



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director

TO: SENATOR THOMAS TIFFANY AND REPRESENTATIVE DAVID CRAIG
FROM: Michael ^{MQ}Queensland, Staff Attorney, and Jessica ^{JKR}Karls-Ruplinger, Deputy Director
RE: Description of 2015 Senate Bill 43, Relating to John Doe Proceedings
DATE: October 2, 2015

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. [s. 968.26 (2) (c) and (d) and (3), Stats.] 2015 Senate Bill 43, "the bill," makes a variety of changes to Wisconsin's John Doe law. This memorandum provides background information about the current law and describes the changes made by the bill and Senate Amendments 5 and 6.

BACKGROUND

Initiation of Proceeding

A John Doe proceeding may be convened either upon the request of a district attorney, or upon a complaint to the judge by a person who has reason to believe that a crime was committed if, after referral of the complaint to the district attorney, the district attorney has declined to issue charges. If the request came from a district attorney, the law requires the judge to convene a John Doe proceeding. If the request for the proceeding came from a citizen complaint, the judge may choose to convene the proceeding if the judge determines that a proceeding is necessary to determine if a crime has been committed. [s. 968.26 (1) and (2), Stats.]

Factfinder

Wisconsin law requires a judge to conduct a John Doe proceeding, and to ascertain whether a crime has been committed and by whom. For this process, the law allows the judge to subpoena and examine any witnesses, although in practice this may be done by the district attorney. [s. 968.26 (2) (c), Stats.; CR 48, Wis. Judicial Benchbook.]

Manner of Inquiry

At the judge's discretion, a John Doe proceeding may be conducted in secret. If a proceeding is secret, the record of the proceeding and all testimony is closed to inspection by anyone other than the district attorney, although portions of transcripts that are relevant to the charge may be used at the preliminary hearing or trial of the person accused. [s. 968.26 (3), Stats.]

Any person who appears before a judge in a John Doe proceeding may choose to have an attorney be present, and may consult with the attorney, during the appearance. However, the attorney is not allowed to examine the person, cross-examine other witnesses, or make any argument to the judge. [s. 968.26 (3), Stats.]

Any person who appears before a judge in a John Doe proceeding may be compelled to answer all questions, if the district attorney files a motion to compel testimony and if the court grants the motion. The law provides that a person who is compelled to provide self-incriminating testimony or evidence is immune from prosecution based on that testimony or evidence or based on evidence derived from that testimony or evidence. [ss. 968.26 (3), 972.08, and 972.085, Stats.]

Issuance of Criminal Charges

In a John Doe proceeding petitioned by someone other than the district attorney, the judge may issue a criminal complaint formally accusing a person of committing a crime if he or she finds sufficient credible evidence to warrant a prosecution of the complaint. If a judge issues a criminal complaint, criminal proceedings then proceed in the same manner as any criminal charge, including a preliminary hearing to determine if there is probable cause to believe the person committed the crime. [s. 968.26 (2) (d), Stats.]

THE BILL

Crimes Investigated

Under **current law**, a John Doe proceeding can be used to investigate any crime, which is defined as conduct that is prohibited by state law and punishable by fine or imprisonment or both. Conduct that is punishable only by a forfeiture is not a crime. [s. 939.12, Stats.]

The **bill** specifies the crimes that may be investigated under a John Doe proceeding. The attachment provides a brief description of criminal penalties in Wisconsin and specifies each crime that may be investigated under a John Doe proceeding in the bill. Very generally, these crimes include the following:

- Any Class A, B, C, or D felony in the Criminal Code or the Uniform Controlled Substances Act.
- 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.

