



## 2015 SENATE BILL 43

February 19, 2015 - Introduced by Senators TIFFANY, FARROW, WANGGAARD, LEMAHIEU, NASS, VUKMIR and LAZICH, cosponsored by Representatives CRAIG, HORLACHER, BRANDTJEN, R. BROOKS, CZAJA, HUTTON, GANNON, JAGLER, KAPENGA, KLEEFISCH, KNODL, KNUDSON, KOOYENGA, KREMER, KUGLITSCH, KULP, MURPHY, NEYLON, SANFELIPPO, SCHRAA, SKOWRONSKI, TAUCHEN, THIESFELDT, VORPAGEL and BORN. Referred to Committee on Judiciary and Public Safety.

1     **AN ACT** *to renumber* 968.26 (1) and 978.045 (1r) (a) to (h); *to renumber and*  
2             *amend* 968.20 (1) (intro.), 968.26 (3), 978.045 (1r) (intro.) and 978.045 (1r) (i);  
3             *to amend* 173.12 (1m); and *to create* 968.26 (1b), 968.26 (4), 968.26 (5) and  
4             968.26 (6) and (7) of the statutes; **relating to:** John Doe proceedings and  
5             providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Under current law governing John Doe hearings, if a district attorney requests a judge to convene a proceeding to make a determination of whether a crime has been committed, the judge must convene a proceeding to make the determination. If a person who is not a district attorney complains to a judge that he or she has reason to believe a crime has been committed, the judge must refer the complaint to a district attorney. The district attorney has 90 days to issue charges; if the district attorney does not issue charges, the district attorney must forward to the judge with jurisdiction all law enforcement reports, all records and cases files, and a written explanation for not issuing charges. If that judge determines a proceeding is necessary to determine if a crime has been committed, the judge must convene a proceeding.

Under current law, any conduct that is prohibited by state law and punishable by fine or imprisonment or both is a crime that may be investigated under a John Doe proceeding. Under this bill, the crimes that may be investigated under a John Doe proceeding are certain felonies under the Criminal Code or any conduct punishable

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by fine or imprisonment or both that is allegedly committed by an on-duty law enforcement officer, corrections officer, or state probation, parole, or extended supervision officer.

Under current law, the judge who convenes a John Doe proceeding has discretion as to whether to keep the proceeding secret and may issue a secrecy order that extends to every participant in the proceeding. Under this bill, a judge may enter a secrecy order upon a showing of good cause by the district attorney, but the order may apply only to the judge, the district attorney or other prosecuting attorney, law enforcement personnel, interpreters, and reporters who make or transcribe a record of the proceeding. Any person who violates a secrecy order is subject to a fine of up to \$10,000, imprisonment for up to nine months, or both.

This bill imposes a six-month time limit on a John Doe proceeding. This limit may be extended for additional six-month periods if a majority of judicial administrative district chief judges find good cause for each extension. This bill also provides that the same finding is required to add specified crimes to the original complaint. The vote of each judge must be available to the public.

Finally, under this bill, records reflecting the costs of John Doe investigations and proceedings are a matter of public record, temporary or permanent reserve judges are excluded from presiding over John Doe proceedings, and special prosecutors may be appointed to assist the district attorney in a John Doe proceeding only under certain conditions.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 173.12 (1m) of the statutes is amended to read:  
2           173.12 (1**m**) If an animal has been seized because it is alleged that the animal  
3 has been used in or constitutes evidence of any crime specified in s. 951.08, the  
4 animal may not be returned to the owner by an officer under s. 968.20 (2). In any  
5 hearing under s. 968.20 (1) (1g), the court shall determine if the animal is needed as  
6 evidence or there is reason to believe that the animal has participated in or been

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1 trained for fighting. If the court makes such a finding, the animal shall be retained  
2 in custody.

3 **SECTION 2.** 968.20 (1) (intro.) of the statutes is renumbered 968.20 (1) and  
4 amended to read:

5 968.20 (1) Any person claiming the right to possession of property seized  
6 pursuant to a search warrant or seized without a search warrant may apply for its  
7 return to the circuit court for the county in which the property was seized or where  
8 the search warrant was returned, except that a court may commence a hearing, on  
9 its own initiative, to return property seized under s. 968.26.

