

Judiciary

AB 78 (SB 51) – John Doe Reform

Rep. Hintz

Summary of Bill (*as amended*)

Under current law, in a “John Doe” proceeding, a person who believes a crime has been committed may complain to a judge. Then the judge must ascertain if a crime has been committed. The scope of examination is within the judge’s discretion. If the judge determines a crime has probably been committed, she or he will issue a warrant for the arrest of the accused.

Under this bill, if a district attorney (DA) who believes a crime has been committed complains to a judge, the judge must convene a John Doe proceeding as described above except that the judge does not issue a warrant for the arrest of the accused because the district attorney has that ability. If a person other than a DA who believes a crime has been committed complains to a judge, the judge must refer the complaint to the district attorney. If the district attorney refuses to issue a charge, the judge must convene a proceeding if the judge determines that the proceeding is necessary to determine if a crime has been committed. The judge has discretion over the scope of the examination, and the judge may issue a criminal complaint if the judge finds sufficient evidence to warrant prosecution.

Under current law, if an action is brought against a state officer or employee for acts committed while carrying out his or her state duties, and the court finds that the defendant was acting within the scope of his or her employment, the state pays the damages and costs, and provides legal representation or pays the defendant’s attorney fees and litigation costs. AB-78 provides these protections and benefits to a state officer or employee who is the subject of a John Doe proceeding if the charge is for an act done within the person’s official capacity, within the scope of the person’s employment, and the Attorney General determined the person was acting in good faith. These protections and benefits apply regardless of the Attorney General’s determination of good faith if the person is found not guilty in a criminal action commenced as the result of the John Doe proceeding. The bill provides that the protections and benefits provided include the payment of attorney fees, costs, and fines arising out of the criminal action.

Assembly Amendment 2 (a) removes the Attorney General from the decision as to whether the state should reimburse state employees for attorneys fees and costs and instead says that the state shall reimburse a state employee if the employee was acting within the scope of his employment and the employee was not convicted of a crime arising from the conduct in question. AA2 also allows the court to appoint a special prosecutor when a John Doe Complaint relates to the conduct of the district attorney. In addition, under the bill, the DA who receives a complaint from a judge has 90 days to either issue charges or refuse to issue charges. AA2 allows the judge to extend the 90 days for “cause shown.” Finally, AA2 clarifies that, if a DA refuses to issue charges following referral of a complaint by a judge, the DA only has to forward to the judge law enforcement reports that “are in the custody of the district attorney.” The amendment allows the judge to seek investigative reports from other law enforcement agencies. [AA2 to AB78 adopted 8-2]

Senate Bill 51 has not been amended.

Fiscal Effect:

A fiscal estimate prepared by the Department of Corrections indicates this bill would have indeterminate state costs and no local government costs. A fiscal estimate prepared by the Department of Justice indicates increased state costs that may be possible to absorb within the agency’s budget (although AA2 would remove the AG from the process) and indeterminate local costs.

Supporters Message:

- These John Doe complaints by inmates against correctional officers often serve only to harass, and result in significant financial and emotional strain on correctional officers and their families.
- Others, on the other hand, claim this bill does not go far enough in reforming Wisconsin’s John Doe system.

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Opposition Arguments:

- The fiscal estimate prepared by the Department of Justice states “there is a rapidly growing trend of prisoners filing John Doe cases against state correctional officers.”
- Opponents claim this bill would limit access of inmates to John Doe proceedings. That argument is incorrect, however, in that his bill only changes the procedure for John Doe complaints. No one is losing access to the system.
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Key Supporters:

Representative Gordon Hintz (author); Marty Beil, Madison – WSEU-AFSCME #24; Dane County Judge Bill Foust; William Grosshaus, Dept. of Corrections; Senator Pat Kreitlow; Dan Meehan – AFSCME Local 18; William Pollard, Dept. of Corrections; Representative Dick Spanbauer; Gabe Umentum, AFSCME; Steve Watters, DHFS Sand Ridge Secure Treatment Center, Todd Wetzel, AFSCME Local 178; Senator Luther Olsen; Scott Spector, AFT Wisconsin; Susan McMurray, AFSCME; Senator Lena Taylor; Senator Randy Hopper; Senator Jon Erpenbach, Phil Neuenfeldt, Wisconsin State AFL-CIO; Senator Jeff Fitzgerald; SEIU Wisconsin State Council, and the Wisconsin Professional Police Association.

Key Opponents:

No one testified or registered against AB78, and no one registered against it with the Ethics Board.

Committee Vote:

On April 21, 2009, the Assembly Committee Judiciary and Ethics recommended passage of AB78, as amended, on a vote of 9-1. [Rep. Kessler voted “no”]

Staff Author of Bill Summary

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