Eligibility to Conduct Proceedings

Under **current law**, only a judge may conduct a John Doe proceeding. For these purposes, "judge" means a judge of a court of record, including reserve judges. A "permanent reserve judge" is a judge appointed by the chief justice to serve an assignment for a period of six months. Permanent reserve judges perform the same duties as other judges and may be reappointed for subsequent periods. A "temporary reserve judge" is a judge appointed by the chief justice to serve specified duties on a day-by-day basis as the chief justice directs. To be eligible to serve as a reserve judge, a person must have either served a total of six or more years as a Supreme Court justice, court of appeals judge, or a circuit court judge, or, the person must have been eligible to serve as a reserve judge before May 1, 1992. [ss. 967.02 (6) and 753.075 (1), Stats.]

The **bill** prohibits a permanent reserve judge or temporary reserve judge from conducting a John Doe proceeding.

Secrecy of Proceedings

Under **current law**, proceedings are presumptively open; however, at a judge's discretion a John Doe proceeding may be conducted in secret. As noted above, if a proceeding is secret, the record of the proceeding and all testimony is closed to inspection by anyone other than the district attorney, although portions of transcripts that are relevant to the charge may be used at the preliminary hearing or trial of the person accused. [s. 968.26 (3), Stats.]

The **bill** 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.

The **bill** also sets forth 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.

Length of Proceedings

Current law does not limit the length of time that a John Doe proceeding may last.

Under the **bill**, 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 judicial administrative district chief judges¹ 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.

Scope of Proceedings

Current statutes do not limit the scope of a John Doe proceeding to investigating crimes that were a part of the original request or complaint for the proceeding. The Wisconsin Supreme Court has stated that the scope of a John Doe investigation "is essentially limited to the subject matter of the complaint upon which the John Doe is commenced. The John Doe judge has no authority to ferret out crime wherever he or she thinks it might exist." [*State v. Washington*, 83 Wis.2d 808, 822 (1978).]

Under the **bill**, 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.

Return of Seized Property

Current law allows a person to apply to the circuit court for the return of property that has been seized pursuant to a criminal investigation. Once an application is received, the court must: (1) provide such notice as it deems adequate to be given to the district attorney and all persons who have or may have an interest in the property; and (2) hold a hearing to hear all claims to the property's true ownership. With certain exceptions, if the right to possession is proved to the court's satisfaction, it must order the property to be returned if: (1) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or (2) all proceedings in which it might be required have been completed. [s. 968.20, Stats.]

In addition to the procedures available in current law, the **bill** provides that a judge conducting a John Doe proceeding must, at the close of the proceeding, order notice as he or she

¹ The state is divided into 10 judicial administrative districts for the purpose of administering the court system. Each district includes all the circuit courts within the district. [See s. SCR 70.17.]

determines to be adequate to all persons who have or may have an interest in any property seized during the course of the proceeding. In addition, the bill allows a judge to commence a hearing on its own initiative to return property seized pursuant to a John Doe proceeding.

Expenditure Records

Wisconsin's Open Records Law governs public requests for government information. Records held by a governmental authority are generally required to be available for inspection and copying by the public. A "record" is any material which bears information, regardless of form and which was created or is being kept by a custodian. The Wisconsin Open Records Law does not, generally, require an authority to create a new record by extracting information from existing records and compiling the information in a new format. [subch. II, ch. 19, Stats.]

The **bill** 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.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

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Attachment

ATTACHMENT

CRIMES IN WISCONSIN

Crime is conduct that is prohibited by state law and punishable by fine or imprisonment or both. Conduct that is punishable only by a forfeiture is not a crime. [s. 939.12, Stats.] Each criminal offense is either a felony or a misdemeanor. A crime that is punishable by imprisonment for more than one year is a felony. A crime that is punishable by imprisonment for less than one year is a misdemeanor. If a statute specifies a maximum term of imprisonment of one year, the crime is a misdemeanor if the statute specifies that a one-year sentence should be served in a county jail; otherwise, the crime is a felony.

