CHAPTER 978

DISTRICT ATTORNEYS

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Cross−reference: See definitions in s. 967.02.

978.001 Definitions. In this chapter:

(1g) "Law firm" means a private firm of attorneys, the legal department of a governmental unit or agency, a corporation or another organization or a legal services organization.

(1p) "Prosecution system" means all of the prosecutorial units.

(2) "Prosecutorial unit" means a prosecutorial unit described in s. 978.01 (1).

History: 1989 a. 31; 1991 a. 188.

978.01 Number of district attorneys; election; term. (1) There shall be 71 district attorneys elected for full terms at the general election held in 2008 and quadrennially thereafter. The regular term of office for each district attorney is 4 years, commencing on the first Monday of January next succeeding his or her election. Each county is a prosecutorial unit and shall elect a district attorney, except that Shawano and Menominee counties form one 2−county prosecutorial unit and shall elect a single district attorney by the combined electorate of the 2 counties.

(2) (a) Except as provided in par. (b), each district attorney serves on a full−time basis.

(b) A district attorney serves on a part−time basis if his or her prosecutorial unit consists of Buffalo, Florence, or Pepin county.

History: 1989 a. 31 ss. 2900, 2900c; 1991 a. 39; 1999 a. 9; 2007 a. 20, 158.

978.02 Eligibility for office. No person is eligible to hold the office of district attorney unless he or she is licensed to practice law in this state and resides in the prosecutorial unit from which he or she was elected.

History: 1989 a. 31.

An entity characterized as the "office of the district attorney" or "district attorney", separate from the elected official, does not have authority to sue or be sued. Buchanan v. City of Kenosha, 57 F. Supp. 2d 675 (1999).

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

(1m) The district attorney of any prosecutorial unit having a population of 200,000 or more but not more than 499,999 may appoint 3 deputy district attorneys and such assistant district attorneys as may be requested by the department of administration and authorized in accordance with s. 16.505. The district attorney shall rank the deputy district attorneys for purposes of carrying out duties under this section. The deputies, according to rank, may perform any duty of the district attorney, under the district attorney's direction. In the absence or disability of the district attorney, the deputies, according to rank, may perform any act required by law to be performed by the district attorney. Any such deputy must have practiced law in this state for at least 2 years prior to appointment under this section.

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

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

History: 1989 a. 31; 1991 a. 39; 1999 a. 9; 2001 a. 16; 2005 a. 25, 434; 2015 a. 55.

978.04 Assistants in certain prosecutorial units. The district attorney of any prosecutorial unit having a population of less than 100,000 may appoint one or more assistant district attorneys as necessary to carry out the duties of his or her office and as may be requested by the department of administration authorized in accordance with s. 16.505. Any such assistant district attorney must be an attorney admitted to practice law in this state and, except as provided in s. 978.043 (1), may perform any duty required by law to be performed by the district attorney.

History: 1989 a. 31; 1999 a. 9; 2005 a. 434.

978.041 Population estimates of prosecutorial units. In ss. 978.03 and 978.04, the population of a prosecutorial unit is the population estimate for the unit as last determined by the department of administration under s. 16.96.

History: 1993 a. 16.

978.043 Assistants for prosecution of sexually violent person commitment cases. (1) The district attorney of the prosecutorial unit that consists of Brown County and the district attorney of the prosecutorial unit that consists of Milwaukee County shall each assign one assistant district attorney in his or her prosecutorial unit to be a sexually violent person commitment prosecutor. An assistant district attorney assigned under this subsection to be a sexually violent person commitment prosecutor may engage only in the prosecution of sexually violent person commitment proceedings under ch. 980 and, at the request of the

district attorney of the prosecutorial unit, may file and prosecute sexually violent person commitment proceedings under ch. 980 in any prosecutorial unit in this state.

