

1989 Assembly Bill 628

Date of enactment: **December 8, 1989**
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1989 WISCONSIN ACT 117

AN ACT *to renumber* 978.06 (5); *to renumber and amend* 978.06 (3); *to amend* 16.003 (2), 230.12 (1) (c) 2, 978.05 (6) (a), 978.05 (8) (b), 978.06 (1), 978.06 (2), 978.12 (4) and (6) and 978.13 (2) (e); and *to create* 20.475 (1) (h), 20.475 (1) (k), 20.475 (1) (m), 978.045, 978.047, 978.06 (3) (b) and 978.06 (5) (b) of the statutes; and *to affect* 1989 Wisconsin Act 31, section 3058 (1f) (title) and (a); 1989 Wisconsin Act 31, section 3058 (1f) (ar); and 1989 Wisconsin Act 31, section 3058 (1f) (c), **relating to**: various changes affecting district attorneys and employes of the office of district attorney and making appropriations.

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

SECTION 1. 16.003 (2) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

16.003 (2) STAFF. Except as provided in ss. 16.548 and 16.57, 978.03 (1) and (2), 978.04 and 978.05 (8) (b), the secretary shall appoint the staff necessary for performing the duties of the department. All staff shall be appointed under the classified service except as otherwise provided by law.

SECTION 1m. 20.475 (1) (h) of the statutes is created to read:

20.475 (1) (h) *Gifts and grants.* All moneys received as gifts, grants or bequests to carry out the purposes for which received.

SECTION 2. 20.475 (1) (k) of the statutes is created to read:

20.475 (1) (k) *Interagency and intra-agency assistance.* All moneys received from any state agency for the administration of the programs or projects for which received.

SECTION 3. 20.475 (1) (m) of the statutes is created to read:

20.475 (1) (m) *Federal aid.* All moneys received as federal aid as authorized by the governor under s. 16.54.

SECTION 4. 230.12 (1) (c) 2. of the statutes is amended to read:

230.12 (1) (c) 2. The secretary may establish a plan of extra compensation for work performed during selected hours at an hourly rate or rates subject to approval of the joint committee on employment relations. The secretary may establish a plan of extra compensation for assistant district attorneys, which may include extra compensation for work performed during selected hours or for special duty such as on-call duty, at hourly rates subject to the approval of the joint committee on employment relations. Eligibility for such extra compensation shall be as provided in the compensation plan.

SECTION 5. 978.045 of the statutes is created to read:

978.045 Acting district attorney; assistants in criminal cases. (1) If there is no district attorney for the county, if the district attorney is absent from the county, has acted as attorney for a party accused in relation to the matter of which the accused stands charged and for which he or she is to be tried, is near of kin to the party to be tried on a criminal charge, is unable to attend to his or her duties or is serving in the armed forces of the United States, or if the district attorney stands charged with a crime and the governor has not acted under s. 17.11, any judge of a court of record, by an order entered in the record stating the cause therefor, may appoint some suitable attorney to perform, for the time being, or for the trial of the accused person, the duties of the district attorney, and the attorney so appointed shall have all the powers of the district attorney while so acting.

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(2) The court shall fix the amount of compensation for any attorney appointed under this section, which shall be the amount customarily charged by attorneys of this state for comparable services, and shall provide for the repayment of disbursements in such sum as the court deems proper. The department of administration shall pay the compensation and disbursements ordered by the court from the appropriation under s. 20.475 (1) (r). The court and the appointed attorney shall provide any information regarding this payment that the department requests. When appointing an attorney under this section, the court shall first consider the feasibility of appointing a district attorney, a deputy district attorney or an assistant district attorney from another prosecution unit or an assistant attorney general.

SECTION 6. 978.047 of the statutes is created to read:

978.047 Investigators; police powers. The district attorney of any county having a population of 500,000 or more or containing a 2nd or 3rd class city may appoint such investigators as are authorized by the county board, and the county board may abolish the positions at its pleasure. The investigators when so appointed have general police powers within the county.

SECTION 7. 978.05 (6) (a) of the statutes, as created by 1989 Wisconsin Act 31, is amended to read:

978.05 (6) (a) Institute, commence or appear in all civil actions or special proceedings under and perform the duties set forth for the district attorney under ss. 17.14, 30.03 (2), 48.09 (1), (2) and (5), 48.18, 48.355 (6) (b), 59.073, 59.77, 69.07 (3), 70.36, 103.50 (8), 103.92 (4), 109.09, 161.55 (5), 180.847 (3m) (b), 343.305 (9) (a), 453.08, 806.05, 946.86, 946.87, 971.14 and 973.075 to 973.077, perform any duties in connection with court proceedings in a court assigned to exercise jurisdiction under ch. 48 as the judge may request and perform all appropriate duties and appear if the district attorney is designated in specific statutes, including matters within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits the authority of the county board to designate, under s. 48.09 (2) or (5), that the corporation counsel provide representation as specified in s. 48.09 (2) or (5) or to designate, under s. 48.09 (6), the district attorney as an appropriate person to represent the interests of the public under s. 48.14.

