



State of Wisconsin
2019 - 2020 LEGISLATURE

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MLJ&CMH:wlj&kjf

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 127**

September 20, 2019 - Offered by Senator JACQUE.

1 **AN ACT** *to repeal* 978.001 (1p) and 978.11; *to renumber and amend* 977.08 (3)
2 (b); *to amend* 13.093 (2) (a), 16.971 (9), 16.971 (10), 230.33 (1), 977.02 (5),
3 977.08 (3) (c), 978.03, 978.045 (1g), 978.045 (1r) (bm) (intro.), 978.045 (2), 978.05
4 (9) and 978.12 (1) (c); and *to create* 13.0967, 15.77, 20.548, 20.923 (4) (f) 7x.,
5 227.118, 227.19 (3) (em), 230.08 (2) (qp), 977.08 (3) (b) 2., 978.001 (1b), (1d) and
6 (1n), 978.003, 978.004 and 978.005 of the statutes; **relating to:** creation of a
7 prosecutor board and a state prosecutors office, Public Defender Board
8 regulation, and making an appropriation.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

PUBLIC DEFENDER

Under current law, the Public Defender Board may promulgate rules to assure that representation of indigent clients by the private bar is at the same level as the representation provided by the state public defender. Under this bill, the board's authority to promulgate rules is expanded to include setting standards for and

imposing conditions upon private bar attorney certification, decertification, or recertification to represent clients. The bill also adds the following list of reasons as grounds for which the office of the state public defender may exclude a private bar attorney from a public defender list: 1) the attorney has failed to meet minimum attorney performance standards adopted by the state public defender; 2) the attorney has failed to comply with the supreme court rules of professional conduct for attorneys; 3) the attorney has engaged in conduct that is contrary to the interests of clients, the interests of justice, or the interests of the state public defender; or 4) the state public defender learns of any information that raises a concern about the attorney's character, performance, ability, or behavior.

DISTRICT ATTORNEYS

The bill creates an independent prosecutor board that oversees and sets policies for a state prosecutors office, also created in the bill. Under the bill, the executive director of the state prosecutors office manages the office; prepares personnel policies, fiscal estimates, and an annual report; and represents the board before the governor, the legislature, bar associations, and courts. The executive director may also identify methods and practices for district attorneys that promote professional competence and ethical practices. Under the bill, the state prosecutors office assumes duties relating to district attorneys that current law assigns to the Department of Administration, such as preparing a budget for all of the prosecutorial units, approving appointments of special prosecutors when needed, and making requests for assistant district attorneys in certain prosecutorial units. The bill requires any rule that directly affects the state prosecutors office to be reviewed by the office and for the office to submit a report on the proposed rule that includes information about the effect of the proposed rule on the state prosecutors office. The bill requires DOA to provide the state prosecutors office with general access to a case management system currently used by the Department of Justice to manage case-related information and to share the information among prosecutors.

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

1 **SECTION 1.** 13.093 (2) (a) of the statutes is amended to read:
2 13.093 (2) (a) Any bill making an appropriation, any bill increasing or
3 decreasing existing appropriations or state or general local government fiscal
4 liability or revenues, and any bill that modifies an existing surcharge or creates a
5 new surcharge that is imposed under ch. 814, shall, before any vote is taken thereon
6 by either house of the legislature if the bill is not referred to a standing committee,
7 or before any public hearing is held before any standing committee or, if no public

