

2007 SENATE BILL 432

January 30, 2008 – Introduced by Senators KAPANKE, ROESSLER, S. FITZGERALD, OLSEN, SCHULTZ, DARLING, GROTHMAN, LAZICH, ERPENBACH and COWLES, cosponsored by Representatives J. FITZGERALD, GUNDRUM, SUDER, MOULTON, NERISON, MURTHA, HINES, VAN ROY, WOOD, BALLWEG, MURSAU, DAVIS, M. WILLIAMS, PETROWSKI, ZIEGELBAUER, OWENS, KESTELL, HAHN, PETERSEN, MONTGOMERY, ROTH, KLEEFISCH, KAUFERT, MUSSER, LEMAHIEU, TOWNSEND, J. OTT, A. OTT, NASS, GOTTLIEB, TRAVIS, HINTZ, SHERIDAN and SEIDEL. Referred to Committee on Judiciary, Corrections, and Housing.

1 **AN ACT** *to renumber and amend* 968.26; *to amend* 48.981 (7) (a) 14m., 230.81
 2 (2), 911.01 (4) (b), 970.02 (1) (c), 971.02 (1), 971.23 (1) (a), 972.08 (1) (a), 972.08
 3 (2) and 972.085; and *to create* 968.26 (2) of the statutes; **relating to:** John Doe
 4 proceedings.

Analysis by the Legislative Reference Bureau

Under current law, under a John Doe proceeding, a person who believes a crime has been committed may complain to a judge. Then the judge must ascertain if a crime has been committed. The scope of examination is within the judge's discretion. If the judge determines that a crime has probably been committed, she or he will issue a warrant for the arrest of the accused.

This bill limits an individual who believes a crime has been committed to complaining only to a district attorney under any of the following circumstances: 1) If the alleged crime occurs when the individual is under arrest, incarcerated, imprisoned, or otherwise detained by any law enforcement agency or detained as a sexually violent person; 2) If the alleged crime occurs on the property of the Department of Corrections (DOC), the Department of Health and Family Services (DHFS), or a county jail; 3) If the person who allegedly committed the crime is working as an employee of DOC or DHFS, a law enforcement officer, or a correctional officer. After the individual files a complaint, the district attorney may conduct an investigation of the complaint and may file a complaint.

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

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

1 **SECTION 1.** 48.981 (7) (a) 14m. of the statutes is amended to read:

2 48.981 (7) (a) 14m. A judge conducting proceedings under s. 968.26 (1).

3 **SECTION 2.** 230.81 (2) of the statutes is amended to read:

4 230.81 (2) Nothing in this section prohibits an employee from disclosing
5 information to an appropriate law enforcement agency, a state or federal district
6 attorney in whose jurisdiction the crime is alleged to have occurred, a state or federal
7 grand jury or a judge in a proceeding commenced under s. 968.26 (1), or disclosing
8 information pursuant to any subpoena issued by any person authorized to issue
9 subpoenas under s. 885.01. Any such disclosure of information is a lawful disclosure
10 under this section and is protected under s. 230.83.

11 **SECTION 3.** 911.01 (4) (b) of the statutes is amended to read:

12 911.01 (4) (b) *Grand jury; John Doe proceedings.* Proceedings before grand
13 juries or a John Doe proceeding under s. 968.26.

14 **SECTION 4.** 968.26 of the statutes is renumbered 968.26 (1) and amended to
15 read:

16 968.26 (1) ~~If~~ Except as provided in sub. (2), if a person complains to a judge that
17 he or she has reason to believe that a crime has been committed within his or her
18 jurisdiction, the judge shall examine the complainant under oath and any witnesses
19 produced by him or her and may, and at the request of the district attorney shall,
20 subpoena and examine other witnesses to ascertain whether a crime has been
21 committed and by whom committed. The extent to which the judge may proceed in

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

15 **SECTION 5.** 968.26 (2) of the statutes is created to read:

16 968.26 (2) An individual who has reason to believe that a crime has been
17 committed may complain only to the district attorney of the county in which the
18 alleged crime occurred, and the district attorney may conduct an investigation and
19 file a complaint, if any of the following circumstances apply:

20 (a) The complaining individual was a prisoner, as defined in s. 46.011 (2), or was
21 detained under ch. 980, when the alleged crime occurred.

