO-CHUNK NATION

In .... Court
The Ho-Chunk Nation
vs.
.... (Name of defendant)
UPON ALL THE FILES, RECORDS AND PROCEEDINGS, IT IS ADJUDGED That the defendant has been convicted upon the defendant's plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty) (no contest) on the .... day of ...., ... (year), of the crime of .... in violation of s. ....; and the court having asked the defendant whether the defendant has anything to state why sentence should not be pronounced, and no sufficient grounds to the contrary being shown or appearing to the court.
*IT IS ADJUDGED That the defendant is guilty as convicted.
*IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin state prisons (county jail of .... county) for an indeterminate term of not more than .....
*IT IS ADJUDGED That the defendant is ordered to serve a bifurcated sentence consisting of .... year(s) of confinement in prison (county jail of) and .... months/years of extended supervision.
*IT IS ADJUDGED That the defendant is placed in the intensive sanctions program subject to the limitations of section
973.032 (3) of the Ho-Chunk Nation Statutes and the following conditions:
....
*IT IS ADJUDGED That the defendant is hereby committed to detention in (the defendant's place of residence or place designated by judge) for a term of not more than .....
*IT IS ADJUDGED That the defendant is ordered to pay a fine of $.... (and the costs of this action).
*IT IS ADJUDGED That the defendant pay restitution to ....
*IT IS ADJUDGED That the defendant is restricted in his or her use of computers as follows: ....
*The .... at .... is designated as the Reception Center to which the defendant shall be delivered by the sheriff.
*IT IS ORDERED That the clerk deliver a duplicate original of this judgment to the sheriff who shall forthwith execute the same and deliver it to the warden.
Dated this .... day of ...., ... (year)
BY THE COURT ....
Date of Offense ....,
Tribal Prosecutor ....,
Defense Attorney ....
*Strike inapplicable paragraphs.
HO-CHUNK NATION
In .... Court
The Ho-Chunk Nation
vs.
.... (Name of defendant)

On the .... day of ...., ... (year), the tribal prosecutor appeared for the Nation and the defendant appeared in person and by .... the defendant's attorney.
UPON ALL THE FILES, RECORDS AND PROCEEDINGS IT IS ADJUDGED That the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.
Dated this .... day of ...., ... (year)
BY THE COURT ....

(7) Probation and parole shall prescribe and furnish forms to the clerk for use as judgments in cases where a defendant is placed on probation or committed to the custody of the department pursuant to chs. 967 to 979.

972.14 Statements before sentencing. (1) In this section:

(ag) "Crime considered at sentencing" means any crime for which the defendant was convicted and any read–in crime, as defined in s. 973.20 (1g) (b).

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

(2) Before pronouncing sentence, the court shall ask the defendant why sentence should not be pronounced upon him or her and allow the tribal prosecutor, defense counsel and defendant an opportunity to make a statement with respect to any matter relevant to the sentence.

(2m) Before pronouncing sentence, the court shall inquire of the tribal prosecutor whether he or she has complied with s. 971.095 (2) and with sub. (3) (b), whether any of the victims of a crime considered at sentencing requested notice of the date, time and place of the sentencing hearing and, if so, whether the district attorney provided to the victim notice of the date, time and place of the sentencing hearing.

(3) (a) Before pronouncing sentence, the court shall determine whether a victim of a crime considered at sentencing wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read in court. The court may allow any other person to make or submit a statement under this paragraph. Any statement under this paragraph must be relevant to the sentence.

(b) After a conviction, if the tribal prosecutor knows of a victim of a crime to be considered at sentencing, the tribal prosecutor shall make a reasonable attempt to contact that person to inform him or her of the right to make or provide a statement under par. (a). Any failure to comply with this paragraph is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

972.15 Presentence investigation. (1) After a conviction the court may order a presentence investigation, except that the court may order an employee of probation and parole to conduct a presentence investigation only after a conviction.

(1m) SEX OFFENSES AGAINST MINORS. If a person is convicted for a felony that requires him or her to register and if the victim was under 18 years of age at the time of the offense, the court may order probation and parole to conduct a presentence investigation report to assess whether the person is at risk for committing another sex offense.

