



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Senate Bill 537

**Senate
Amendment 1**

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Current Law

Section 968.26, Stats., provides as follows:

John Doe proceeding. If a person complains to a judge that he or she has reason to believe that a crime has been committed within his or her jurisdiction, the judge shall examine the complainant under oath and any witnesses produced by him or her 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 ... a warrant shall issue for the arrest of the accused

The Wisconsin Supreme Court has noted that while a John Doe proceeding permits the investigation of alleged or suspected violations of law, it also serves to prevent reckless and ill-advised prosecution by requiring that a complaint may not be issued except upon a finding of probable cause. The proceeding is not so much a procedure for the determination of probable cause as it is an inquest for the discovery of crime. [See, *State v. Washington*, 83 Wis. 2d 808, 266 N.W.2d 597 (1978).]

Senate Bill 537

Senate Bill 537 amends current law by providing that:

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 district attorney refuses in writing to issue charges or the district attorney takes no action within 90

days, the judge must convene a John Doe proceeding only if, after the exercise of his or her discretion, the judge determines that a proceeding is necessary to determine if a crime has been committed.

3. Once a proceeding has been convened, the judge determines who the witnesses will be.
4. The judge will consider the credibility of testimony in support of and opposed to the person's complaint and may issue a criminal complaint if the judge finds sufficient credible evidence to warrant a prosecution of the complaint.
5. When considering when to convene a John Doe proceeding or whether to issue a complaint, the judge may consider law enforcement investigative reports, the records and case files of the district attorney, and any other written records that the judge finds relevant.

Senate Amendment 1

Under current law, a state public officer or employee may not have his or her attorney fees and costs paid by the state in a criminal action. [See s. 895.46 (1), Stats.]

The Senate Amendment provides that attorney fees and costs will be paid for a state public officer or employee who is the subject of a John Doe proceeding for actions occurring within his or her official capacity if both of the following apply:

1. The officer or employee is found to be acting within the scope of his or her employment.
2. The Attorney General determines that the state officer or state employee acted in good faith.

The Senate Amendment further provides that regardless of the determination made by the Attorney General regarding whether a person acted in good faith, attorney fees and costs or fines will be paid by the state if the officer or employee is not found guilty in a criminal action commenced as a result of the John Doe proceeding.

Legislative History

On March 4, 2008, the Senate adopted Senate Amendment 1 on a vote of Ayes, 33; Noes, 0. On the same day, the Senate passed Senate Bill 537 on a vote of Ayes, 18; Noes, 15.

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