

State of Wisconsin



2015 Senate Bill 43

Date of enactment: **October 23, 2015**
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2015 WISCONSIN ACT 64

AN ACT *to renumber* 968.20 (1) (a) and (b), 968.26 (1) and 978.045 (1r) (a) to (h); *to renumber and amend* 968.20 (1) (intro.), 968.26 (3), 978.045 (1r) (intro.) and 978.045 (1r) (i); *to amend* 173.12 (1m); and *to create* 968.26 (1b), 968.26 (4), 968.26 (5) and 968.26 (6) and (7) of the statutes; **relating to:** John Doe proceedings and providing a penalty.

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

SECTION 1. 173.12 (1m) of the statutes is amended to read:

173.12 (1m) If an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime specified in s. 951.08, the animal may not be returned to the owner by an officer under s. 968.20 (2). In any hearing under s. 968.20 (1) (1g), the court shall determine if the animal is needed as evidence or there is reason to believe that the animal has participated in or been trained for fighting. If the court makes such a finding, the animal shall be retained in custody.

SECTION 2. 968.20 (1) (intro.) of the statutes is renumbered 968.20 (1) and amended to read:

968.20 (1) Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned, except that a court may commence a hearing, on its own initiative, to return property seized under s. 968.26.

(1g) The court shall order such notice as it deems adequate to be given the district attorney and, unless notice was provided under s. 968.26 (7), to all persons who have

or may have an interest in the property ~~and~~. The court shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205, returned if:

SECTION 2h. 968.20 (1) (a) and (b) of the statutes are renumbered 968.20 (1g) (a) and (b).

SECTION 3. 968.26 (1) of the statutes is renumbered 968.26 (1m).

SECTION 4. 968.26 (1b) of the statutes is created to read:

968.26 (1b) In this section:

(a) "Crime" means any of the following:

1. Any Class A, B, C, or D felony under chs. 940 to 948 or 961.

2. A violation of any of the following if it is a Class E, F, G, H, or I felony:

a. Section 940.04, 940.11, 940.19 (2), (4), (5), or (6), 940.195 (2), (4), (5), or (6), 940.20, 940.201, 940.203, 940.205, 940.207, 940.208, 940.22 (2), 940.225 (3), 940.29, 940.302 (2) (c), 940.32, 941.32, 941.38 (2), 942.09 (2), 943.10, 943.205, 943.32 (1), 946.43, 946.44, 946.47, 946.48, 948.02 (3), 948.03 (2) (b) or (c), (3), or (4), 948.04, 948.055, 948.095, 948.10 (1) (a), 948.11,

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

948.13 (2) (a), 948.14, 948.20, 948.23 (1), (2), or (3) (c) 2. or 3., or 948.30 (1).

b. Section 940.285 (2) if s. 940.285 (2) (b) 1m., 1r., or 2. applies; s. 940.295 (3) (a) if s. 940.295 (3) (b) 1m., 1r., 2., or 3. applies; s. 948.05 (1), (1m), or (2) if s. 948.05 (2p) (b) applies; s. 948.12 (1m) or (2m) if s. 948.12 (3) (b) applies; or s. 948.21 if s. 948.21 (1) (b) or (c) applies.

3. A violation of s. 940.03.

4. A violation of s. 946.83 or 946.85, if the racketeering activity is listed in s. 946.82 (4) and in subd. 1., 2., or 3.

4m. A solicitation, conspiracy, or attempt to commit any violation under subd. 1., 2., 3., or 4.

5. Any conduct that is prohibited by state law and punishable by fine or imprisonment or both if the individual who allegedly participated in the conduct was a law enforcement officer; a correctional officer; or a state probation, parole, or extended supervision officer and the individual was engaged in his or her official duties at the time of the alleged conduct.

(b) "Judge" does not include a permanent reserve judge, as defined in s. 753.075 (1) (a), or a temporary reserve judge, as defined in s. 753.075 (1) (b).

SECTION 5. 968.26 (3) of the statutes is renumbered 968.26 (3) (a) and amended to read:

968.26 (3) (a) ~~The Except as provided in sub. (5), the extent to which the judge may proceed in an examination under sub. (4) (1m) or (2) is within the judge's discretion.~~

(b) The examination may be adjourned ~~and may be secret.~~

(c) Any witness examined under this section may have counsel present at the examination but the counsel shall not be allowed to examine his or her client, cross-examine other witnesses, or argue before the judge. ~~Subject to s. 971.23, if the proceeding is secret, the record of the proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used.~~

(d) A court, on the motion of a district attorney, may compel a person to testify or produce evidence under s. 972.08 (1). The person is immune from prosecution as provided in s. 972.08 (1), subject to the restrictions under s. 972.085.