10 **(1g)** The court shall order such notice as it deems adequate to be given the  
11 district attorney and, unless notice was provided under s. 968.26 (7), to all persons  
12 who have or may have an interest in the property and. The court shall hold a hearing  
13 to hear all claims to its true ownership. If the right to possession is proved to the  
14 court's satisfaction, it shall order the property, other than contraband or property  
15 covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205, returned if:

16 **SECTION 3.** 968.26 (1) of the statutes is renumbered 968.26 (1m).

17 **SECTION 4.** 968.26 (1b) of the statutes is created to read:

18 968.26 (1b) In this section:

19 (a) "Crime" means any of the following:

20 1. Any Class A, B, C, or D felony under chs. 940 to 948 or 961.

21 2. A violation of any of the following if it is a Class E, F, G, H, or I felony:

22 a. Section 940.04, 940.11, 940.19 (2), (4), (5), or (6), 940.195 (2), (4), (5), or (6),  
23 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.22 (2), 940.225 (3), 940.29,  
24 940.302 (2) (c), 940.32, 941.32, 941.38 (2), 942.09 (2), 943.10, 943.205, 943.32 (1),  
25 946.43, 946.44, 946.47, 946.48, 948.02 (3), 948.03 (2) (b) or (c), (3), or (4), 948.04,

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1 948.055, 948.095, 948.10 (1) (a), 948.11, 948.13 (2) (a), 948.14, 948.20, 948.23 (1), (2),  
2 or (3) (c) 2. or 3., or 948.30 (1).

3 b. Section 940.285 (2) if s. 940.285 (2) (b) 1m., 1r., or 2. applies; s. 940.295 (3)  
4 (a) if s. 940.295 (3) (b) 1m., 1r., 2., or 3. applies; s. 948.05 (1), (1m), or (2) if s. 948.05  
5 (2p) (b) applies; s. 948.12 (1m) or (2m) if s. 948.12 (3) (b) applies; or s. 948.21 if s.  
6 948.21 (1) (b) or (c) applies.

7 3. A violation of s. 940.03.

8 4. A violation of s. 946.83 or 946.85, if the racketeering activity is listed in s.  
9 946.82 (4) and in subd. 1., 2., or 3.

10 5. Any conduct that is prohibited by state law and punishable by fine or  
11 imprisonment or both if the individual who allegedly participated in the conduct was  
12 a law enforcement officer; a correctional officer; or a state probation, parole, or  
13 extended supervision officer and the individual was engaged in his or her official  
14 duties at the time of the alleged conduct.

15 (b) "Judge" does not include a permanent reserve judge, as defined in s. 753.075  
16 (1) (a), or a temporary reserve judge, as defined in s. 753.075 (1) (b).

17 **SECTION 5.** 968.26 (3) of the statutes is renumbered 968.26 (3) (a) and amended  
18 to read:

19 968.26 (3) (a) The Except as provided in sub. (5), the extent to which the judge  
20 may proceed in an examination under sub. (1) (1m) or (2) is within the judge's  
21 discretion.

22 (b) The examination may be adjourned ~~and may be secret.~~

23 (c) Any witness examined under this section may have counsel present at the  
24 examination but the counsel shall not be allowed to examine his or her client,  
25 cross-examine other witnesses, or argue before the judge. ~~Subject to s. 971.23, if the~~

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1 ~~proceeding is secret, the record of the proceeding and the testimony taken shall not~~  
2 ~~be open to inspection by anyone except the district attorney unless it is used by the~~  
3 ~~prosecution at the preliminary hearing or the trial of the accused and then only to~~  
4 ~~the extent that it is so used.~~

5 (d) A court, on the motion of a district attorney, may compel a person to testify  
6 or produce evidence under s. 972.08 (1). The person is immune from prosecution as  
7 provided in s. 972.08 (1), subject to the restrictions under s. 972.085.

8 **SECTION 6.** 968.26 (4) of the statutes is created to read:

9 968.26 (4) (a) The judge may enter a secrecy order upon a showing of good cause  
10 by the district attorney. A secrecy order under this paragraph may apply to only the  
11 judge, a district attorney or other prosecuting attorney who participates in a  
12 proceeding under this section, law enforcement personnel admitted to a proceeding  
13 under this section, an interpreter who participates in a proceeding under this  
14 section, or a reporter who makes or transcribes a record of a proceeding under this  
15 section. No secrecy order under this section may apply to any other person.