SECTION 8. 978.05 (8) (b) of the statutes, as created by 1989 Wisconsin Act 31, is amended to read:

978.05 (8) (b) Supervise Hire, employ and supervise his or her staff and make appropriate assignments of the staff throughout the prosecutorial unit. The district attorney may request the assistance of district attorneys or assistant district attorneys from other prosecutorial units who then may appear and assist in the prosecution of criminal matters in like manner as assistants in the prosecutorial unit and with the same authority as the district attorney in the unit in which the action is brought. Nothing in this paragraph limits the authority of counties to

regulate the hiring, employment and supervision of county employes.

SECTION 9. 978.06 (1) of the statutes, as created by 1989 Wisconsin Act 31, is amended to read:

978.06 (1) No district attorney, deputy district attorney or assistant district attorney may receive any fee or reward from or on behalf of any prosecutor or any other individual for services in any prosecution or business to which it is the district attorney's official duty to attend.

SECTION 10. 978.06 (2) of the statutes, as created by 1989 Wisconsin Act 31, is amended to read:

978.06 (2) No district attorney, deputy district attorney or assistant district attorney may be concerned as attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution commenced but undetermined depends.

SECTION 11. 978.06 (3) of the statutes, as created by 1989 Wisconsin Act 31, is renumbered 978.06 (3) (a) and amended to read:

978.06 (3) (a) No district attorney, deputy district attorney or assistant district attorney while in office may hold any judicial office. No full-time district attorney, deputy district attorney or assistant district attorney may hold the office of or act as corporation counsel or city, village or town attorney. A part-time district attorney, deputy district attorney or assistant district attorney may hold the office of or act as corporation counsel or city, village or town attorney or otherwise serve as legal counsel to any governmental unit.

SECTION 12. 978.06 (3) (b) of the statutes is created to read:

978.06 (3) (b) Notwithstanding par. (a), if a district attorney, deputy district attorney or assistant district attorney holds a judicial office on January 1, 1990, he or she may continue to hold that office until January 1, 1993.

SECTION 13. 978.06 (5) of the statutes, as created by 1989 Wisconsin Act 31, is renumbered 978.06 (5) (a).

SECTION 14. 978.06 (5) (b) of the statutes is created to read:

978.06 (5) (b) Notwithstanding par. (a), if a deputy district attorney, assistant district attorney or full-time district attorney has a contractual obligation on January 1, 1990, to provide legal services, he or she may continue to provide those services until January 1, 1993. The services provided may not be in conflict with the interest of the county or counties of his or her prosecutorial unit.

SECTION 15. 978.12 (4) and (6) of the statutes, as created by 1989 Wisconsin Act 31, are amended to read:

978.12 (4) ANNUAL LEAVE. Annual leave for the district attorney and is governed by s. 230.35 (1r). Annual leave for other state employes of the office of district attorney shall be accrued at the rate provided in s. 230.35 using the employe's state service computed under sub. (2). Annual leave shall be earned on a calendar year basis

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prorated from the effective date of the employee's transfer for the balance of the calendar year.

(6) OTHER FRINGE BENEFITS. District attorneys and state employes in the office of district attorney shall be included within all insurance and deferred compensation benefits of ch. 40, as eligible employes of that office, except as authorized in this subsection. ~~An~~ A district attorney or other employe of the office of district attorney who was employed in that office as a county employe on December 31, 1989, and who received any form of fringe benefits other than retirement as a county employe, as defined by that county pursuant to the county's personnel policies, or pursuant to a collective bargaining agreement in effect on January 1, 1990, or the most recent collective bargaining agreement covering represented employes who are not covered by such an agreement, may elect to continue to be covered under all such fringe benefit plans provided by the county after becoming a state employe. In a county having a population of 500,000 or more, the plans shall include health insurance benefits fully paid by the county for each retired employe who, on or after December 31, 1989, attains at least 15 years of service in the office of district attorney of that county, whether or not the service is as a county employe, for the duration of the employe's life. An employe may make an election under this subsection no later than January 31, 1990, except that an employe who serves as an assistant district attorney in a county having a population of 500,000 or more may make an election under this subsection no later than March 1, 1990. An election under this subsection shall be for the duration of the employe's employment in the office of district attorney for the same county by which the employe was employed or until the employe terminates the election under this subsection, at the same cost to the county as the county incurs for a similarly situated county employe. If the employer's cost for such fringe benefits for any such employe is less than or equal to the cost for comparable coverage under ch. 40, if any, the state shall reimburse the county for that cost. If the employer's cost for such fringe benefits for any such employe is greater than the cost for comparable coverage under ch. 40, the state shall reimburse the county for the cost of comparable coverage under ch. 40 and the county shall pay the remainder of the cost. An employe who makes the election under this subsection may terminate that election, and shall then be included within all insurance and deferred compensation benefits of ch. 40, except that the department of employe trust funds may require prior written notice, not exceeding one year's duration, of an employe's intent to be included under any benefit plan under ch. 40.

