



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2472/1
CMH&MED:amn

2017 ASSEMBLY BILL 231

April 12, 2017 - Introduced by Representatives TUSLER, BORN, OTT, R. BROOKS, DOYLE, FELZKOWSKI, HORLACHER, JAGLER, KRUG, MURSAU, NERISON, NOVAK, PETERSEN, PETRYK, RIPP, SCHRAA, SHANKLAND, SKOWRONSKI, TITTL and WACHS, cosponsored by Senators WANGGAARD, BEWLEY, COWLES, HANSEN, L. TAYLOR and TESTIN. Referred to Committee on Government Accountability and Oversight.

1 **AN ACT** *to repeal* 978.001 (1p) and 978.11; *to amend* 13.093 (2) (a), 16.971 (9),
2 16.971 (10), 230.33 (1), 978.03, 978.045 (1g), 978.045 (1r) (bm) (intro.), 978.045
3 (2), 978.05 (9) and 978.12 (1) (c); and *to create* 13.0967, 15.77, 20.548, 20.923
4 (4) (f) 7x., 20.923 (6) (hs), 227.112, 227.19 (3) (em), 230.08 (2) (qp), 978.001 (1b),
5 (1d) and (1n), 978.003, 978.004 and 978.005 of the statutes; **relating to:**
6 creation of a prosecutor board and a state prosecutors office and making
7 appropriations.

Analysis by the Legislative Reference Bureau

This bill creates an independent prosecutor board that oversees and sets policies for a state prosecutors office, also created in this bill. Under this 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 this 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

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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. Finally, this 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.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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
8 hearing is held, before any vote is taken by the committee, incorporate a reliable
9 estimate of the anticipated change in appropriation authority or state or general
10 local government fiscal liability or revenues under the bill, including to the extent
11 possible a projection of such changes in future biennia. The estimate shall also
12 indicate whether any increased costs incurred by the state under the bill can be
13 mitigated through the use of contractual service contracts let in accordance with
14 competitive procedures. For purposes of this paragraph, a bill increasing or
15 decreasing the liability or revenues of the unemployment reserve fund is considered
16 to increase or decrease state fiscal liability or revenues. Except as otherwise
17 provided by joint rules of the legislature or this paragraph, such estimates shall be
18 made by the department or agency administering the appropriation or fund or

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1 collecting the revenue. The legislative council staff shall prepare the fiscal estimate
2 with respect to the provisions of any bill referred to the joint survey committee on
3 retirement systems which create or modify any system for, or make any provision for,
4 the retirement of or payment of pensions to public officers or employees. The director
5 of state courts shall prepare the fiscal estimate with respect to the provisions of any
6 bill that modifies an existing surcharge or creates a new surcharge that is imposed
7 under ch. 814. The executive director of the state prosecutors office shall prepare the
8 fiscal estimate with respect to the provisions of any bill that affects prosecutors or
9 the state prosecutors office, including bills modifying or creating crimes or
10 sentencing practices. When a fiscal estimate is prepared after the bill has been
11 introduced, it shall be printed and distributed as are amendments.

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

13 **13.0967 Review of bills affecting state prosecutors office.** Any bill that
14 is introduced in either house of the legislature that directly affects the state
15 prosecutors office shall have a notation to that effect on its jacket when the jacket is
16 prepared. When a bill that has that notation on the jacket is introduced, the
17 legislative reference bureau shall submit a copy of the bill to the state prosecutors
18 office.

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

20 **15.77 Prosecutor board.** There is created a prosecutor board consisting of
21 11 members, appointed for staggered 3-year terms, as follows:

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

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

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

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

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

6 16.971 **(9)** In conjunction with the public defender board, the prosecutor board,
7 the director of state courts, and the departments of corrections and justice ~~and~~
8 ~~district attorneys~~, the department may maintain, promote and coordinate
9 automated justice information systems that are compatible among counties and the
10 officers and agencies specified in this subsection, using the moneys appropriated
11 under s. 20.505 (1) (kh), (kp), and (kq). The department shall annually report to the
12 legislature under s. 13.172 (2) concerning the department’s efforts to improve and
13 increase the efficiency of integration of justice information systems.

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

15 16.971 **(10)** The department shall maintain, and provide the department of
16 justice and the state prosecutors office with general access to, a case management
17 system that allows the state prosecutors office and district attorneys to manage all
18 case-related information and share the information among prosecutors.

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

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1 on the proposed rule before it is submitted to the legislative council staff under s.
2 227.15. The state prosecutors office may request any information from other state
3 agencies, local governments, individuals, or organizations that is reasonably
4 necessary for the office to prepare the report. The state prosecutors office shall
5 prepare the report within 30 days after the rule is submitted to the office.

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

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

11 **SECTION 11.** 227.19 (3) (em) of the statutes is created to read:

12 227.19 (3) (em) The report of the state prosecutors office, if the proposed rule
13 directly affects the state prosecutors office.

14 **SECTION 12.** 230.08 (2) (qp) of the statutes is created to read:

15 230.08 (2) (qp) The executive director and legislative liaison in the office of
16 state prosecutors.