(2) When a presentence investigation report has been received the judge shall disclose the contents of the report to the defendant's attorney and to the tribal prosecutor prior to sentencing. When the defendant is not represented by an attorney, the contents shall be disclosed to the defendant.

(2b) If the defendant is subject to being sentenced under s. 973.01 and he or she satisfies the criteria for substance abuse programing, the person preparing the presentence investigation report shall include in the report a recommendation as to whether the defendant should be eligible to participate in the earned release program.

(2c) If the defendant is subject to being sentenced under s. 973.01 and he or she satisfies the criteria under Wisconsin State Statute s. 302.045 (2) (b) and (c), the person preparing the presentence investigation report shall include in the report a recommendation as to whether the defendant should be eligible for the challenge incarceration program under Wisconsin State Statute s. 302.045.

(2g) If the defendant is subject to being sentenced under s. 973.01 and a factor under s. 973.017 is pertinent to the offense, the person preparing the presentence investigation report shall include in the report any such factor.

(2m) The person preparing the presentence investigation report shall make a reasonable attempt to contact the victim to determine the economic, physical and psychological effect of the crime on the victim. The person preparing the report may ask any appropriate person for information. This subsection does not preclude the person who prepares the report from including any information for the court concerning the impact of a crime on the victim.

(2s) If the defendant is under 21 years of age, the person preparing the presentence investigation report shall attempt to determine whether the defendant has been adjudged delinquent under Wisconsin State Statutes ch. 48, 1993 stats., or ch. 938 or has had a similar adjudication in any other state in the 4 years immediately preceding the date the criminal complaint relating to the present offense was issued and, if so, shall include that information in the report.

(3) The judge may conceal the identity of any person who provided information in the presentence investigation report.

(4) Except as provided in sub. (4m), (4r), (5), or (6), after sentencing the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court.

(4m) Except as provided in s. 950.04 (1v) (p), a tribal prosecutor, the defendant's attorney, or the attorney general who receives a copy of the report shall keep it confidential. A defendant who views the contents of a presentence investigation report shall keep the information in the report confidential.

(4r) The victim of the crime is entitled to view all sentencing recommendations included in the presentence investigation report, including any recommendations under sub. (2b) or (2c), and any

portion of the presentence investigation report that contains information pertaining to the victim that was obtained pursuant to sub. (2m). A victim who views any contents of a presentence investigation report may not keep a copy of any portion of the report and shall keep the information he or she views confidential.

(5) Probation and parole may use the presentence investigation report for correctional programming, parole consideration or care and treatment of any person sentenced to imprisonment or the intensive sanctions program, placed on probation, released on parole or extended supervision or committed to the probation and parole under Wisconsin State Statute ch. 51 or Ho-Chunk Statute s. 971 or any other person in the custody of the probation and parole or for research purposes. Probation and parole may make the report available to other agencies or persons to use for purposes related to correctional programming, parole consideration, care and treatment, or research. Any use of the report under this subsection is subject to the following conditions:

(a) If a report is used or made available to use for research purposes and the research involves personal contact with subjects, probation and parole, agency or person conducting the research may use a subject only with the written consent of the subject or the subject's authorized representative.

(b) Probation and parole or the agency or person to whom the report is made available shall not disclose the name or any other identifying characteristics of the subject, except for disclosure to appropriate staff members or employees of the department, agency or person as necessary for purposes related to correctional programming, parole consideration, care and treatment, or research.

(6) The presentence investigation report and any information contained in it or upon which it is based may be used by any of the following persons in any evaluation, examination, referral, hearing, trial, postcommitment relief proceeding, appeal, or other proceeding under Wisconsin State ch. 980:

(a) The state department of corrections or Ho-Chunk Nation probation and parole.

(b) The Nation's department of health or the state department of health services.

(c) The person who is the subject of the presentence investigation report, his or her attorney, or an agent or employee of the attorney.

(d) The attorney representing the Nation, state or an agent or employee of the attorney.

(e) A licensed physician, licensed psychologist, or other mental health professional who is examining the subject of the presentence investigation report.

(f) The court and, if applicable, the jury hearing the case.