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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2015 Senate Bill 43</b>	<b>Senate Amendments 5, 6, and 7</b>
<i>Memo published: October 23, 2015</i>	<i>Contact: Michael Queensland, Staff Attorney (266-3810)</i>

### **2015 SENATE BILL 43**

A John Doe proceeding is conducted by a judge to investigate whether a crime has been committed and by whom, and to decide whether sufficient credible evidence exists to warrant prosecution of the crime. A judge's role is both investigative and judicial, and the extent to which to proceed in the investigation is within the judge's discretion.

**2015 Senate Bill 43**, "the bill," makes a variety of changes to Wisconsin's John Doe law, including the following:

- Specifies the crimes that may be investigated under a John Doe proceeding.
- Prohibits a permanent reserve judge or temporary reserve judge from conducting a John Doe proceeding.
- Specifies that a judge may enter a secrecy order upon a showing of good cause by the district attorney and provides that the order may only apply to the judge, a district attorney or other prosecutor participating in the proceeding, law enforcement personnel admitted to a proceeding, an interpreter participating in the proceeding, or a reporter who makes or transcribes a record of the proceeding. The bill specifically prohibits a secrecy order from applying to any other person. Under the bill, any person who violates a secrecy order is subject to a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both.
- Provides ways a secrecy order may be terminated. Under the bill, a judge must terminate a secrecy order if any person applies to the judge for the termination and establishes that good cause no longer exists. The bill also provides that a secrecy order is automatically terminated at the initial appearance if a criminal complaint is filed. If

a secrecy order has been terminated, the identity of the subject of the proceeding may not be disclosed without the subject's consent unless a criminal complaint has been filed.

- Provides that a John Doe proceeding may not last longer than six months from either the day that the district attorney requests the judge to convene the proceeding, or from the day that the district attorney forwards to the judge all reports, records and case files, and an explanation of his or her refusal. This six-month period may only be extended if a majority of the 10 judicial administrative district chief judges find good cause for the extension. Each judge's vote must be available to the public. A John Doe proceeding may be extended through this procedure an unlimited number of times, but no extension may last more than six months.
- Specifies that a John Doe proceeding may only investigate a crime that was part of the original request or complaint, unless a majority of the judicial administrative district chief judges find good cause to add specified crimes and the identification of each judge's vote is available to the public. An unlimited number of specified crimes may be added to the scope of a proceeding, but for each additional crime, a majority of judicial administrative district chief judges must find good cause and the identification of the vote of each judge must be made available to the public.
- In addition to the procedures available in current law that allow a person to apply to the circuit court for the return of property that has been seized pursuant to a criminal investigation, provides that a judge conducting a John Doe proceeding must, at the close of the proceeding, order notice as he or she determines to be adequate to all persons who have or may have an interest in any property seized during the course of the proceeding. The bill also allows a judge to commence a hearing on its own initiative to return property seized pursuant to a John Doe proceeding.
- Provides that records reflecting the costs of a John Doe proceeding and investigation are subject to Wisconsin's Open Records Law. If a request to inspect or copy a record is received, but no record exists, the recipient of the request must provide a summary amount of the costs.

### **SENATE AMENDMENT 5**

**Senate Amendment 5** specifies that a search warrant relating to a John Doe proceeding may only be issued by a judge that is not presiding over that proceeding.

### **SENATE AMENDMENT 6**

**Senate Amendment 6** provides that a secrecy order in effect on the bill's effective date may only apply to the judge, a district attorney or other prosecuting attorney participating in the proceeding, law enforcement personnel admitted to a proceeding, an interpreter participating in the proceeding, or a reporter who makes or transcribes a record of the proceeding. Senate Amendment 6 terminates all secrecy orders covering other persons.

## **SENATE AMENDMENT 7**

As described earlier, the **bill** specifies the crimes that may be investigated under a John Doe proceeding. Very generally, these crimes include the following:

- Any Class A, B, C, or D felony in chs. 940 to 948 and 961, Stats.
- Specified Class E, F, G, H, or I felonies.
- Felony murder.
- Racketeering or continuing a criminal enterprise, if the underlying activity being investigated is one of the above-listed crimes and is listed in the definition of “racketeering activity” in s. 946.82 (4), Stats.
- Any crime committed by an on-duty law enforcement officer, correctional officer, or state probation, parole, or extended supervision officer.

**Senate Amendment 7** provides that a John Doe proceeding may be used to investigate a solicitation, conspiracy, or attempt to commit any of the above crimes.

## **BILL HISTORY**

Senate Amendments 5 and 6 were offered by Senators Tiffany and Wanggaard on September 30, 2015. Senate Amendment 7 was offered by Senator Tiffany on October 20, 2015. On October 20, 2015, the Senate adopted Senate Amendment 5 on a vote of Ayes, 18; Noes, 13. On the same day, the Senate adopted Senate Amendment 6 on a vote of Ayes, 18; Noes, 14; and adopted Senate Amendment 7 on a voice vote. On October 21, 2015, the Senate passed the bill, as amended, on a vote of Ayes, 18; Noes, 14. Later that day, the Assembly concurred in the bill on a vote of Ayes, 61; Noes, 36.

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