With the exception of crimes for which the statutes specify a minimum penalty, criminal penalties are expressed, in the Wisconsin statutes, as a fine not to exceed a specified amount, imprisonment not to exceed a specified amount of time, or both. Nearly all of the misdemeanors located within the Criminal Code -- chs. 939 to 951, Stats. -- and all felonies in the statutes (with the exception of three offenses) are "classified." That is, each offense is assigned to a class that corresponds to a penalty range. Wisconsin currently has nine classes of felonies. The classes of felonies and their penalties are shown below:

Felony Class	Fine (not to exceed)	Term of Imprisonment (not to exceed)
Class A	n/a	Life
Class B	n/a	60 years
Class C	\$100,000	40 years
Class D	\$100,000	25 years
Class E	\$50,000	15 years
Class F	\$25,000	12 years and 6 months
Class G	\$25,000	10 years
Class H	\$10,000	6 years
Class I	\$10,000	3 years and 6 months

CRIMES THAT MAY BE INVESTIGATED UNDER A JOHN DOE PROCEEDING

Under **current law**, a John Doe proceeding may be used to investigate any crime. Under **2015 Senate Bill 43** "the bill," a John Doe proceeding may be used to investigate any of the following crimes:

Class A Felonies, in chs. 940 to 948 or 961¹

1. First-degree intentional homicide. [s. 940.01, Stats.]
2. Intentionally performing a partial-birth abortion. [s. 940.16, Stats.]
3. Treason. [s. 946.01, Stats.]

¹ The lists of Class A, B, C, and D felonies were obtained from Informational Paper 54, *Felony Sentencing and Probation*, published by the Legislative Fiscal Bureau.

4. Absconding after being adjudicated delinquent for a Class A felony. [s. 946.50, Stats.]
5. Sexual contact or intercourse with a person under 13 years, if the sexual contact or intercourse resulted in great bodily harm to the person. [s. 948.02 (1) (am), Stats.]
6. Engaging in repeated sexual contact or intercourse with a person under 13 years, if at least three of the offenses resulted in great bodily harm to the person. [s. 948.025 (1) (a), Stats.]

Class B Felonies, in chs. 940 to 948 or 961

1. First-degree reckless homicide. [s. 940.02, Stats.]
2. Second-degree intentional homicide. [s. 940.05, Stats.]
3. First-degree sexual assault. [s. 940.225 (1), Stats.]
4. Taking hostages, unless each hostage is released without bodily harm before the hostage taker's arrest. [s. 940.305, Stats.]
5. Kidnapping with intent to cause another to transfer property to obtain the release of the victim, where the victim is not released without permanent physical injury prior to the time the first witness is sworn at trial. [s. 940.31, Stats.]
6. Absconding after being adjudicated delinquent for a Class B felony. [s. 946.50 (2), Stats.]
7. Sexual intercourse with a person under 12. [s. 948.02 (1) (b), Stats.]
8. Sexual intercourse with a person under 16 by use or threat of force or violence. [s. 948.02 (1) (c), Stats.]
9. Sexual contact with a person under 16 by use or threat of force or violence, if the actor is at least 18 when the sexual contact occurs. [s. 948.02 (1) (d), Stats.]
10. Sexual contact or sexual intercourse with a person under 13. [s. 948.02 (1) (e), Stats.]
11. Engaging in at least three violations of one of the following: (a) sexual contact or intercourse with a person under 13 years, if resulted in great bodily harm; (b) sexual intercourse with a person under 12; (c) sexual intercourse with a person under 16 by use or threat of force or violence; or (d) sexual contact with a person under 16 by use or threat of force or violence, if the actor is at least 18 when the sexual contact occurs, if fewer than three of the violations were of (a). [s. 948.025 (1) (b), (c), or (d), Stats.]

Class C Felonies, in chs. 940 to 948 or 961

1. First-degree reckless homicide, where drugs are provided or administered ("Len Bias" Law). [s. 940.02, Stats.]
2. Homicide by intoxicated use of a vehicle, one or more previous convictions, suspension or revocation relating to certain operating under the influence offenses. [s. 940.09 (1c) (b), Stats.]