16 (b) If a judge enters a secrecy order under par. (a), the judge shall terminate  
17 that secrecy order if any person applies to the judge for the termination and  
18 establishes that the good cause shown under par. (a) no longer exists. If a judge  
19 terminates a secrecy order entered under par. (a), the identity of the subject of the  
20 proceeding under this section may not be disclosed without the subject's consent,  
21 except as provided in par. (c).

22 (c) If a criminal complaint is filed following a proceeding in which the judge  
23 entered a secrecy order, the order is terminated at the initial appearance and s.  
24 971.23 governs disclosure of information from a proceeding under this section.

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1 (d) Any person who violates a secrecy order entered under par. (a) is subject to  
2 a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

3 **SECTION 7.** 968.26 (5) of the statutes is created to read:

4 968.26 (5) (a) 1. Except as provided in subd. 2., no proceeding may last longer  
5 than the following:

6 a. If the proceeding begins under sub. (1m), 6 months beginning on the day the  
7 district attorney requests the judge to convene the proceeding.

8 b. If the proceeding begins under sub. (2), 6 months beginning on the day the  
9 district attorney forwards under sub. (2) (b) to a judge all reports, records and case  
10 files, and an explanation of his or her refusal.

11 2. The period under subd. 1. may be extended only if a majority of judicial  
12 administrative district chief judges find good cause for the extension and  
13 identification of the vote of each judge is available to the public. The period under  
14 subd. 1. may be extended an unlimited number of times, but each extension may be  
15 for no more than 6 months and, for each extension, a majority of judicial  
16 administrative district chief judges must find good cause and the identification of the  
17 vote of each judge must be available to the public.

18 (b) A proceeding may not investigate a crime that was not part of the original  
19 request under sub. (1m) or complaint under sub. (2) (a), whichever is appropriate,  
20 unless a majority of judicial administrative district chief judges find good cause to  
21 add specified crimes and the identification of the vote of each judge is available to the  
22 public. An unlimited number of specified crimes may be added but, for each addition  
23 of a specified crime, a majority of judicial administrative district chief judges must  
24 find good cause and the identification of the vote of each judge must be available to  
25 the public.

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1           **SECTION 8.** 968.26 (6) and (7) of the statutes are created to read:

2           **968.26 (6)** Records reflecting the costs of an investigation and proceedings  
3 under sub. (3) are subject to the provisions of subch. II of ch. 19. If a request to inspect  
4 or copy a record is received, but no record exists, then, notwithstanding s. 19.35 (1)  
5 (L), the recipient of the request shall provide a summary amount of the costs.

6           **(7)** If property was seized during a proceeding under this section, the judge  
7 shall, at the close of the proceeding, order notice as he or she determines to be  
8 adequate to all persons who have or may have an interest in the property.

9           **SECTION 9.** 978.045 (1r) (intro.) of the statutes is renumbered 978.045 (1r) (am)  
10 and amended to read:

11           **978.045 (1r) (am)** Any judge of a court of record, by an order entered in the  
12 record stating the cause for it, may appoint an attorney as a special prosecutor to  
13 perform, for the time being, or for the trial of the accused person, the duties of the  
14 district attorney. An attorney appointed under this subsection shall have all of the  
15 powers of the district attorney.

16           **(bm)** The judge may appoint an attorney as a special prosecutor at the request  
17 of a district attorney to assist the district attorney in the prosecution of persons  
18 charged with a crime, in grand jury proceedings ~~or John Doe proceedings under s.~~  
19 ~~968.26~~, in proceedings under ch. 980, or in investigations. The judge may appoint  
20 an attorney as a special prosecutor if any of the following conditions exists:

21           **SECTION 10.** 978.045 (1r) (a) to (h) of the statutes are renumbered 978.045 (1r)  
22 (bm) 1. to 8.

23           **SECTION 11.** 978.045 (1r) (i) of the statutes is renumbered 978.045 (1r) (cm) and  
24 amended to read:

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1           978.045 (1r) (cm) ~~-A-~~ The judge may not appoint an attorney as a special  
2 prosecutor to assist the district attorney in John Doe proceedings under s. 968.26  
3 unless a condition under par. (bm) 1. to 8. exists or unless the judge determines that  
4 a complaint received under s. 968.26 (2) (am) relates to the conduct of the district  
5 attorney to whom the judge otherwise would refer the complaint. This paragraph  
6 does not prohibit assistance authorized by s. 978.05 (8).

7

(END)