(2) If an assistant district attorney assigned under sub. (1) prosecutes or assists in the prosecution of a case under ch. 980 in a prosecutorial unit other than his or her own, the prosecutorial unit in which the case is heard shall reimburse the assistant district attorney's own prosecutorial unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. Unless otherwise agreed upon by the prosecutorial units involved, the court hearing the case shall determine the amount of money to be reimbursed for expert witness fees under this subsection.

History: 1999 a. 9; 2005 a. 434.

978.045 Special prosecutors. (1g) A court on its own motion may appoint a special prosecutor under sub. (1r) or a district attorney may request a court to appoint a special prosecutor under that subsection. Before a court appoints a special prosecutor on its own motion or at the request of a district attorney for an appointment that exceeds 6 hours per case, the court or district attorney shall request assistance from a district attorney, deputy district attorney or assistant district attorney from other prosecutorial units or an assistant attorney general. A district attorney requesting the appointment of a special prosecutor, or a court if the court is appointing a special prosecutor on its own motion, shall notify the department of administration, on a form provided by that department, of the district attorney's or the court's inability to obtain assistance from another prosecutorial unit or from an assistant attorney general.

(1r) (am) Any judge of a court of record, by an order entered in the record stating the cause for it, may appoint an attorney as a special prosecutor to perform, for the time being, or for the trial of the accused person, the duties of the district attorney. An attorney appointed under this subsection shall have all of the powers of the district attorney.

(bm) The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury proceedings, in proceedings under ch. 980, or in investigations. The judge may appoint an attorney as a special prosecutor only if the judge or the requesting district attorney submits an affidavit to the department of administration attesting that any of the following conditions exists:

NOTE: Par. (bm) (intro.) is shown as affected by 2015 Wis. Acts 55 and 64 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

1. There is no district attorney for the county.

2. The district attorney is absent from the county.

2m. The district attorney, or a deputy or assistant district attorney for the district attorney office, is on parental leave.

3. The district attorney has acted as the attorney for a party accused in relation to the matter of which the accused stands charged and for which the accused is to be tried.

4. The district attorney is near of kin to the party to be tried on a criminal charge.

5. The district attorney is unable to attend to his or her duties due to a health issue or has a mental incapacity that impairs his or her ability to substantially perform his or her duties.

6. The district attorney is serving in the U.S. armed forces.

7. The district attorney stands charged with a crime and the governor has not acted under s. 17.11.

8. The district attorney determines that a conflict of interest exists regarding the district attorney or the district attorney staff.

(cm) The judge may not appoint an attorney as a special prosecutor to assist the district attorney in John Doe proceedings under s. 968.26 unless a condition under par. (bm) 1. to 8. exists or unless the judge determines that a complaint received under s. 968.26 (2) (am) relates to the conduct of the district attorney to whom the judge otherwise would refer the complaint. This paragraph does not prohibit assistance authorized by s. 978.05 (8).

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

(3) (a) If an attorney is available and willing to serve as a special prosecutor without state compensation, the district attorney may appoint the attorney as a public service special prosecutor to serve at the pleasure of the district attorney. The public service special prosecutor may perform the duties and has the powers of the district attorney while acting under such an appointment, but is not subject to the appointment procedure under subs. (1g) and (1r) or to the compensation under sub. (2). A full−time public service special prosecutor may not engage in a private practice of law while serving under this paragraph. A part−time public service special prosecutor may engage in a private practice of law while serving under this paragraph.

(b) A law firm or other employer employing an attorney who is appointed as a public service special prosecutor may continue to pay, for a period of not more than 4 months, the salary and fringe benefits of the attorney while he or she serves under par. (a). If the public service special prosecutor receives any such payments, the prosecutor's law firm and the prosecutor are subject to the following restrictions:

1. The law firm may not participate in any of the cases in which the public service special prosecutor participates.

2. The public service special prosecutor may not consult with any attorney in or employee of the law firm about any criminal case in which the public service special prosecutor participates except as necessary to ensure compliance with this subsection.