1 hearing is held, before any vote is taken by the committee, incorporate a reliable
2 estimate of the anticipated change in appropriation authority or state or general
3 local government fiscal liability or revenues under the bill, including to the extent
4 possible a projection of such changes in future biennia. The estimate shall also
5 indicate whether any increased costs incurred by the state under the bill can be
6 mitigated through the use of contractual service contracts let in accordance with
7 competitive procedures. For purposes of this paragraph, a bill increasing or
8 decreasing the liability or revenues of the unemployment reserve fund is considered
9 to increase or decrease state fiscal liability or revenues. Except as otherwise
10 provided by joint rules of the legislature or this paragraph, such estimates shall be
11 made by the department or agency administering the appropriation or fund or
12 collecting the revenue. The legislative council staff shall prepare the fiscal estimate
13 with respect to the provisions of any bill referred to the joint survey committee on
14 retirement systems which create or modify any system for, or make any provision for,
15 the retirement of or payment of pensions to public officers or employees. The director
16 of state courts shall prepare the fiscal estimate with respect to the provisions of any
17 bill that modifies an existing surcharge or creates a new surcharge that is imposed
18 under ch. 814. The executive director of the state prosecutors office shall prepare the
19 fiscal estimate with respect to the provisions of any bill that affects prosecutors or
20 the state prosecutors office, including bills modifying or creating crimes or
21 sentencing practices. When a fiscal estimate is prepared after the bill has been
22 introduced, it shall be printed and distributed as are amendments.

23 **SECTION 2.** 13.0967 of the statutes is created to read:

24 **13.0967 Review of bills affecting state prosecutors office.** Any bill that
25 is introduced in either house of the legislature that directly affects the state

1 prosecutors office shall have a notation to that effect on its jacket when the jacket is
2 prepared. When a bill that has that notation on the jacket is introduced, the
3 legislative reference bureau shall submit a copy of the bill to the state prosecutors
4 office.

5 **SECTION 3.** 15.77 of the statutes is created to read:

6 **15.77 Prosecutor board.** There is created a prosecutor board consisting of
7 11 members, appointed for staggered 3-year terms, as follows:

8 (1) From each district under s. 752.11 (1) (b), (c), and (d), 2 district attorneys
9 appointed by a majority of district attorneys from the district.

10 (2) From the district under s. 752.11 (1) (a), the district attorney and a deputy
11 district attorney appointed by the district attorney.

12 (3) Two nonelected prosecutors, each from a different county, appointed by a
13 majority of nonelected prosecutors. Under this subsection, “prosecutor” does not
14 include a special prosecutor appointed under s. 978.045 or 978.05 (8) (b).

15 (4) The attorney general or his or her designee.

16 **SECTION 4.** 16.971 (9) of the statutes is amended to read:

17 16.971 (9) In conjunction with the public defender board, the prosecutor board,
18 the director of state courts, and the departments of corrections and justice and
19 ~~district attorneys,~~ the department may maintain, promote and coordinate
20 automated justice information systems that are compatible among counties and the
21 officers and agencies specified in this subsection, using the moneys appropriated
22 under s. 20.505 (1) (kh) and (kq). The department shall annually report to the
23 legislature under s. 13.172 (2) concerning the department’s efforts to improve and
24 increase the efficiency of integration of justice information systems.

25 **SECTION 5.** 16.971 (10) of the statutes is amended to read:

1 16.971 (10) The department shall maintain, and provide the department of
2 justice and the state prosecutors office with general access to, a case management
3 system that allows the state prosecutors office and district attorneys to manage all
4 case-related information and share the information among prosecutors.

5 **SECTION 6.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
6 the following amounts for the purposes indicated:

	2019-20	2020-21
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7 **20.548 Prosecutor board**

8 (1) COORDINATION AND ADMINISTRATION OF
9 PROSECUTOR FUNCTIONS

10 (a) Program administration	GPR	A	252,000	246,500
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11 **SECTION 7.** 20.548 of the statutes is created to read:

12 **20.548 Prosecutor board.** There is appropriated to the prosecutor board for
13 the following program:

14 **(1) COORDINATION AND ADMINISTRATION OF PROSECUTOR FUNCTIONS.** (a) *Program*
15 *administration.* The amounts in the schedule for program administration costs of
16 the office of state prosecutors.

17 (g) *Gifts, grants, and proceeds.* All moneys received from gifts and grants and
18 all proceeds from services, conferences, and sales of publications and promotional
19 materials for the purposes for which made or received.