SECTION 16. 978.13 (2) (e) of the statutes, as created by 1989 Wisconsin Act 31, is amended to read:

978.13 (2) (e) Adequate investigators and clerical and all other support staff subject to the approval and supervision of the district attorney.

SECTION 18. 1989 Wisconsin Act 31, section 3058 (1f) (title) and (a) are amended to read:

[1989 Wisconsin Act 31] Section 3058 (1f) (title) REGIONAL PROSECUTION; INITIAL CLASSIFICATIONS, SALARIES AND SERVICE BASIS.

(a) Notwithstanding section 978.12 (1) (a) of the statutes, as created by this act, each district attorney shall be compensated by the state under that paragraph for the period beginning January 1, 1990, and ending January 7, 1991, based on his or her annual salary on December 31, 1989, except that if the department of administration determines that a district attorney is serving on a part-time basis on December 31, 1989, and the district attorney serves on a full-time basis on January 1, 1990, under section 978.01 (2) of the statutes, the district attorney shall be initially compensated by the state at an annual salary equivalent to the hourly salary rate at which the district attorney serves on December 31, 1989, as determined by the department of administration, applied to a work week of 40 hours. Notwithstanding section 978.12 (1) (a) of the statutes, as created by this act, and any other provision of this paragraph, any district attorney who is paid a salary on the day prior to the effective date of this paragraph or who is authorized to be paid a salary under this paragraph that exceeds the salary payable to the district attorney under section 978.12 (1) (a) of the statutes, as created by this act, shall be initially compensated at the same salary the district attorney received on the day prior to the effective date of this paragraph or the salary payable under this paragraph, whichever is greater, until such time as the salary otherwise payable under section 978.12 (1) (a) of the statutes, as created by this act, exceeds that initial salary. Notwithstanding sections 978.01 (2) and 978.06 (3) and (5) of the statutes, as created by this act, a district attorney who serves on a part-time basis on December 31, 1989, shall continue on a part-time basis for the period beginning January 1, 1990, and ending January 7, 1991, and may engage in a private practice of law or may serve in a position described under section 978.06 (3) of the statutes, as created by this act, or both during that time period.

(ag) A district attorney who serves on a full-time basis on December 31, 1989, shall continue on a full-time basis for the period beginning January 1, 1990, and ending January 7, 1991.

SECTION 18g. 1989 Wisconsin Act 31, section 3058 (1f) (ar) is created to read:

[1989 Wisconsin Act 31] Section 3058 (1f) (ar) Notwithstanding section 20.923 (6) (ac) of the statutes, the secretary of administration shall set the initial salary of each deputy and assistant district attorney who is transferred to state employment under this act.

SECTION 18r. 1989 Wisconsin Act 31, section 3058 (1f) (c) is amended to read:

[1989 Wisconsin Act 31] Section 3058 (1f) (c) Notwithstanding sections 20.923 (6) (ac) and 978.12 (1) (b)

and (c) of the statutes, on January 1, 1990, each deputy and assistant district attorney who is transferred to state employment under this act shall be paid an initial salary at least equivalent to his or her salary on December 31, 1989. Any longevity bonus paid by a county to ~~an a deputy or~~ assistant district attorney in the 12-month period prior to January 1, 1990, shall be included within the employe's salary for purposes of this paragraph, unless the longevity bonus is defined by the county as a fringe benefit, as provided in section 978.12 (6) of the statutes, as created by this act, and the deputy or assistant district attorney makes an election to continue to be covered by county fringe benefit plans as provided in that subsec-

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tion. Notwithstanding section 978.12 (1) (c) of the statutes, the secretary of administration may, in setting the initial salary of an assistant district attorney who is transferred to state employment under this act, grant additional moneys not authorized under the compensation plan on the basis of relevant prosecution experience outside county employment, but no salary may exceed the maximum of the salary range to which the attorney's position is assigned.

SECTION 20. Effective date. This act takes effect on January 1, 1990, or the day after publication, whichever is later.