(c) An attorney serving as a public service special prosecutor under par. (a) is considered to be a public employee for purposes of s. 895.46. A law firm or employer described under par. (b) is not liable for any acts or omissions of a public service special prosecutor while acting in his or her official capacity or performing duties or exercising powers under par. (a).

History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27; 2005 a. 434; 2009 a. 24; 2015 a. 55, 64; s. 13.92 (2) (i).

A defect in an appointment under sub. (1r) that was not central to the statutory scheme of s. 978.045 was cured by a subsequent court order entered *nunc pro tunc*. The court did not lose competence to proceed in a matter brought by the special prosecutor. State v. Bollig, 222 Wis. 2d 558, 587 N.W.2d 908 (Ct. App. 1998), 97−2231.

A court may appoint a special prosecutor on request of a district attorney or upon its own motion. Any restrictions on the appointment under this section is triggered only when the appointment is made at the request of a district attorney, not when made by the court on its own motion. State v. Carlson, 2002 WI App 44, 250 Wis. 2d 562, 641 N.W.2d 451, 01−1088.

The authority of someone who is appointed as a special prosecutor ends at the point in time when a court makes a legal ruling that the appointment was invalid and orders as a matter of law that the individual's authority is terminated. Three Unnamed Petitioners v. Peterson, 2015 WI 103, 365 Wis. 2d 351, 875 N.W.2d 49, 13−2504.

978.047 Investigators; police powers. The district attorney of any county 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.

History: 1989 a. 117; 1993 a. 51.

978.05 Duties of the district attorney. The district attorney shall:

(1) CRIMINAL ACTIONS. Except as otherwise provided by law, prosecute all criminal actions before any court within his or her

prosecutorial unit and have sole responsibility for prosecution of all criminal actions arising from violations of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 and from violations of other laws arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, that are alleged to be committed by a resident of his or her prosecutorial unit, or if alleged to be committed by a nonresident of this state, that are alleged to occur in his or her prosecutorial unit unless another prosecutor is substituted under s. 5.05 (2m) (i) or 19.49 (2) (h) or this chapter or by referral of the elections commission under s. 5.05 (2m) (c) 15. or 16. or the ethics commission under s. 19.49 (2) (b) 13. or 14. For purposes of this subsection, a person other than an individual is a resident of a prosecutorial unit if the person's principal place of operation is located in that prosecutorial unit.

(2) FORFEITURES. Except as otherwise provided by law, prosecute all state forfeiture actions, county traffic actions and actions concerning violations of county ordinances which are in conformity with state criminal laws in the courts within his or her prosecutorial unit and have joint responsibility, together with the elections commission and the ethics commission, for prosecution of all forfeiture actions arising from violations of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 and from violations of other laws arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 that are alleged to be committed by a resident of his or her prosecutorial unit, or if alleged to be committed by a nonresident of this state, that are alleged to occur within his or her prosecutorial unit unless another prosecutor is substituted under s. 5.05 (2m) (h) or 19.49 (2) (g) or this chapter or by referral of the elections commission under s. 5.05 (2m) (c) 15. or 16. or the ethics commission under s. 19.49 (2) (b) 13. or 14. For purposes of this subsection, a person other than an individual is a resident of a prosecutorial unit if the person's principal place of operation is located in that prosecutorial unit.

(3) JOHN DOE PROCEEDINGS. Participate in investigatory proceedings under s. 968.26.

(4) GRAND JURY. When requested by a grand jury under s. 968.47, attend the grand jury for the purpose of examining witnesses in their presence; give the grand jury advice in any legal matter; draw bills of indictment; and issue subpoenas and other processes to compel the attendance of witnesses.

(4m) WELFARE FRAUD INVESTIGATIONS. Cooperate with the departments of children and families and health services regarding the fraud investigation programs under ss. 49.197 (1m) and 49.845 (1).