20 **SECTION 8.** 20.923 (4) (f) 7x. of the statutes is created to read:

21 20.923 (4) (f) 7x. State prosecutors office: executive director.

22 **SECTION 9.** 227.118 of the statutes is created to read:

1 **227.118 Review of rules affecting state prosecutors office. (1) REPORT**
2 ON RULES AFFECTING STATE PROSECUTORS OFFICE. If a proposed rule directly affects the
3 state prosecutors office, the agency proposing the rule shall, prior to submitting the
4 proposed rule to the legislative council staff under s. 227.15, submit the proposed
5 rule to the state prosecutors office. The state prosecutors office shall prepare a report
6 on the proposed rule before it is submitted to the legislative council staff under s.
7 227.15. The state prosecutors office may request any information from other state
8 agencies, local governments, individuals, or organizations that is reasonably
9 necessary for the office to prepare the report. The state prosecutors office shall
10 prepare the report within 30 days after the rule is submitted to the office.

11 **(2) FINDINGS OF THE OFFICE TO BE CONTAINED IN THE REPORT.** The report of the
12 state prosecutors office shall contain information about the effect of the proposed
13 rule on the state prosecutors office.

14 **(3) APPLICABILITY.** This section does not apply to emergency rules promulgated
15 under s. 227.24.

16 **SECTION 10.** 227.19 (3) (em) of the statutes is created to read:

17 227.19 **(3)** (em) The report of the state prosecutors office, if the proposed rule
18 directly affects the state prosecutors office.

19 **SECTION 11.** 230.08 (2) (qp) of the statutes is created to read:

20 230.08 **(2)** (qp) The executive director in the office of state prosecutors.

21 **SECTION 12.** 230.33 (1) of the statutes is amended to read:

22 230.33 **(1)** A person appointed to an unclassified position by the governor,
23 elected officer, judicial body, or prosecutor board, or by a legislative body or
24 committee shall be granted a leave of absence without pay for the duration of the
25 appointment and for 3 months thereafter, during which time the person has

1 restoration rights to the former position or equivalent position in the department in
2 which last employed in a classified position without loss of seniority. The person
3 shall also have reinstatement privileges for 5 years following appointment to the
4 unclassified service or for one year after termination of the unclassified appointment
5 whichever is longer. Restoration rights and reinstatement privileges shall be
6 forfeited if the reason for termination of the unclassified appointment would also be
7 reason for discharge from the former position in the classified service.

8 **SECTION 13.** 977.02 (5) of the statutes is amended to read:

9 977.02 (5) Promulgate rules establishing procedures to assure that
10 representation of indigent clients by the private bar at the initial stages of cases
11 assigned under this chapter is at the same level as the representation provided by
12 the state public defender, including setting standards for and imposing conditions
13 upon private bar attorney certification, decertification, or recertification to represent
14 clients under this chapter.

15 **SECTION 14.** 977.08 (3) (b) of the statutes is renumbered 977.08 (3) (b) 1. and
16 amended to read:

17 977.08 (3) (b) 1. A final set of lists for each county shall be prepared, certified,
18 and annually updated by the state public defender. Persons may not be excluded
19 from any a list unless only if the state public defender states in writing the reasons
20 for such action in ~~the context of~~ accordance with subd. 2. and existing rules adopted
21 by the state public defender board. Any attorney thus excluded ~~shall then have the~~
22 ~~opportunity to~~ may appeal the state public defender's decision to the board, which
23 shall issue a final decision in writing.

24 **SECTION 15.** 977.08 (3) (b) 2. of the statutes is created to read:

1 977.08 (3) (b) 2. An attorney may be excluded from a list under subd. 1. if any
2 of the following applies:

3 a. The attorney fails or has failed to meet minimum attorney performance
4 standards adopted by the state public defender.