3. Mayhem. [s. 940.21, Stats.]
4. Second-degree sexual assault. [s. 940.225 (2), Stats.]
5. Abuse of vulnerable adults under circumstances that cause death by intentional or reckless maltreatment, except for employees of certain institutions, facilities and programs. [s. 940.285 (2) (b) 1g., Stats.]
6. Abuse or neglect by employees of certain institutions, facilities or programs of persons at risk under circumstances that cause death by intentional or reckless abuse or neglect. [s. 940.295 (3) (b) 1g., Stats.]
7. Taking hostages when, before the time of the hostage taker's arrest, each person who is held as a hostage is released without bodily harm. [s. 940.305, Stats.]
8. Kidnapping. [s. 940.31, Stats.]
9. Causing death to another by tampering with household products. [s. 941.327, Stats.]
10. Arson of a building; damage of property by explosives. [s. 943.02, Stats.]
11. Carjacking. [s. 943.23 (1g), Stats.]
12. Armed robbery. [s. 943.32 (2), Stats.]
13. Robbery of a financial institution. [s. 943.87, Stats.]
14. Absconding after being adjudicated delinquent for a Class C felony. [s. 946.50 (3), Stats.]
15. Second-degree sexual assault of a child. [s. 948.02 (2), Stats.]
16. Engaging in repeated acts of first- or second-degree sexual assault of a child, if fewer than three violations involved first-degree sexual assault. [s. 948.025 (1) (e), Stats.]
17. Physical abuse of a child (intentionally causing great bodily harm). [s. 948.03 (2) (a), Stats.]
18. Sexual exploitation of a child. [s. 948.05 (2p) (b), Stats.]
19. Trafficking a child. [s. 948.051 (1), Stats.]
20. Trafficking a child (benefiting in any manner from a violation). [s. 948.051 (2), Stats.]
21. Using a computer to facilitate a child sex crime. [s. 948.075, Stats.]
22. Sexual assault of a child placed in substitute care. [s. 948.085, Stats.]
23. Incest with a child. [s. 948.06, Stats.]
24. Abduction of another's child by force or threat of force. [s. 948.30 (2), Stats.]
25. Manufacture, distribution or delivery of cocaine or cocaine base, more than 40 grams. [s. 961.41 (1) (cm) 4., Stats.]
26. Manufacture, distribution or delivery of heroin, more than 50 grams. [s. 961.41 (1) (d) 4., Stats.]
27. Manufacture, distribution or delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams. [s. 961.41 (1) (e) 4., Stats.]
28. Manufacture, distribution or delivery of certain other schedule I controlled substances or ketamine, more than 50 grams. [s. 961.41 (1) (hm) 4., Stats.]

29. Manufacture, distribution or delivery of flunitrozepam, more than 50 grams. [s. 961.41 (1) (im) 4., Stats.]
30. Possession with intent to manufacture, distribute or deliver cocaine or cocaine base, more than 40 grams. [s. 961.41 (1m) (cm) 4., Stats.]
31. Possession with intent to manufacture, distribute or deliver heroin, more than 50 grams. [s. 961.41 (1m) (d) 4., Stats.]
32. Possession with intent to manufacture, distribute or deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams. [s. 961.41 (1m) (e) 4., Stats.]
33. Possession with intent to manufacture, distribute or deliver certain other schedule I controlled substances or ketamine, more than 50 grams. [s. 961.41 (1m) (hm) 4., Stats.]
34. Possession with intent to manufacture, distribute or deliver flunitrazepam, more than 50 grams. [s. 961.41 (1m) (im) 4., Stats.]

