

**Wisconsin Judicial Council**  
**Summary of Major Changes Proposed for Criminal Procedure Code**  
**Summer 2011**

**Promote prompt disposition of misdemeanors.**

- Encourage the use of citation over formal arrest.
- Encourage arrest and release over detention.
- Eliminate the long form complaint by allowing endorsement of the citation and its use as the charging document.
- Require access to police reports at the first appearance.
- Avoid unnecessary pretrial detention and unnecessary court appearances and pretrial conferences.

**Elimination of the preliminary examination in felony cases.**

- The current preliminary is of extremely limited utility – its official function, to identify weak cases and dismiss them, is rarely carried out. Credibility of witnesses is not to be considered and competing inferences are not to be weighed.
- Unofficial functions – previewing witnesses, obtaining discovery, evaluating the strength of the case – are of limited value in light of current limits on scope of the preliminary and the high number of waivers.
- In some counties, the preliminary continues to work moderately well but even then its value is outweighed by the resources consumed – court time, the time of witnesses – often involving overtime for police officers – and, the time of prosecutors and defense lawyers.

**The unofficial functions of the preliminary examination can better be served directly through new provisions:**

- Encouraging earlier and more complete discovery; for example: police reports at the initial appearance.
- Allowing a motion for pretrial dismissal to address the rare situation where uncontroverted facts show the case cannot be proved.

**Clean up troublesome statutes – Examples**

- Consolidation of charges from more than one county – see, § 971.09 of current law.
- John Doe procedures: current § 968.26 is revised to eliminate citizen-initiated John Does; it also eliminates the authority for the court to issue a complaint, both after a John Doe and under §968.02(3), which is repealed; this recognizes that, as a practical matter, only the district attorney can prosecute a charge. [Note: similar changes were made by 2009 Wisconsin Act 24.]
- Dividing current § 972.11 into separate statutes and moving several provisions [e.g., the “rape shield law”] to other chapters of the statutes.

**Discovery rules are reorganized to make them more accessible and understandable.**

**Bail provisions are reorganized to make them more accessible and understandable.**

**Provisions relating to competency to stand trial and the insanity defense are reorganized in a new Chapter 975.**

- Extremely long statutes are broken into separate statutes with captions to make the material more accessible and understandable.

**New Several statutes are created to provide new authority or to clarify procedures.**

- Allowing the district attorney to apply for an order requiring a financial institution to disclose a person's status as a depositor – intended to facilitate access to this basic information without going through formal procedures such as a John Doe.
- Listing the ways a person's appearance in court can be secured – intended to clarify the available procedures.
- Allowing the district attorney to release a defendant on bond before the initial appearance – intended primarily for cases where the defendant is likely to be released without monetary conditions after the initial appearance.
- Codifying case law defining the prosecutor's authority to dismiss a complaint.
- Creating a single, general, statute authorizing deferred and suspended prosecution agreements; it replaces several separate statutes that purport to govern agreements in specified types of cases.
- Describing the effects of the different pleas available to the defendant; it codifies current law to clarify the issues.
- Codifying current law relating to motions to dismiss asserting that a statute is unconstitutional – intended to avoid unwitting waivers by failing to make proper service.
- Creating a motion for pretrial dismissal for use in the rare case where uncontroverted facts show that a charge cannot be proved.
- Codifying remedies for the so-called Bruton situation where one codefendant's statement is not admissible as to the other codefendant.
- Codifying current law allowing jurors to ask questions, in the discretion of the court.
- Codifying current law relating to the acceptance of stipulations.
- Requiring an individual jury poll in all cases, to avoid unnecessarily litigating whether the defendant knew of and waived the right.
- Codifying current law relating to the defendant's presence at postconviction proceedings.