(5) CRIMINAL APPEALS. Upon the request and under the supervision and direction of the attorney general, brief and argue all criminal cases brought by appeal or writ of error or certified from a county within his or her prosecutorial unit to the court of appeals or supreme court. The district attorney for the prosecutorial unit in which the case was filed shall represent the state in any appeal or other proceeding if the case is decided by a single court of appeals judge, as specified in s. 752.31 (3).

(6) CIVIL ACTIONS OR SPECIAL PROCEEDINGS. (a) Institute, commence or appear in all civil actions or special proceedings under and perform the duties set forth for the district attorney under ch. 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 84.062 (8), 89.08, 103.92 (4), 109.09, 343.305 (9) (a), 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a), 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in connection with court proceedings in a court assigned to exercise jurisdiction under chs. 48 and 938 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 (5), that the corporation counsel provide representation as specified in s. 48.09 (5) or to designate, under s. 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the interests of the public under s. 48.14 or 938.14.

(b) Enforce the provisions of all general orders of the department of safety and professional services relating to the sale, transportation and storage of explosives.

(7) ACTIONS TRANSFERRED TO ANOTHER COUNTY. If the place of trial is changed in any action or proceeding under this section to another county within or outside his or her prosecutorial unit, prosecute or defend the action or proceeding in that county.

(8) ADMINISTRATION. (a) Establish such offices throughout the prosecutorial unit as are necessary to carry out the duties of the office of district attorney.

(b) Hire, employ, and supervise his or her staff and, subject to s. 978.043 (1), make appropriate assignments of the staff throughout the prosecutorial unit. The district attorney may request the assistance of district attorneys, deputy district attorneys, or assistant district attorneys from other prosecutorial units or assistant attorneys general who then may appear and assist in the investigation and prosecution of any matter for which a district attorney is responsible under this chapter 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 employees.

(c) Supervise all expenditures of the district attorney's office.

(9) BUDGET. Prepare a biennial budget request for submission to the department under s. 978.11 by September 1 of each even−numbered year.

History: 1989 a. 31, 117, 336; 1991 a. 16, 32, 39; 1993 a. 98; 1995 a. 27 ss. 7291, 7292, 9116 (5), 9130 (4); 1995 a. 77, 201, 448; Sup. Ct. Order No. 96−08, 207 Wis. 2d xv (1997); 1997 a. 3, 35, 73; 1999 a. 9; 2001 a. 16; 2005 a. 25, 434; 2007 a. 1; 2007 a. 20 ss. 3927, 9121 (6) (a); 2011 a. 32; 2015 a. 55, 118; s. 35.17 correction in (6) (a).

District attorneys and their assistants when acting within the scope of their prosecutorial functions are absolutely immune from damages. Ford v. Kenosha County, 160 Wis. 2d 485, 466 N.W.2d 646 (1991).

Inclusion of employees hired under sub. (8) (b) in a bargaining unit subject to the county's collective bargaining agreement does not impermissibly restrict the district attorney's statutory hiring authority. Crawford County v. WERC, 177 Wis. 2d 66, 501 N.W.2d 836 (Ct. App. 1993).

It is within the discretionary power of a district attorney to enter nonprosecution agreements prior to filing charges in exchange for information in a criminal investigation. State v. Jones, 217 Wis. 2d 57, 576 N.W.2d 580 (Ct. App. 1998), 97−1806.

County and district attorney responsibilities in staffing district attorney offices discussed. 80 Atty. Gen. 19.

Unless otherwise stated in a specific statute, criminal and civil forfeiture provisions of the election, lobby, and ethics laws can be enforced by a district attorney independently of the government accountability board. A referral following an investigation by the board is not required. A district attorney may request prosecutorial or investigative assistance from the attorney general in connection with any duty of the district attorney under those laws. If there has been a referral to the district attorney by the board under s. 5.05 (2m) (c) 11., 14., or 15., the district attorney must retain ultimate supervisory authority over the matter referred unless a special prosecutor has been appointed to serve in lieu of the district attorney. OAG 10−08.

