



2019 SENATE BILL 766

January 30, 2020 - Introduced by Senators DARLING, JACQUE and WANGGAARD, cosponsored by Representatives KNODL, SANFELIPPO, DITTRICH, DUCHOW, EDMING, GUNDRUM, JAMES, KUGLITSCH, SKOWRONSKI and WICHGERS. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to renumber and amend* 967.04 (1); and *to create* 967.04 (1) (b) and
2 967.04 (5) (a) 5. of the statutes; **relating to:** using testimony taken by
3 deposition in a criminal trial if witness is at risk of being intimidated.

Analysis by the Legislative Reference Bureau

Under current law, if a witness in a criminal proceeding may not be able to attend the trial or hearing, the court may take the witness's testimony by deposition if the testimony is material and necessary in order to prevent a failure of justice. The deposition testimony may be used at trial if the witness is dead, the witness is out-of-state, the witness is unable to attend because of sickness, or the subpoenaed witness does not attend.

Under this bill, a court may take a witness's testimony by deposition if it appears that the witness is at risk of being intimidated and therefore may not fully cooperate at trial. Under the bill, the deposition testimony may be used at trial if the court finds, by clear and convincing evidence, that the witness may have been intimidated and is at risk of not fully cooperating at trial. When making the finding, the court may consider the safety of the witness, the risk that the witness was intimidated, the nature of the offense being tried, if the witness has changed his or her testimony, and the nature of the defendant.

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

SENATE BILL 766**SECTION 1**

1 **SECTION 1.** 967.04 (1) of the statutes is renumbered 967.04 (1) (a) and amended
2 to read:

3 967.04 (1) (a) If it appears that a prospective witness may be unable to attend
4 or prevented from attending a criminal trial or hearing, that the prospective
5 witness's testimony is material, and that it is necessary to take the prospective
6 witness's deposition in order to prevent a failure of justice, the court at any time after
7 the filing of an indictment or information may upon motion and notice to the parties
8 order that the prospective witness's testimony be taken by deposition and that any
9 designated books, papers, documents or tangible objects, not privileged, be produced
10 at the same time and place.

11 (c) If a witness is committed pursuant to s. 969.01 (3), the court shall direct that
12 the witness's deposition be taken upon notice to the parties. After the deposition has
13 been subscribed, the court shall discharge the witness.

14 **SECTION 2.** 967.04 (1) (b) of the statutes is created to read:

15 967.04 (1) (b) If it appears that a prospective witness is at risk of being
16 intimidated and therefore is at risk of not fully cooperating at trial as he or she would
17 if not intimidated, the court may upon motion and notice to the parties order that the
18 prospective witness's testimony be taken by deposition.

19 **SECTION 3.** 967.04 (5) (a) 5. of the statutes is created to read:

20 967.04 (5) (a) 5. The court finds clear and convincing evidence that the witness
21 may have been intimidated and is at risk of not fully cooperating at trial as he or she
22 would if not intimidated. When making a finding under this subdivision the court
23 may consider the safety of the witness, the risk that the witness was intimidated, the

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1 nature of the offense being tried, if the witness has changed his or her testimony, and
2 the nature of the defendant.

3 (END)