SECTION 6. 968.26 (4) of the statutes is created to read:

968.26 (4) (a) The judge may enter a secrecy order upon a showing of good cause by the district attorney. A secrecy order under this paragraph may apply to only the judge, a district attorney or other prosecuting attorney who participates in a proceeding under this section, law enforcement personnel admitted to a proceeding under this section, an interpreter who participates in a proceeding under this section, or a reporter who makes or transcribes a record of a proceeding under this section. No

secrecy order under this section may apply to any other person.

(b) If a judge enters a secrecy order under par. (a), the judge shall terminate that secrecy order if any person applies to the judge for the termination and establishes that the good cause shown under par. (a) no longer exists. If a judge terminates a secrecy order entered under par. (a), the identity of the subject of the proceeding under this section may not be disclosed without the subject's consent, except as provided in par. (c).

(c) If a criminal complaint is filed following a proceeding in which the judge entered a secrecy order, the order is terminated at the initial appearance and s. 971.23 governs disclosure of information from a proceeding under this section.

(d) Any person who violates a secrecy order entered under par. (a) is subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

SECTION 7. 968.26 (5) of the statutes is created to read:

968.26 (5) (a) 1. Except as provided in subd. 2., no proceeding may last longer than the following:

a. If the proceeding begins under sub. (1m), 6 months beginning on the day the district attorney requests the judge to convene the proceeding.

b. If the proceeding begins under sub. (2), 6 months beginning on the day the district attorney forwards under sub. (2) (b) to a judge all reports, records and case files, and an explanation of his or her refusal.

2. The period under subd. 1. may be extended only if a majority of judicial administrative district chief judges find good cause for the extension and identification of the vote of each judge is available to the public. The period under subd. 1. may be extended an unlimited number of times, but each extension may be for no more than 6 months and, for each extension, a majority of judicial administrative district chief judges must find good cause and the identification of the vote of each judge must be available to the public.

(b) A proceeding may not investigate a crime that was not part of the original request under sub. (1m) or complaint under sub. (2) (a), whichever is appropriate, unless a majority of judicial administrative district chief judges find good cause to add specified crimes and the identification of the vote of each judge is available to the public. An unlimited number of specified crimes may be added but, for each addition of a specified crime, a majority of judicial administrative district chief judges must find good cause and the identification of the vote of each judge must be available to the public.

(c) A judge may issue a search warrant relating to a proceeding under this section only if the judge is not presiding over that proceeding.

SECTION 8. 968.26 (6) and (7) of the statutes are created to read:

968.26 (6) Records reflecting the costs of an investigation and proceedings under sub. (3) are subject to the provisions of subch. II of ch. 19. If a request to inspect or copy a record is received, but no record exists, then, notwithstanding s. 19.35 (1) (L), the recipient of the request shall provide a summary amount of the costs.

(7) If property was seized during a proceeding under this section, the judge shall, 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 the property.

SECTION 9. 978.045 (1r) (intro.) of the statutes is renumbered 978.045 (1r) (am) and amended to read:

978.045 (1r) (am) Any judge of a court of record, by an order entered in the record stating the cause for it, may appoint an attorney as a special prosecutor to perform, for the time being, or for the trial of the accused person, the duties of the district attorney. An attorney appointed under this subsection shall have all of the powers of the district attorney.

(bm) The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury proceedings or ~~John Doe proceedings under s. 968.26~~, in proceedings under ch. 980,

or in investigations. The judge may appoint an attorney as a special prosecutor if any of the following conditions exists:

SECTION 10. 978.045 (1r) (a) to (h) of the statutes are renumbered 978.045 (1r) (bm) 1. to 8.

SECTION 11. 978.045 (1r) (i) of the statutes is renumbered 978.045 (1r) (cm) and amended to read:

978.045 (1r) (cm) ~~A. The judge may not appoint an attorney as a special prosecutor to assist the district attorney in John Doe proceedings under s. 968.26 unless a condition under par. (bm) 1. to 8. exists or unless the judge determines that a complaint received under s. 968.26 (2) (am) relates to the conduct of the district attorney to whom the judge otherwise would refer the complaint. This paragraph does not prohibit assistance authorized by s. 978.05 (8).~~

SECTION 12j. Nonstatutory provisions.

(1) A secrecy order entered under section 968.26 of the statutes that is in effect on the effective date of this subsection may apply only to persons listed in section 968.26 (4) (a) of the statutes, as created by this act. A secrecy order covering persons not listed in section 968.26 (4) (a) of the statutes, as created by this act, is terminated on the effective date of this subsection.