



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0550/1
CMH:ahe

2017 ASSEMBLY BILL 155

March 20, 2017 - Introduced by Representatives C. TAYLOR, KOLSTE, GOYKE, BERCEAU, BROSTOFF and SINICKI, cosponsored by Senators L. TAYLOR and C. LARSON. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to amend** 175.47 (5), 978.045 (1g) and 978.045 (1r) (bm) (intro.) of the
2 statutes; **relating to:** prosecution decisions following deaths involving law
3 enforcement officers.

Analysis by the Legislative Reference Bureau

Current law requires an investigation following a death that involves a law enforcement officer and outlines specific requirements of the investigation. One requirement is that the investigators provide a report of the investigation to the district attorney of the county in which the death occurred, and that district attorney must determine whether to prosecute the officer. This bill requires instead that the investigators provide the report to the chief judge of the judicial administrative district, and that judge must appoint a special prosecutor who then must determine whether to prosecute the officer.

For further information see the ***state and local*** 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:

4 **SECTION 1.** 175.47 (5) of the statutes is amended to read:
5 175.47 (5) (a) The investigators conducting the investigation under sub. (3) (a)
6 shall, in an expeditious manner, provide a complete report to the ~~district attorney~~ of

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1 ~~the county chief judge of the judicial administrative district in which the~~
2 ~~officer-involved death occurred. The chief judge that receives the report shall~~
3 ~~appoint a special prosecutor under s. 978.045 (1r) and shall provide the report to the~~
4 ~~special prosecutor. The special prosecutor shall determine if there is a basis to~~
5 ~~prosecute the law enforcement officer involved in the officer-involved death. If the~~
6 ~~special prosecutor files charges against the officer, the special prosecutor shall be the~~
7 ~~prosecuting attorney in the case.~~

8 (b) If the ~~district attorney~~ special prosecutor appointed under par. (a)
9 determines there is no basis to prosecute the law enforcement officer involved in the
10 officer-involved death, the investigators conducting the investigation under sub. (3)
11 (a) shall release the report, except that the investigators shall, before releasing the
12 report, delete any information that would not be subject to disclosure pursuant to a
13 request under s. 19.35 (1) (a).

14 **SECTION 2.** 978.045 (1g) of the statutes is amended to read:

15 978.045 (1g) A court on its own motion may appoint a special prosecutor under
16 sub. (1r) ~~or a~~, except that a court shall appoint a special prosecutor under sub. (1r)
17 if s. 175.47 (5) (a) applies. A district attorney may request a court to appoint a special
18 prosecutor under ~~that subsection sub. (1r)~~. Before a court appoints a special
19 prosecutor on its own motion or at the request of a district attorney for an
20 appointment that exceeds 6 hours per case, the court or district attorney shall
21 request assistance from a district attorney, deputy district attorney or assistant
22 district attorney from other prosecutorial units or an assistant attorney general. A
23 district attorney requesting the appointment of a special prosecutor, or a court if the
24 court is appointing a special prosecutor on its own motion, shall notify the
25 department of administration, on a form provided by that department, of the district

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1 attorney's or the court's inability to obtain assistance from another prosecutorial unit
2 or from an assistant attorney general.

3 **SECTION 3.** 978.045 (1r) (bm) (intro.) of the statutes is amended to read:

4 978.045 (1r) (bm) (intro.) The judge may appoint an attorney as a special
5 prosecutor at the request of a district attorney to assist the district attorney in the
6 prosecution of persons charged with a crime, in grand jury proceedings, in
7 proceedings under ch. 980, or in investigations. The **Except as provided under s.**
8 **175.47 (5) (a),** a judge may appoint an attorney as a special prosecutor only if the
9 judge or the requesting district attorney submits an affidavit to the department of
10 administration attesting that any of the following conditions exists:

11 **SECTION 4. Initial applicability.**

12 (1) This act first applies to reports provided on the effective date of this
13 subsection.

14 (END)