



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 24
[2009 Senate Bill 51]

John Doe Proceedings

A “John Doe” proceeding is essentially an inquest during which a judge determines if a crime has been committed and by whom. Prior to the enactment of 2009 Wisconsin Act 24, any person, not just a district attorney, could complain to a judge that he or she had reason to believe that a crime had been committed. A judge had limited discretion, upon receiving a complaint, in deciding whether to convene a John Doe proceeding and, following a proceeding, whether to issue charges.

Act 24 treats John Doe proceedings in the following manner:

1. The law remains unchanged with respect to a request from a district attorney to convene a John Doe proceeding.
2. Any person who is not a district attorney may complain to a judge that a crime has been committed and the judge must refer the complaint to the district attorney. [If the complaint refers to the conduct of the district attorney, the judge must refer the complaint to a special prosecutor.] The district attorney then must, within 90 days, issue charges or refuse to issue charges. If the district attorney does not issue charges, he or she must forward to the judge all law enforcement investigative reports on the matter that are in the custody of the district attorney. The judge may require a law enforcement agency to provide any investigative reports that the law enforcement agency has on the matter. The judge must convene a John Doe proceeding only if, after the exercise of discretion, the judge determines that a proceeding is necessary to determine if a crime has been committed. When making this determination, the judge may consider the law enforcement investigative reports, the records and case files of the district attorney, and any other written records that the judge finds relevant.
3. Once a proceeding has been convened, the judge will determine who the witnesses will be.
4. The judge will consider the credibility of testimony in support of and opposed to a person’s complaint and may issue a criminal complaint if the judge finds sufficient credible evidence to warrant a prosecution of the complaint. The judge must consider available law enforcement investigative reports,

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

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

5. Reimbursement of reasonable attorney fees and costs incurred by a state officer or employee in connection with, and in a criminal action arising from, a John Doe proceeding initiated by someone other than a district attorney will be provided if the officer or employee was acting within the scope of employment and the officer or employee is not convicted of a crime arising from conduct that is the subject of a criminal complaint issued as a result of the John Doe proceeding.

Effective Date: The Act took effect on June 27, 2009.

Prepared by: Ronald Sklansky, Senior Staff Attorney

July 9, 2009

RS:jal