



State of Wisconsin
2009 – 2010 LEGISLATURE

LRBs0044/1
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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 78**

April 23, 2009 – Offered by Representative KESSLER.

1 **AN ACT** *to renumber and amend* 968.26; *to amend* 753.075 (1) (a), 911.01 (4)
2 (b), 972.08 (2) and 978.045 (1r) (intro.); and *to create* 753.075 (2m) and 968.26
3 (2) of the statutes; **relating to:** John Doe proceedings.

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

4 **SECTION 1.** 753.075 (1) (a) of the statutes is amended to read:

5 753.075 (1) (a) “Permanent reserve judge” means a judge appointed by the chief
6 justice to serve an assignment. Except as provided in sub. (2m), an appointment
7 shall be for a period of 6 months and permanent reserve judges may be reappointed
8 for subsequent periods. Permanent reserve judges shall perform the same duties as
9 other judges and ~~may be reappointed for subsequent periods.~~

10 **SECTION 2.** 753.075 (2m) of the statutes is created to read:

11 753.075 (2m) RESERVE JUDGES TO REVIEW PRISON INMATE COMPLAINTS. The chief
12 justice of the supreme court shall assign a permanent reserve judge to hear

1 complaints under s. 968.26 (2) for not more than one 12-month period to be
2 compensated as described under sub. (3) (b).

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

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

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

8 968.26 (1) ~~If~~ Except as provided in sub. (2), if a person complains to a judge that
9 he or she has reason to believe that a crime has been committed within his or her
10 jurisdiction, the judge shall examine the complainant under oath and any witnesses
11 produced by him or her and may, and at the request of the district attorney shall,
12 subpoena and examine other witnesses to ascertain whether a crime has been
13 committed and by whom committed. The extent to which the judge may proceed in
14 the examination is within the judge's discretion. The examination may be adjourned
15 and may be secret. Any witness examined under this section may have counsel
16 present at the examination but the counsel shall not be allowed to examine his or her
17 client, cross-examine other witnesses or argue before the judge. If it appears
18 probable from the testimony given that a crime has been committed and who
19 committed it, the complaint may be reduced to writing and signed and verified; and
20 ~~thereupon~~ a warrant shall ~~issue~~ be issued for the arrest of the accused. Subject to
21 s. 971.23, if the proceeding is secret, the record of the proceeding and the testimony
22 taken shall not be open to inspection by anyone except the district attorney unless
23 it is used by the prosecution at the preliminary hearing or the trial of the accused and
24 then only to the extent that it is so used. A court, on the motion of a district attorney,
25 may compel a person to testify or produce evidence under s. 972.08 (1). The person

1 is immune from prosecution as provided in s. 972.08 (1), subject to the restrictions
2 under s. 972.085.

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

4 968.26 (2) (a) Unless the complainant is a district attorney, an individual who
5 has reason to believe that a crime has been committed, or that a rule promulgated
6 by the department or the department of health services has been violated, may
7 complain only to a reserve judge assigned under s. 753.075 (2m) and only the process
8 described under this subsection applies, if any of the following circumstances
9 applies:

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

12 2. The complaining individual has reason to believe that the individual who
13 allegedly committed the crime or violated the rule is an employee of the department,
14 an employee of the department of health and family services, or a correctional officer;
15 has contact in his or her official duties with prisoners, as defined in s. 46.011 (2) or
16 with individuals detained or committed under ch. 980; and was working in his or her
17 official duty at the time that the crime is alleged to have been committed or the rule
18 is alleged to have been violated.

19 (b) If an individual complains under par. (a) to a reserve judge that he or she
20 has a reason to believe that a crime has been committed or a rule has been violated
21 and any of the circumstances under par. (a) apply, the reserve judge shall do one of
22 the following:

23 1. If the reserve judge finds that no crime has been committed or no rule has
24 been violated, dismiss the complaint.

1 2. If the reserve judge finds probable cause that a rule has been violated, refer
2 the complaint to the department or the department of health services, whichever
3 promulgated the rule that has been violated.

4 3. If the reserve judge finds probable cause that a crime has been committed,
5 refer the complaint to the district attorney or to the circuit court of the county in
6 which the crime allegedly occurred.

7 (c) If a circuit court judge receives a complaint from a reserve judge under par.
8 (b) 3., the circuit court judge shall conduct an investigation to determine whether a
9 crime has been committed. In making the determination, the judge may, at his or
10 her discretion, examine under oath the complainant or any witnesses produced by
11 the complainant and subpoena and examine under oath other witnesses, as the judge
12 determines is necessary to ascertain whether a crime has been committed and by
13 whom committed. The examination may be adjourned and may be secret. Any
14 witness examined may have counsel present but the counsel may not examine his or
15 her client, cross-examine other witnesses, or argue before the judge. If the judge
16 determines from the testimony that a crime has been committed and who committed
17 it, he or she may issue a warrant for the arrest of the accused.

18 **SECTION 6.** 972.08 (2) of the statutes is amended to read:

19 972.08 (2) Whenever a witness attending in any court trial or appearing before
20 any grand jury or John Doe investigation under s. 968.26 fails or refuses without just
21 cause to comply with an order of the court under this section to give testimony in
22 response to a question or with respect to any matter, the court, upon such failure or
23 refusal, or when such failure or refusal is duly brought to its attention, may
24 summarily order the witness's confinement at a suitable place until such time as the
25 witness is willing to give such testimony or until such trial, grand jury term, or John

1 Doe investigation under s. 968.26 is concluded but in no case exceeding one year. No
2 person confined under this section shall be admitted to bail pending the
3 determination of an appeal taken by the person from the order of confinement.

4 **SECTION 7.** 978.045 (1r) (intro.) of the statutes is amended to read:

5 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
6 record stating the cause for it, may appoint an attorney as a special prosecutor to
7 perform, for the time being, or for the trial of the accused person, the duties of the
8 district attorney. An attorney appointed under this subsection shall have all of the
9 powers of the district attorney. The judge may appoint an attorney as a special
10 prosecutor at the request of a district attorney to assist the district attorney in the
11 prosecution of persons charged with a crime, in grand jury proceedings or John Doe
12 proceedings under s. 968.26, in proceedings under ch. 980, or in investigations. The
13 judge may appoint an attorney as a special prosecutor if any of the following
14 conditions exists:

15 **SECTION 8. Initial applicability.**

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

18 (END)