17 **SECTION 13.** 230.33 (1) of the statutes is amended to read:

18 230.33 (1) A person appointed to an unclassified position by the governor,
19 elected officer, judicial body, or prosecutor board, or by a legislative body or
20 committee shall be granted a leave of absence without pay for the duration of the
21 appointment and for 3 months thereafter, during which time the person has
22 restoration rights to the former position or equivalent position in the department in
23 which last employed in a classified position without loss of seniority. The person
24 shall also have reinstatement privileges for 5 years following appointment to the
25 unclassified service or for one year after termination of the unclassified appointment

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1 whichever is longer. Restoration rights and reinstatement privileges shall be
2 forfeited if the reason for termination of the unclassified appointment would also be
3 reason for discharge from the former position in the classified service.

4 **SECTION 14.** 978.001 (1b), (1d) and (1n) of the statutes are created to read:

5 978.001 **(1b)** “Board” means the prosecutor board.

6 **(1d)** “Executive director” means the executive director appointed under s.
7 978.003 (3).

8 **(1n)** “Office” means the state prosecutors office.

9 **SECTION 15.** 978.001 (1p) of the statutes is repealed.

10 **SECTION 16.** 978.003 of the statutes is created to read:

11 **978.003 Board; duties.** The board shall do all of the following:

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

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

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

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

19 **(5)** Review existing law or proposed legislation and make recommendations to
20 the legislature.

21 **SECTION 17.** 978.004 of the statutes is created to read:

22 **978.004 State prosecutors office executive director.** **(1)** The executive
23 director shall do all of the following:

24 **(a)** Manage and direct the office subject to the policy initiatives set under s.
25 978.003 (4).

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

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

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

7 (e) Appoint in the classified service an executive assistant and all other
8 employees of the office. Before making an appointment under this paragraph, the
9 executive director shall notify the board of any prospective appointment. If the board
10 does not object to the prospective appointment within 7 working days after
11 notification, the executive director may make the appointment. If the board objects
12 to a prospective appointment, the executive director may not make the appointment
13 until the board approves it.

14 (f) Prepare fiscal estimates on bills affecting prosecutors or the office, including
15 bills modifying or creating crimes or sentencing practices. To prepare a fiscal
16 estimate, the executive director shall consult with and obtain data from district
17 attorneys. The executive director shall transmit a draft fiscal estimate to the board.
18 If the board does not object to the draft fiscal estimate within 7 working days after
19 receiving it, the executive director may submit the fiscal estimate. If the board
20 objects to a draft fiscal estimate, the executive director may not submit the fiscal
21 estimate until the board approves it.

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

25 **SECTION 18.** 978.005 of the statutes is created to read:

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1 **978.005 Limits on board and executive director.** Neither the board nor
2 the executive director may make any decision regarding the handling of any case nor
3 interfere with any district attorney in carrying out professional duties. Neither the
4 board nor the office may interfere with or infringe upon the autonomy of a district
5 attorney or upon the authority of a district attorney to manage his or her own
6 prosecutorial unit.

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

8 **978.03 Deputies and assistants in certain prosecutorial units.** (1) The
9 district attorney of any prosecutorial unit having a population of 500,000 or more
10 may appoint 7 deputy district attorneys and such assistant district attorneys as may
11 be requested by the department of administration, or by the board, and authorized
12 in accordance with s. 16.505. The district attorney shall rank the deputy district
13 attorneys for purposes of carrying out duties under this section. The deputies,
14 according to rank, may perform any duty of the district attorney, under the district
15 attorney's direction. In the absence or disability of the district attorney, the deputies,
16 according to rank, may perform any act required by law to be performed by the
17 district attorney. Any such deputy must have practiced law in this state for at least
18 2 years prior to appointment under this section.

19 **(1m)** The district attorney of any prosecutorial unit having a population of
20 200,000 or more but not more than 499,999 may appoint 3 deputy district attorneys
21 and such assistant district attorneys as may be requested by the department of
22 administration, or by the board, and authorized in accordance with s. 16.505. The
23 district attorney shall rank the deputy district attorneys for purposes of carrying out
24 duties under this section. The deputies, according to rank, may perform any duty
25 of the district attorney, under the district attorney's direction. In the absence or

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

5 (2) The district attorney of any prosecutorial unit having a population of
6 100,000 or more but not more than 199,999 may appoint one deputy district attorney
7 and such assistant district attorneys as may be requested by the department of
8 administration, or by the board, and authorized in accordance with s. 16.505. The
9 deputy may perform any duty of the district attorney, under the district attorney's
10 direction. In the absence or disability of the district attorney, the deputy may
11 perform any act required by law to be performed by the district attorney. The deputy
12 must have practiced law in this state for at least 2 years prior to appointment under
13 this section.

