

# State of Wisconsin



2009 Senate Bill 51

Date of enactment: **June 12, 2009**  
Date of publication\*: **June 26, 2009**

## 2009 WISCONSIN ACT 24

AN ACT to renumber and amend 968.26; to amend 911.01 (4) (b), 972.08 (2) and 978.045 (1r) (intro.); and to create 895.46 (9), 968.26 (1), 968.26 (2) (a), (b) and (d) and 978.045 (1r) (i) of the statutes; relating to: judicial discretion in certain John Doe proceedings and the provision of attorney representation of state employees at John Doe proceedings.

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

**SECTION 1.** 895.46 (9) of the statutes is created to read:

895.46 (9) (a) The state shall reimburse a state officer or state employee for reasonable attorney fees and costs incurred by the officer or employee in connection with a John Doe proceeding under s. 968.26 (2) arising from the officer's or employee's conduct in the performance of official duties if all the following apply:

1. The officer or employee was acting within the scope of his or her employment.

2. The officer or employee is not convicted of a crime arising from the conduct that is the subject of any criminal complaint issued under s. 968.26 (2) (d).

(b) The state shall reimburse a state officer or state employee for reasonable attorney fees and costs incurred by the officer or employee in defending a criminal complaint issued under s. 968.26 (2) (d) arising from the officer's or employee's conduct in the performance of official duties if all of the following apply:

1. The officer or employee was acting within the scope of his or her employment.

2. The officer or employee is not convicted of a crime arising from the conduct that is the subject of the criminal complaint issued under s. 968.26 (2) (d).

**SECTION 2.** 911.01 (4) (b) of the statutes is amended to read:

911.01 (4) (b) *Grand jury; John Doe proceedings.* Proceedings before grand juries or a John Doe proceeding under s. 968.26.

**SECTION 3.** 968.26 of the statutes is renumbered 968.26 (2) (am) and amended to read:

968.26 (2) (am) If a person who is not a district attorney complains to a judge that he or she has reason to believe that a crime has been committed within ~~his or her~~ the judge's jurisdiction, the judge shall refer the complaint to the district attorney or, if the complaint may relate to the conduct of the district attorney, to another prosecutor under s. 978.045.

(c) In a proceeding convened under par. (b), the judge shall subpoena and examine the complainant under oath the complainant and any witnesses produced by him or her and may, and at the request of the district attorney shall, subpoena and examine other witnesses that the judge determines to be necessary and appropriate to ascertain whether a crime has been committed and by

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

whom committed. The judge shall consider the credibility of testimony in support of and opposed to the person's complaint.

~~(3) The extent to which the judge may proceed in the an examination under sub. (1) or (2) is within the judge's discretion. The examination may be adjourned and may be secret. Any witness examined under this section may have counsel present at the examination but the counsel shall not be allowed to examine his or her client, cross-examine other witnesses, or argue before the judge. If it appears probable from the testimony given that a crime has been committed and who committed it, the complaint may be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. Subject to s. 971.23, if the proceeding is secret, the record of the proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used. A court, on the motion of a district attorney, may compel a person to testify or produce evidence under s. 972.08 (1). The person is immune from prosecution as provided in s. 972.08 (1), subject to the restrictions under s. 972.085.~~

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

968.26 (1) If a district attorney requests a judge to convene a proceeding to determine whether a crime has been committed in the court's jurisdiction, the judge shall convene a proceeding described under sub. (3) and shall subpoena and examine any witnesses the district attorney identifies.

**SECTION 5.** 968.26 (2) (a), (b) and (d) of the statutes are created to read:

968.26 (2) (a) Except in par. (am), in this subsection, "district attorney" includes a prosecutor to whom the judge has referred the complaint under par. (am).

(b) If a district attorney receives a referral under par. (am), the district attorney shall, within 90 days of receiving the referral, issue charges or refuse to issue charges. If the district attorney refuses to issue charges, the district attorney shall forward to the judge in whose jurisdiction the crime has allegedly been committed all law enforcement investigative reports on the matter that are in the custody of the district attorney, his or her records and case files on the matter, and a written explanation why he or she refused to issue charges. The judge may require a law enforcement agency to provide to him or her any investigative reports that the law enforcement agency has on the matter. The judge shall convene a proceeding as described under sub. (3) if he or she determines that a proceeding is necessary to determine if a crime has been committed. When determining if a proceeding is necessary, the judge may consider the law enforcement investi-

gative reports, the records and case files of the district attorney, and any other written records that the judge finds relevant.

(d) In a proceeding convened under par. (b), the judge may issue a criminal complaint if the judge finds sufficient credible evidence to warrant a prosecution of the complaint. The judge shall consider, in addition to any testimony under par. (c), the law enforcement investigative reports, the records and case files of the district attorney, and any other written reports that the judge finds relevant.

**SECTION 6.** 972.08 (2) of the statutes is amended to read:

972.08 (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.

**SECTION 7.** 978.045 (1r) (intro.) of the statutes is amended to read:

978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the record stating the cause for it, may appoint an attorney as a special prosecutor to perform, for the time being, or for the trial of the accused person, the duties of the district attorney. An attorney appointed under this subsection shall have all of the powers of the district attorney. The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury proceedings or John Doe proceedings under s. 968.26, in proceedings under ch. 980, or in investigations. The judge may appoint an attorney as a special prosecutor if any of the following conditions exists:

**SECTION 7e.** 978.045 (1r) (i) of the statutes is created to read:

978.045 (1r) (i) A judge determines that a complaint received under s. 968.26 (2) (am) relates to the conduct of the district attorney to whom the judge otherwise would refer the complaint.

**SECTION 8. Initial applicability.**

(1) This act first applies to complaints made on the effective date of this subsection.