The government accountability board and district attorneys possess joint and co−equal authority to investigate possible violations of the election, lobby, and ethics laws and to prosecute civil forfeiture actions under those laws. Unless otherwise stated in a specific statute, the district attorney possesses the authority to prosecute criminal proceedings under those laws. The board has no statutory authority to prosecute criminal proceedings under those laws except as stated in s. 5.05 (2m) (i). OAG 10−08.

978.06 Restriction on district attorney. (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.

(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.

(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.

(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.

(4) No person who acted as district attorney, deputy district attorney or assistant district attorney, or special prosecutor under s. 978.045, for a county at the time of an arrest, examination or indictment of any person charged with a crime in that county may thereafter appear for, or defend that person against the crime charged in the complaint, information or indictment.

(5) (a) No full−time district attorney, deputy district attorney or assistant district attorney may engage in a private practice of law, but he or she is authorized to complete all civil cases, not in conflict with the interest of the county or counties of his or her prosecutorial unit, in which he or she is counsel, pending in court before he or she takes office. A part−time district attorney, deputy district attorney or assistant district attorney may engage in a private practice of law.

(b) Notwithstanding par. (a), if a full−time district attorney, deputy district attorney or assistant 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.

(6) No district attorney, deputy district attorney or assistant district attorney may appear in a civil action or proceeding under s. 49.22 (7), 59.53 (5), 767.205 (2), 767.501 or 767.80 or ch. 769.

History: 1989 a. 31, 117; 1991 a. 39; 1993 a. 326; 1995 a. 201, 404; 1997 a. 35; 2005 a. 443 s. 265.

978.07 Obsolete district attorney records. (1) Whenever necessary to gain needed vault and filing space, a district attorney may destroy, subject to sub. (2), obsolete records in his or her custody as follows:

(a) Any district attorney record, after it has first been microfilmed or transferred to optical disc or electronic storage and preserved in accordance with s. 16.61.

(b) Any case record of a traffic, misdemeanor, civil or related case, 3 years after commencement of the action.

(c) 1. Any case record of a felony punishable by life imprisonment or a related case, after the defendant's parole eligibility date under s. 304.06 (1) or 973.014 (1) or date of eligibility for release to extended supervision under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, or 50 years after the commencement of the action, whichever occurs later. If there is no parole eligibility date or no date for release to extended supervision, the district attorney may destroy the case record after the defendant's death.

2. Any case record of a felony punishable by a maximum period of imprisonment equal to at least 20 years or a related case, after the mandatory release date established under s. 302.11 (1) or the presumptive mandatory release date established under s. 302.11 (1g), if applicable, of any person convicted of that felony or 20 years after commencement of the action, whichever is later.

3. Except as provided in subds. 1. and 2., any case record of a felony or related case, after the mandatory release date established under s. 302.11 (1) or the presumptive mandatory release date established under s. 302.11 (1g), if applicable, of any person convicted of that felony or 10 years after the commencement of the action, whichever is later.

(d) Any other district attorney record not included under pars. (a) to (c) made or received in connection with a transaction as evidence of a district attorney's activities or functions, after 6 years.

(2) Prior to destruction of records under sub. (1), the district attorney for a prosecutorial unit with a population of less than 500,000 shall make a written offer to the historical society under s. 44.09. If the offer is accepted by the society within 60 days after the day the offer is made, the district attorney shall transfer the title to those records to the historical society. If the offer is not accepted within 60 days after the day the offer is made, the district attorney may destroy the records.

History: 1991 a. 39 ss. 1618 to 1621, 3678 to 3682; 1993 a. 172, 194, 289; 1995 a. 27; 1997 a. 283; 2015 a. 196.

978.08 Preservation of certain evidence. (1) In this section:

(a) "Custody" has the meaning given in s. 968.205 (1) (a).

(b) "Discharge date" has the meaning given in s. 968.205 (1) (b).