22 (b) The complaining individual has reason to believe that the alleged crime
23 occurred on property, including a vehicle, owned or leased by the department or the
24 department of health and family services, or any property, including a vehicle, used
25 lawfully for a purpose under s. 302.31.

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1 (c) The complaining individual has reason to believe that the individual who
2 allegedly committed the crime is an employee of the department, the department of
3 health and family services, a law enforcement officer, or a correctional officer and was
4 working in his or her official duty at the commission of the alleged crime.

5 **SECTION 6.** 970.02 (1) (c) of the statutes is amended to read:

6 970.02 (1) (c) That the defendant is entitled to a preliminary examination if
7 charged with a felony in any complaint, including a complaint issued under s. 968.26
8 (1), or when the defendant has been returned to this state for prosecution through
9 extradition proceedings under ch. 976, or any indictment, unless waived in writing
10 or in open court, or unless the defendant is a corporation or limited liability company.

11 **SECTION 7.** 971.02 (1) of the statutes is amended to read:

12 971.02 (1) If the defendant is charged with a felony in any complaint, including
13 a complaint issued under s. 968.26 (1), or when the defendant has been returned to
14 this state for prosecution through extradition proceedings under ch. 976, or any
15 indictment, no information or indictment shall be filed until the defendant has had
16 a preliminary examination, unless the defendant waives such examination in
17 writing or in open court or unless the defendant is a corporation or limited liability
18 company. The omission of the preliminary examination shall not invalidate any
19 information unless the defendant moves to dismiss prior to the entry of a plea.

20 **SECTION 8.** 971.23 (1) (a) of the statutes is amended to read:

21 971.23 (1) (a) Any written or recorded statement concerning the alleged crime
22 made by the defendant, including the testimony of the defendant in a secret
23 proceeding under s. 968.26 (1) or before a grand jury, and the names of witnesses to
24 the defendant's written statements.

25 **SECTION 9.** 972.08 (1) (a) of the statutes is amended to read:

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1 972.08 (1) (a) Whenever any person refuses to testify or to produce books,
2 papers or documents when required to do so before any grand jury, in a proceeding
3 under s. 968.26 (1) or at a preliminary examination, criminal hearing or trial for the
4 reason that the testimony or evidence required of him or her may tend to incriminate
5 him or her or subject him or her to a forfeiture or penalty, the person may
6 nevertheless be compelled to testify or produce the evidence by order of the court on
7 motion of the district attorney. No person who testifies or produces evidence in
8 obedience to the command of the court in that case may be liable to any forfeiture or
9 penalty for or on account of testifying or producing evidence, but no person may be
10 exempted from prosecution and punishment for perjury or false swearing committed
11 in so testifying.

12 **SECTION 10.** 972.08 (2) of the statutes is amended to read:

13 972.08 (2) Whenever a witness attending in any court trial or appearing before
14 any grand jury or John Doe investigation under s. 968.26 fails or refuses without just
15 cause to comply with an order of the court under this section to give testimony in
16 response to a question or with respect to any matter, the court, upon such failure or
17 refusal, or when such failure or refusal is duly brought to its attention, may
18 summarily order the witness's confinement at a suitable place until such time as the
19 witness is willing to give such testimony or until such trial, grand jury term or John
20 Doe investigation is concluded but in no case exceeding one year. No person confined
21 under this section shall be admitted to bail pending the determination of an appeal
22 taken by the person from the order of confinement.

23 **SECTION 11.** 972.085 of the statutes is amended to read:

24 **972.085 Immunity; use standard.** Immunity from criminal or forfeiture
25 prosecution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15,

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1 139.20, 139.39 (5), 195.048, 196.48, 551.56 (3), 553.55 (3), 601.62 (5), 767.87 (4),
2 885.15, 885.24, 885.25 (2), 891.39 (2), 968.26 (1), 972.08 (1) and 979.07 (1) and ch.
3 769, provides immunity only from the use of the compelled testimony or evidence in
4 subsequent criminal or forfeiture proceedings, as well as immunity from the use of
5 evidence derived from that compelled testimony or evidence.

6 **SECTION 12. Initial applicability.**

7 (1) The treatment of section 968.26 (2) of the statutes first applies to complaints
8 made on the effective date of this subsection.

9 (END)