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

20 **SECTION 20.** 978.045 (1g) of the statutes is amended to read:

21 978.045 (1g) A court on its own motion may appoint a special prosecutor under
22 sub. (1r) or a district attorney may request a court to appoint a special prosecutor
23 under that subsection. Before a court appoints a special prosecutor on its own motion
24 or at the request of a district attorney for an appointment that exceeds 6 hours per
25 case, the court or district attorney shall request assistance from a district attorney,

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1 deputy district attorney or assistant district attorney from other prosecutorial units
2 or an assistant attorney general. A district attorney requesting the appointment of
3 a special prosecutor, or a court if the court is appointing a special prosecutor on its
4 own motion, shall notify the ~~department of administration, on a form provided by~~
5 ~~that department, of office that~~ the district attorney's attorney or the court's inability
6 court, whichever is appropriate, is unable to obtain assistance from another
7 prosecutorial unit or from an assistant attorney general.

8 **SECTION 21.** 978.045 (1r) (bm) (intro.) of the statutes is amended to read:

9 978.045 (1r) (bm) (intro.) The judge may appoint an attorney as a special
10 prosecutor at the request of a district attorney to assist the district attorney in the
11 prosecution of persons charged with a crime, in grand jury proceedings, in
12 proceedings under ch. 980, or in investigations. The judge may appoint an attorney
13 as a special prosecutor only if the judge or the requesting district attorney submits
14 an affidavit to the ~~department of administration~~ office attesting that any of the
15 following conditions exists:

16 **SECTION 22.** 978.045 (2) of the statutes is amended to read:

17 978.045 (2) If the ~~department of administration~~ office approves the
18 appointment of a special prosecutor under sub. (1r), the court shall fix the amount
19 of compensation for the attorney appointed according to the rates specified in s.
20 977.08 (4m) (b). The department of administration shall pay the compensation
21 ordered by the court from the appropriation under s. 20.475 (1) (d). The court, district
22 attorney, and the special prosecutor shall provide any information regarding a
23 payment of compensation that the department requests. Any payment under this
24 subsection earns interest on the balance due from the 121st day after receipt of a
25 properly completed invoice or receipt and acceptance of the property or service under

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1 the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a)
2 compounded monthly.

3 **SECTION 23.** 978.05 (9) of the statutes is amended to read:

4 978.05 (9) BUDGET. Prepare a biennial budget request for submission to the
5 department executive director under s. ~~978.11~~ 978.004 (1) (b) by September 1 of each
6 even-numbered year.

7 **SECTION 24.** 978.11 of the statutes is repealed.

8 **SECTION 25.** 978.12 (1) (c) of the statutes is amended to read:

9 978.12 (1) (c) *Assistant district attorneys.* Assistant district attorneys shall be
10 employed outside the classified service. For purposes of salary administration, the
11 administrator of the division of personnel management in the department of
12 administration, in consultation with the office, shall establish one or more
13 classifications for assistant district attorneys in accordance with the classification
14 or classifications allocated to assistant attorneys general. Except as provided in ss.
15 111.93 (3) (b) and 230.12 (10), the salaries of assistant district attorneys shall be
16 established and adjusted in accordance with the state compensation plan for
17 assistant attorneys general whose positions are allocated to the classification or
18 classifications established by ~~the administrator of the division of personnel~~
19 ~~management in the department of administration~~ under this paragraph.

20 **SECTION 26. Nonstatutory provisions.**

21 (1) INITIAL TERMS FOR PROSECUTOR BOARD MEMBERS. Notwithstanding section
22 15.77 of the statutes, of the members of the prosecutor board who are appointed as
23 initial members, one member representing each district under section 752.11 (1) (b)
24 and (d) of the statutes and one member under section 15.77 (3) of the statutes shall
25 serve for a one-year term and one member representing the district under section

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1 752.11 (1) (c) of the statutes, one member under section 15.77 (2) of the statutes, and
2 one member under section 15.77 (3) of the statutes shall serve for a 2-year term.

3 (2) TRANSFER OF STATE PROSECUTORS OFFICE.

4 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and
5 liabilities of the department of administration that are primarily related to the state
6 prosecutors office, as determined by the secretary of administration, become the
7 assets and liabilities of the prosecutor board.

8 (b) *Tangible personal property.* On the effective date of this paragraph, all
9 tangible personal property, including records, of the department of administration
10 that is primarily related to the state prosecutors office, as determined by the
11 secretary of administration, is transferred to the prosecutor board.

12 (c) *Contracts.* All contracts entered into by the department of administration
13 that are primarily related to the state prosecutors office, as determined by the
14 secretary of administration, in effect on the effective date of this paragraph, remain
15 in effect and are transferred to the prosecutor board. The prosecutor board shall
16 carry out any such contractual obligations unless modified or rescinded by the
17 prosecutor board to the extent allowed under the contract.

18 (d) *Pending matters.* Any matter pending with the department of
19 administration that is primarily related to the state prosecutors office, as
20 determined by the secretary of administration, on the effective date of this
21 paragraph, is transferred to the prosecutor board, and all materials submitted to or
22 actions taken by the department of administration, with respect to the pending
23 matter are considered as having been submitted to or taken by the prosecutor board.

24 (e) *Rules and orders.* All rules promulgated for the department of
25 administration that are primarily related to the state prosecutors office, as

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SECTION 26

1 determined by the secretary of administration, that are in effect on the effective date
2 of this paragraph remain in effect until their specified expiration dates or until
3 amended or repealed by the prosecutor board.

4 (END)