



## 2023 ASSEMBLY BILL 544

October 18, 2023 - Introduced by Representatives MOSES, RETTINGER, DONOVAN, SCHUTT, O'CONNOR, DITTRICH, ROZAR, GUNDRUM, MURSAU, WICHGERS, BODDEN and BRANDTJEN, cosponsored by Senators HUTTON, BRADLEY, WANGGAARD, JAMES, FELZKOWSKI and NASS. Referred to Committee on Judiciary.

**AN ACT** *to renumber and amend* 968.02 (3); *to amend* 968.26 (2) (b), 968.26

(2) (c) and 968.26 (2) (d); and *to create* 968.02 (3) (b) 2. of the statutes;

**relating to:** court-issued criminal complaints if the person's actions were in self-defense.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a district attorney has the discretion as to whether or not to issue a complaint to charge a person with a crime. Current law also provides that, if a district attorney refuses to issue a complaint against a person, a judge may conduct a hearing to determine if there is probable cause to believe that the person committed a crime and, if so, issue a complaint.

Under this bill, if the district attorney refused to issue the complaint because the person has a defense of self-defense, the court may not conduct a hearing or issue a complaint unless the court has new evidence that the person's actions were not self-defense under the law.

Under current law, a person is privileged to threaten or intentionally use force against an actor to prevent or terminate what the person reasonably believes to be an unlawful interference with himself or herself or another person by the actor. The person may intentionally use only force or threat as the person believes is necessary to prevent or terminate the interference. Certain presumptions apply if

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the person is in his or her house, business, or vehicle. In addition, if the person engaged in unlawful conduct that was likely to provoke an attack and does provoke an attack, the person generally loses the privilege of self-defense.

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

**SECTION 1.** 968.02 (3) of the statutes is renumbered 968.02 (3) (a) and amended to read:

968.02 (3) (a) If a district attorney ~~refuses or~~ is unavailable to issue a complaint, a circuit judge may permit the filing of a complaint, if the judge finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing.

(b) 1. If the a district attorney refuses to issue a complaint, a circuit judge may permit the filing of a complaint, if the judge finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing.  
The district attorney has refused to issue a complaint, he or she shall be informed of the hearing and may attend. The

(c) A hearing under this subsection shall be ex parte without the right of cross-examination.

**SECTION 2.** 968.02 (3) (b) 2. of the statutes is created to read:

968.02 (3) (b) 2. Notwithstanding subd. 1., a circuit court may not conduct a hearing or permit the filing of a complaint if the district attorney refused to issue a complaint because the person to be charged has a defense of privilege of self-defense or defense of others in accordance with s. 939.48 unless there is new evidence that supports the charge and, after conducting a hearing to consider the new evidence,

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the judge finds there is probable cause to believe that the person did not act in accordance with s. 939.48. The district attorney shall be informed of the hearing and may attend.

**SECTION 3.** 968.26 (2) (b) of the statutes is amended to read:

968.26 (2) (b) 1. If a district attorney receives a referral under par. (am), the district attorney shall, within 90 days of receiving the referral, issue charges or refuse to issue charges.

2. If the district attorney refuses to issue charges, the district attorney shall forward to the judge in whose jurisdiction the crime has allegedly been committed all law enforcement investigative reports on the matter that are in the custody of the district attorney, his or her records and case files on the matter, and a written explanation why he or she refused to issue charges. The judge may require a law enforcement agency to provide to him or her any investigative reports that the law enforcement agency has on the matter.

3. The judge shall convene a proceeding as described under sub. (3) if he or she determines that a proceeding is necessary to determine if a crime has been committed. When determining if a proceeding is necessary, the judge may consider the law enforcement investigative reports, the records and case files of the district attorney, and any other written records that the judge finds relevant. The judge may not convene a proceeding if the district attorney refused to issue charges because the person to be charged has a defense of privilege of self-defense or defense of others in accordance with s. 939.48 unless there is new evidence that supports

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that the person did not act in accordance with s. 939.48 and the judge determines that a proceeding is necessary.

**SECTION 4.** 968.26 (2) (c) of the statutes is amended to read:

968.26 (2) (c) In a proceeding convened under par. (b) 3., the judge shall subpoena and examine under oath the complainant and any witnesses that the judge determines to be necessary and appropriate to ascertain whether a crime has been committed and by whom committed. The judge shall consider the credibility of testimony in support of and opposed to the person's complaint.

**SECTION 5.** 968.26 (2) (d) of the statutes is amended to read:

968.26 (2) (d) In a proceeding convened under par. (b) 3., the judge may issue a criminal complaint if the judge finds sufficient credible evidence to warrant a prosecution of the complaint. The judge shall consider, in addition to any testimony under par. (c), the law enforcement investigative reports, the records and case files of the district attorney, and any other written reports that the judge finds relevant.

**SECTION 6. Initial applicability.**

(1) This act first applies to refusals made by a district attorney on the effective date of this subsection.

**(END)**