5 b. The attorney fails or has failed to comply with SCR chapter 20.

6 c. The attorney engages in conduct that is contrary to the interests of clients,
7 the interests of justice, or the interests of the state public defender.

8 d. The state public defender learns of any information that raises a concern
9 about the attorney's character, performance, ability, or behavior.

10 **SECTION 16.** 977.08 (3) (c) of the statutes is amended to read:

11 977.08 (3) (c) A person appointed from the set of lists prepared under par. (b)
12 1. shall be appointed in order from the top of each list; if any attorney thus appointed
13 states in writing that he or she cannot accept the appointment, he or she shall be
14 placed on the bottom of the list, and the attorney thus elevated to the top of the list
15 shall be appointed.

16 **SECTION 17.** 978.001 (1b), (1d) and (1n) of the statutes are created to read:

17 978.001 (1b) "Board" means the prosecutor board.

18 (1d) "Executive director" means the executive director appointed under s.
19 978.003 (3).

20 (1n) "Office" means the state prosecutors office.

21 **SECTION 18.** 978.001 (1p) of the statutes is repealed.

22 **SECTION 19.** 978.003 of the statutes is created to read:

23 **978.003 Board; duties.** The board shall do all of the following:

24 (1) Submit the budget in accordance with s. 16.42 after the executive director
25 submits the budget to the board and the board approves it.

1 (2) At least annually submit to the joint committee on finance
2 recommendations on the allocation of prosecutor resources.

3 (3) Appoint an attorney with experience in criminal prosecution as the
4 executive director of the office.

5 (4) Oversee, and set policy initiatives for, the executive director.

6 (5) Review existing law or proposed legislation and make recommendations to
7 the legislature.

8 **SECTION 20.** 978.004 of the statutes is created to read:

9 **978.004 State prosecutors office executive director.** (1) The executive
10 director shall do all of the following:

11 (a) Manage and direct the office subject to the policy initiatives set under s.
12 978.003 (4).

13 (b) Prepare and submit to the board for its approval a budget and any personnel
14 and employment policies that the board requires.

15 (c) Prepare and submit to the board and other appropriate persons an annual
16 report of the activities of the office in the form that the board directs.

17 (d) Represent the board before the governor, the legislature, bar associations,
18 courts, and other appropriate entities.

19 (e) Appoint in the classified service an executive assistant and all other
20 employees of the office. Before making an appointment under this paragraph, the
21 executive director shall notify the board of any prospective appointment. If the board
22 does not object to the prospective appointment within 7 working days after
23 notification, the executive director may make the appointment. If the board objects
24 to a prospective appointment, the executive director may not make the appointment
25 until the board approves it.

1 (f) Prepare fiscal estimates on bills affecting prosecutors or the office, including
2 bills modifying or creating crimes or sentencing practices. To prepare a fiscal
3 estimate, the executive director shall consult with and obtain data from district
4 attorneys. The executive director shall transmit a draft fiscal estimate to the board.
5 If the board does not object to the draft fiscal estimate within 7 working days after
6 receiving it, the executive director may submit the fiscal estimate. If the board
7 objects to a draft fiscal estimate, the executive director may not submit the fiscal
8 estimate until the board approves it.

9 (2) The executive director may identify methods and practices for district
10 attorneys that promote professional competence, ethical practices, and
11 evidence-based practices.

12 **SECTION 21.** 978.005 of the statutes is created to read:

13 **978.005 Limits on board and executive director.** Neither the board nor
14 the executive director may make any decision regarding the handling of any case nor
15 interfere with any district attorney in carrying out professional duties. Neither the
16 board nor the office may interfere with or infringe upon the autonomy of a district
17 attorney or upon the authority of a district attorney to manage his or her own
18 prosecutorial unit.

