

**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2007 SENATE BILL 537**

March 4, 2008 – Offered by Senators KAPANKE and ROESSLER.

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.

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***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 substitute amendment generally eliminates access to file a John Doe complaint 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 or committed 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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***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

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) Subsection (1) does not apply if any of the following circumstances  
17 apply:

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

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

24 (c) The complaining individual has reason to believe that the individual who  
25 allegedly committed the crime is an employee of the department, the department of

1 health and family services, a law enforcement officer, or a correctional officer and was  
2 working in his or her official duty at the commission of the alleged crime.

3 **SECTION 6.** 968.26 (3) of the statutes is created to read:

4 968.26 (3) If an individual is alleging that a law enforcement officer supplied  
5 false information and the district attorney had filed charges against the individual  
6 due to the false information the law enforcement officer supplied, the individual may,  
7 notwithstanding sub. (2), file a complaint under sub. (1).

8 **SECTION 7.** 970.02 (1) (c) of the statutes is amended to read:

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

14 **SECTION 8.** 971.02 (1) of the statutes is amended to read:

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

23 **SECTION 9.** 971.23 (1) (a) of the statutes is amended to read:

24 971.23 (1) (a) Any written or recorded statement concerning the alleged crime  
25 made by the defendant, including the testimony of the defendant in a secret

1 proceeding under s. 968.26 (1) or before a grand jury, and the names of witnesses to  
2 the defendant's written statements.

3 **SECTION 10.** 972.08 (1) (a) of the statutes is amended to read:

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

15 **SECTION 11.** 972.08 (2) of the statutes is amended to read:

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