Class D Felonies, in chs. 940 to 948 or 961

1. Second-degree reckless homicide. [s. 940.06, Stats.]
2. Homicide by intoxicated use of a vehicle. [s. 940.09 (1c) (a), Stats.]
3. Homicide by intoxicated use of a firearm. [s. 940.09 (1g), Stats.]
4. Aggravated battery (causing great bodily harm to another by an act done with intent to cause great bodily harm). [s. 940.19 (5), Stats.]
5. Aggravated battery to an unborn child (causing great bodily harm to an unborn child by an act done with intent to cause great bodily harm). [s. 940.195 (5), Stats.]
6. First-degree reckless injury. [s. 940.23 (1), Stats.]
7. Abuse of vulnerable adults under circumstances that cause death by negligent maltreatment, except for employees of certain institutions, facilities and programs. [s. 940.285 (2) (b) 1g., Stats.]
8. Abuse or neglect by employees of certain institutions, facilities or programs of persons at risk under circumstances that cause death by negligent abuse or neglect. [s. 940.295 (3) (b) 1g., Stats.]
9. Human trafficking (knowingly engaging in). [s. 940.302 (2) (a), Stats.]
10. Human trafficking (benefiting in any manner from a violation). [s. 940.302 (2) (b), Stats.]
11. Possession of body armor, second or subsequent violation. [s. 941.291 (3) (b), Stats.]
12. Theft of farm raised fish (second or subsequent violation). [s. 943.74, Stats.]
13. Absconding after being adjudicated delinquent for a Class D felony. [s. 946.50 (4), Stats.]
14. Child enticement. [s. 948.07, Stats.]
15. Soliciting a child for prostitution. [s. 948.08, Stats.]
16. Possession of child pornography. [s. 948.12 (3) (a), Stats.]
17. Neglect of a child resulting in death. [s. 948.21 (1) (d), Stats.]

18. Not reporting disappearance of a child with a specified time period, if child dies while he or she is missing or as a result of injury he or she suffered while missing. [s. 948.23 (3) (c) 4., Stats.]
19. Contributing to the delinquency of a child if death is a consequence. [s. 948.40 (4) (a), Stats.]
20. Manufacture, distribution or delivery of cocaine or cocaine base, more than 15 grams, but not more than 40 grams. [s. 961.41 (1) (cm) 3., Stats.]
21. Manufacture, distribution or delivery of heroin, more than 10 grams but not more than 50 grams. [s. 961.41 (1) (d) 3., Stats.]
22. Manufacture, distribution or delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams. [s. 961.41 (1) (e) 3., Stats.]
23. Manufacture, distribution or delivery of certain other schedule I controlled substances or ketamine, more than 10 grams but not more than 50 grams. [s. 961.41 (1) (hm) 3., Stats.]
24. Manufacture, distribution or delivery of flunitrazepam more than 10 grams but not more than 50 grams. [s. 961.41 (1) (im) 3., Stats.]
25. Possession with intent to manufacture, distribute or deliver cocaine or cocaine base, more than 15 grams but not more than 40 grams. [s. 961.41 (1m) (cm) 3., Stats.]
26. Possession with intent to manufacture, distribute or deliver heroin, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (d) 3., Stats.]
27. Possession with intent to manufacture, distribute or deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (e) 3., Stats.]
28. Possession with intent to manufacture, distribute or deliver certain other schedule I controlled substances or ketamine, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (hm) 3., Stats.]
29. Possession with intent to manufacture, distribute or deliver flunitrazepam, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (im) 3., Stats.]

Class E, F, G, H, or I Felonies, Specified in the Bill

1. Abortion. [s. 940.04, Stats.]
2. Mutilating or hiding a corpse. [s. 940.11, Stats.]
3. Battery, felony violations. [s. 940.19 (2), (4), (5), or (6), Stats.]
4. Battery to an unborn child, felony violations. [s. 940.195 (2), (4), (5), or (6), Stats.]
5. Battery; special circumstances. [s. 940.20, Stats.]
6. Battery or threat to witnesses. [s. 940.201, Stats.]
7. Battery or threat to judge. [s. 940.203, Stats.]
8. Battery or threat to DOR employee. [s. 940.205, Stats.]
9. Battery or threat to DSPS/DWD employee. [s. 940.207, Stats.]
10. Battery or threat to county, city, village, or town employee. [s. 940.208, Stats.]
11. Sexual exploitation by therapist, intentional sexual contact. [s. 940.22 (2), Stats.]