19 **SECTION 22.** 978.03 of the statutes is amended to read:

20 **978.03 Deputies and assistants in certain prosecutorial units.** (1) The
21 district attorney of any prosecutorial unit having a population of 750,000 or more
22 may appoint 7 deputy district attorneys and such assistant district attorneys as may
23 be requested by the department of administration, or by the board, and authorized
24 in accordance with s. 16.505. The district attorney shall rank the deputy district
25 attorneys for purposes of carrying out duties under this section. The deputies,

1 according to rank, may perform any duty of the district attorney, under the district
2 attorney's direction. In the absence or disability of the district attorney, the deputies,
3 according to rank, may perform any act required by law to be performed by the
4 district attorney. Any such deputy must have practiced law in this state for at least
5 2 years prior to appointment under this section.

6 **(1m)** The district attorney of any prosecutorial unit having a population of
7 200,000 or more but less than 750,000 may appoint 3 deputy district attorneys and
8 such assistant district attorneys as may be requested by the department of
9 administration, or by the board, and authorized in accordance with s. 16.505. The
10 district attorney shall rank the deputy district attorneys for purposes of carrying out
11 duties under this section. The deputies, according to rank, may perform any duty
12 of the district attorney, under the district attorney's direction. In the absence or
13 disability of the district attorney, the deputies, according to rank, may perform any
14 act required by law to be performed by the district attorney. Any such deputy must
15 have practiced law in this state for at least 2 years prior to appointment under this
16 section.

17 **(2)** The district attorney of any prosecutorial unit having a population of
18 100,000 or more but not more than 199,999 may appoint one deputy district attorney
19 and such assistant district attorneys as may be requested by the department of
20 administration, or by the board, and authorized in accordance with s. 16.505. The
21 deputy may perform any duty of the district attorney, under the district attorney's
22 direction. In the absence or disability of the district attorney, the deputy may
23 perform any act required by law to be performed by the district attorney. The deputy
24 must have practiced law in this state for at least 2 years prior to appointment under
25 this section.

1 **(3)** Any assistant district attorney under sub. (1), (1m), or (2) must be an
2 attorney admitted to practice law in this state and, except as provided in s. 978.043
3 (1), may perform any duty required by law to be performed by the district attorney.
4 The district attorney of the prosecutorial unit under sub. (1), (1m), or (2) may appoint
5 such temporary counsel as may be authorized by the ~~department of administration~~
6 board.

7 **SECTION 23.** 978.045 (1g) of the statutes is amended to read:

8 978.045 **(1g)** A court on its own motion may appoint a special prosecutor under
9 sub. (1r) or a district attorney may request a court to appoint a special prosecutor
10 under that subsection. Before a court appoints a special prosecutor on its own motion
11 or at the request of a district attorney for an appointment that exceeds 6 hours per
12 case, the court or district attorney shall request assistance from a district attorney,
13 deputy district attorney or assistant district attorney from other prosecutorial units
14 or an assistant attorney general. A district attorney requesting the appointment of
15 a special prosecutor, or a court if the court is appointing a special prosecutor on its
16 own motion, shall notify the ~~department of administration, on a form provided by~~
17 ~~that department, of office that~~ the district attorney's attorney or the court's inability
18 court, whichever is appropriate, is unable to obtain assistance from another
19 prosecutorial unit or from an assistant attorney general.

20 **SECTION 24.** 978.045 (1r) (bm) (intro.) of the statutes is amended to read:

21 978.045 **(1r)** (bm) (intro.) The judge may appoint an attorney as a special
22 prosecutor at the request of a district attorney to assist the district attorney in the
23 prosecution of persons charged with a crime, in grand jury proceedings, in
24 proceedings under ch. 980, or in investigations. Except as provided under par. (bp),
25 the judge may appoint an attorney as a special prosecutor only if the judge or the

1 requesting district attorney submits an affidavit to the department of
2 administration office attesting that any of the following conditions exists:

3 **SECTION 25.** 978.045 (2) of the statutes is amended to read:

4 978.045 (2) If the department of administration office approves the
5 appointment of a special prosecutor under sub. (1r), the court shall fix the amount
6 of compensation for the attorney appointed according to the rates specified in s.
7 977.08 (4m) (b). The department of administration shall pay the compensation
8 ordered by the court from the appropriation under s. 20.475 (1) (d). The court, district
9 attorney, and the special prosecutor shall provide any information regarding a
10 payment of compensation that the department requests. Any payment under this
11 subsection earns interest on the balance due from the 121st day after receipt of a
12 properly completed invoice or receipt and acceptance of the property or service under
13 the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a)
14 compounded monthly.

