

State of Wisconsin



2023 Senate Bill 517

Date of enactment:
Date of publication*:

2023 WISCONSIN ACT

AN ACT to renumber and amend 968.02 (3); to amend 968.26 (2) (b), 968.26 (2) (c) and 968.26 (2) (d); and to create 968.02 (3) (b) 2. of the statutes; relating to: court-issued criminal complaints if the person's actions were in self-defense.

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

SECTION 1. 968.02 (3) of the statutes is renumbered 968.02 (3) (a) and amended to read:

968.02 (3) (a) If a district attorney refuses or is unavailable to issue a complaint, a circuit judge may permit the filing of a complaint, if the judge finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing.

(b) 1. If the a district attorney refuses to issue a complaint, a circuit judge may permit the filing of a complaint, if the judge finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing. The district attorney has refused to issue a complaint, he or she shall be informed of the hearing and may attend. The

(c) A hearing under this subsection shall be ex parte without the right of cross-examination.

SECTION 2. 968.02 (3) (b) 2. of the statutes is created to read:

968.02 (3) (b) 2. Notwithstanding subd. 1., a circuit court may not conduct a hearing or permit the filing of a complaint if the district attorney refused to issue a complaint because the person to be charged has a defense of privilege of self-defense or defense of others in accordance with s. 939.48 unless there is new evidence that sup-

ports the charge and, after conducting a hearing to consider the new evidence, the judge finds there is probable cause to believe that the person did not act in accordance with s. 939.48. The district attorney shall be informed of the hearing and may attend.

SECTION 3. 968.26 (2) (b) of the statutes is amended to read:

968.26 (2) (b) 1. 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.

2. 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.

3. 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 investigative reports,

* Section 991.11, WISCONSIN STATUTES: 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."

the records and case files of the district attorney, and any other written records that the judge finds relevant. The judge may not convene a proceeding if the district attorney refused to issue charges because the person to be charged has a defense of privilege of self-defense or defense of others in accordance with s. 939.48 unless there is new evidence that supports that the person did not act in accordance with s. 939.48 and the judge determines that a proceeding is necessary.

SECTION 4. 968.26 (2) (c) of the statutes is amended to read:

968.26 (2) (c) In a proceeding convened under par. (b) 3., the judge shall subpoena and examine under oath the complainant and any witnesses that the judge determines to be necessary and appropriate to ascertain whether a crime has been committed and by whom com-

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

SECTION 5. 968.26 (2) (d) of the statutes is amended to read:

968.26 (2) (d) In a proceeding convened under par. (b) 3., 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. Initial applicability.

(1) This act first applies to refusals made by a district attorney on the effective date of this subsection.