12. Third-degree sexual assault. [s. 940.225 (3), Stats.]
13. Abuse of individuals at risk, felony violations. [s. 940.285, Stats.]
14. Abuse of residents of penal facilities. [s. 940.29, Stats.]
15. Abuse and neglect of patients and residents, felony violations. [s. 940.295, Stats.]
16. Human trafficking. [s. 940.302, Stats.]
17. Stalking. [s. 940.32, Stats.]
18. Administering dangerous or stupefying drug. [s. 941.32, Stats.]
19. Criminal gang member solicitation and contact, felony violations. [s. 941.38 (2), Stats.]
20. Representations depicting nudity, felony violations. [s. 942.09 (2), Stats.]
21. Burglary. [s. 943.10, Stats.]
22. Theft of trade secrets. [s. 943.205, Stats.]
23. Robbery. [s. 943.32, Stats.]
24. Assault by prisoners. [s. 946.43, Stats.]
25. Assisting or permitting escape. [s. 946.44, Stats.]
26. Harboring or aiding felons. [s. 946.47, Stats.]
27. Kidnapped or missing persons; false information. [s. 946.48, Stats.]
28. Sexual assault of a child, failure to act. [s. 948.02 (3), Stats.]
29. Physical abuse of a child. [s. 948.03, Stats.]
30. Causing mental harm to a child. [s. 948.04, Stats.]
31. Sexual exploitation of a child. [s. 948.05, Stats.]
32. Causing a child to view or listen to sexual activity. [s. 948.055, Stats.]
33. Sexual assault of a child by a school staff person/volunteer. [s. 948.095, Stats.]
34. Exposing genitals, pubic area, or intimate parts, felony violations. [s. 948.10 (1) (a), Stats.]
35. Exposing a child to harmful descriptions. [s. 948.11, Stats.]
36. Possession of child pornography, if the offender is under 18. [s. 948.12, Stats.]
37. Child sex offender working with children. [s. 948.13, Stats.]
38. Registered sex offender and photographing minors. [s. 948.14, Stats.]
39. Abandonment of a child. [s. 948.20, Stats.]
40. Neglecting a child, if bodily harm or great bodily harm is a consequence. [s. 948.21 (1) (b) or (c), Stats.]
41. Concealing or not reporting death of a child, felony violations. [s. 948.23 (1), (2), or (3) (c) 2. or 3., Stats.]
42. Abduction of another's child. [s. 948.30, Stats.]

Felony Murder

1. Felony murder. [s. 940.03, Stats.]

Racketeering Crimes

Very generally, current law prohibits racketeering and continuing a criminal enterprise. [ss. 946.82 to 85, Stats.] An underlying element of racketeering is the existence

of a "pattern of racketeering activity." Under the bill, a violation of Wisconsin's law on racketeering or its law on continuing a criminal enterprise may be investigated through a John Doe proceeding if the underlying "racketeering activity" being investigated is both listed in the racketeering law, s. 946.82 (4), Stats., and is listed above. These underlying crimes include the following:

1. First-degree intentional homicide. [s. 940.01, Stats.]
2. Battery. [s. 940.19, Stats.]
3. Battery; special circumstances. [s. 940.20, Stats.]
4. Battery or threat to witnesses. [s. 940.201, Stats.]
5. Battery or threat to judge. [s. 940.203, Stats.]
6. Mayhem. [s. 940.21, Stats.]
7. Human trafficking. [s. 940.302, Stats.]
8. Taking hostages when, before the time of the hostage taker's arrest, each person who is held as a hostage is released without bodily harm. [s. 940.305, Stats.]
9. Kidnapping. [s. 940.31, Stats.]
10. Administering dangerous or stupefying drug. [s. 941.32, Stats.]
11. Representations depicting nudity. [s. 942.09, Stats.]
12. Arson of a building; damage of property by explosives. [s. 943.02, Stats.]
13. Burglary. [s. 943.10, Stats.]
14. Carjacking. [s. 943.23 (1g), Stats.]
15. Robbery. [s. 943.32, Stats.]
16. Robbery of a financial institution. [s. 943.87, Stats.]
17. Kidnapped or missing persons; false information. [s. 946.48, Stats.]
18. Sexual exploitation of a child. [s. 948.05 (2p) (b), Stats.]
19. Trafficking a child. [s. 948.051 (1), Stats.]
20. Trafficking a child (benefiting in any manner from a violation). [s. 948.051 (2), Stats.]
21. Soliciting a child for prostitution. [s. 948.08, Stats.]
22. Possession of child pornography. [s. 948.12, Stats.]
23. Abduction of another's child by force or threat of force. [s. 948.30, Stats.]
24. Manufacture, distribution or delivery of cocaine or cocaine base, more than 40 grams. [s. 961.41 (1) (cm) 4., Stats.]
25. Manufacture, distribution or delivery of heroin, more than 50 grams. [s. 961.41 (1) (d) 4., Stats.]
26. Manufacture, distribution or delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams. [s. 961.41 (1) (e) 4., Stats.]
27. Manufacture, distribution or delivery of certain other schedule I controlled substances or ketamine, more than 50 grams. [s. 961.41 (1) (hm) 4., Stats.]
28. Manufacture, distribution or delivery of flunitrozepam, more than 50 grams. [s. 961.41 (1) (im) 4., Stats.]
29. Possession with intent to manufacture, distribute or deliver cocaine or cocaine base, more than 40 grams. [s. 961.41 (1m) (cm) 4., Stats.]

30. Possession with intent to manufacture, distribute or deliver heroin, more than 50 grams. [s. 961.41 (1m) (d) 4., Stats.]
31. Possession with intent to manufacture, distribute or deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 50 grams. [s. 961.41 (1m) (e) 4., Stats.]
32. Possession with intent to manufacture, distribute or deliver certain other schedule I controlled substances or ketamine, more than 50 grams. [s. 961.41 (1m) (hm) 4., Stats.]
33. Possession with intent to manufacture, distribute or deliver flunitrazepam, more than 50 grams. [s. 961.41 (1m) (im) 4., Stats.]
34. Manufacture, distribution or delivery of cocaine or cocaine base, more than 15 grams, but not more than 40 grams. [s. 961.41 (1) (cm) 3., Stats.]
35. Manufacture, distribution or delivery of heroin, more than 10 grams but not more than 50 grams. [s. 961.41 (1) (d) 3., Stats.]
36. Manufacture, distribution or delivery of phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams. [s. 961.41 (1) (e) 3., Stats.]
37. Manufacture, distribution or delivery of certain other schedule I controlled substances or ketamine, more than 10 grams but not more than 50 grams. [s. 961.41 (1) (hm) 3., Stats.]
38. Manufacture, distribution or delivery of flunitrazepam more than 10 grams but not more than 50 grams. [s. 961.41 (1) (im) 3., Stats.]
39. Possession with intent to manufacture, distribute or deliver cocaine or cocaine base, more than 15 grams but not more than 40 grams. [s. 961.41 (1m) (cm) 3., Stats.]
40. Possession with intent to manufacture, distribute or deliver heroin, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (d) 3., Stats.]
41. Possession with intent to manufacture, distribute or deliver phencyclidine, amphetamine, methamphetamine or methcathinone, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (e) 3., Stats.]
42. Possession with intent to manufacture, distribute or deliver certain other schedule I controlled substances or ketamine, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (hm) 3., Stats.]
43. Possession with intent to manufacture, distribute or deliver flunitrazepam, more than 10 grams but not more than 50 grams. [s. 961.41 (1m) (im) 3., Stats.]

Crimes Committed by Law Enforcement and Others

Under the bill, a John Doe proceeding may be used to investigate any crime committed by a law enforcement officer, correctional officer, or state probation, parole, or extended supervision officer while the individual was engaged in his or her official duties at the time of the alleged conduct.