15 **SECTION 26.** 978.05 (9) of the statutes is amended to read:

16 978.05 (9) BUDGET. Prepare a biennial budget request for submission to the
17 department executive director under s. ~~978.11~~ 978.004 (1) (b) by September 1 of each
18 even-numbered year.

19 **SECTION 27.** 978.11 of the statutes is repealed.

20 **SECTION 28.** 978.12 (1) (c) of the statutes is amended to read:

21 978.12 (1) (c) *Assistant district attorneys.* Assistant district attorneys shall be
22 employed outside the classified service. For purposes of salary administration, the
23 administrator of the division of personnel management in the department of
24 administration, in consultation with the office, shall establish one or more
25 classifications for assistant district attorneys in accordance with the classification

1 or classifications allocated to assistant attorneys general. Except as provided in ss.
2 111.93 (3) (b) and 230.12 (10), the salaries of assistant district attorneys shall be
3 established and adjusted in accordance with the state compensation plan for
4 assistant attorneys general whose positions are allocated to the classification or
5 classifications established by the administrator of the division of personnel
6 ~~management in the department of administration~~ under this paragraph.

7 **SECTION 29. Nonstatutory provisions.**

8 (1) PROSECUTOR BOARD AND STATE PROSECUTORS OFFICE.

9 (a) *Initial terms for prosecutor board members.* Notwithstanding s. 15.77, of
10 the members of the prosecutor board who are appointed as initial members, one
11 member representing each district under s. 752.11 (1) (b) and (d) and one member
12 under s. 15.77 (3) shall serve for a one-year term and one member representing the
13 district under s. 752.11 (1) (c), one member under s. 15.77 (2), and one member under
14 s. 15.77 (3) shall serve for a 2-year term.

15 (b) *Transfer of state prosecutors office.*

16 1. 'Assets and liabilities.' On the effective date of this subdivision, the assets
17 and liabilities of the department of administration that are primarily related to the
18 state prosecutors office, as determined by the secretary of administration, become
19 the assets and liabilities of the prosecutor board.

20 2. 'Tangible personal property.' On the effective date of this subdivision, all
21 tangible personal property, including records, of the department of administration
22 that is primarily related to the state prosecutors office, as determined by the
23 secretary of administration, is transferred to the prosecutor board.

24 3. 'Contracts.' All contracts entered into by the department of administration
25 that are primarily related to the state prosecutors office, as determined by the

1 secretary of administration, in effect on the effective date of this subdivision, remain
2 in effect and are transferred to the prosecutor board. The prosecutor board shall
3 carry out any such contractual obligations unless modified or rescinded by the
4 prosecutor board to the extent allowed under the contract.

5 4. 'Pending matters.' Any matter pending with the department of
6 administration that is primarily related to the state prosecutors office, as
7 determined by the secretary of administration, on the effective date of this
8 subdivision, is transferred to the prosecutor board, and all materials submitted to or
9 actions taken by the department of administration, with respect to the pending
10 matter are considered as having been submitted to or taken by the prosecutor board.

11 5. 'Rules and orders.' All rules promulgated for the department of
12 administration that are primarily related to the state prosecutors office, as
13 determined by the secretary of administration, that are in effect on the effective date
14 of this subdivision remain in effect until their specified expiration dates or until
15 amended or repealed by the prosecutor board.

16 (END)