(2) Except as provided in sub. (3), if physical evidence that is in the possession of a district attorney includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the district attorney shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

(2m) A district attorney shall retain evidence to which sub. (2) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or included on the evidence.

(3) Subject to sub. (5), a district attorney may destroy evidence that includes biological material before the expiration of the time period specified in sub. (2) if all of the following apply:

(a) The district attorney sends a notice of its intent to destroy the evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment and to either the attorney of record for each person in custody or the state public defender.

(b) No person who is notified under par. (a) does either of the following within 90 days after the date on which the person received the notice:

1. Files a motion for testing of the evidence under s. 974.07 (2).

2. Submits a written request for retention of the evidence to the district attorney.

(c) No other provision of federal or state law requires the district attorney to retain the evidence.

(4) A notice provided under sub. (3) (a) shall clearly inform the recipient that the evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the evidence is filed under s. 974.07 (2) or a written request for retention of the evidence is submitted to the district attorney.

(5) If, after providing notice under sub. (3) (a) of its intent to destroy evidence, a district attorney receives a written request for retention of the evidence, the district attorney shall retain the evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the evidence under s. 974.07 (9) (b) or (10) (a) 5.

History: 2001 a. 16; 2005 a. 60.

978.11 Budget. The department of administration shall prepare the budget of the prosecution system and submit it in accordance with s. 16.42.

History: 1989 a. 31; 1991 a. 39.

978.12 Salaries and benefits of district attorney and state employees in office of district attorney. (1) SALARIES. (a) *District attorneys.* 1. The annual salary of each district attorney shall be reviewed and established in the same manner as provided for positions in the classified service under s. 230.12 (3), except that no district attorney may receive a salary that is greater

than the salary established for the office of attorney general under s. 20.923 (2). Except as provided in subd. 2., the salary of each district attorney shall be established at the rate that is in effect for his or her office on the 2nd Tuesday of July preceding the commencement of his or her term of office. The compensation plan shall include separate salary rates for district attorneys in the following categories based on the population of the prosecutorial units in which they serve, as determined under s. 16.96 on October 10 of the year prior to commencement of their terms of office:

a. Prosecutorial units having a population of more than 500,000.

b. Prosecutorial units having a population of more than 250,000 but not more than 500,000.

c. Prosecutorial units having a population of more than 100,000 but not more than 250,000.

d. Prosecutorial units having a population of more than 75,000 but not more than 100,000.

e. Prosecutorial units having a population of more than 50,000 but not more than 75,000.

f. Prosecutorial units having a population of more than 35,000 but not more than 50,000.

g. Prosecutorial units having a population of more than 20,000 but not more than 35,000.

h. Prosecutorial units having a population of not more than 20,000.

2. If an individual is appointed to fill a vacancy in the office of district attorney, the appointee shall be compensated for the residue of the unexpired term at the same rate that applied to the individual who vacates the office filled by the appointee on the date the vacancy occurs.

(b) *Deputy district attorneys*. Deputy district attorneys shall be employed outside the classified service. The state shall establish and adjust the salaries of deputy district attorneys in accordance with s. 230.12 (10) and the state compensation plan.

(c) *Assistant district attorneys*. Assistant district attorneys shall be employed outside the classified service. For purposes of salary administration, the administrator of the division of personnel management in the department of administration shall establish one or more classifications for assistant district attorneys in accordance with the classification or classifications allocated to assistant attorneys general. Except as provided in ss. 111.93 (3) (b) and 230.12 (10), the salaries of assistant district attorneys shall be established and adjusted in accordance with the state compensation plan for assistant attorneys general whose positions are allocated to the classification or classifications established by the administrator of the division of personnel management in the department of administration.

(2) STATE SENIORITY. A county employee who is transferred to state employment under 1989 Wisconsin Act 31 shall have his or her seniority with the state computed by treating the employee's total service with any county in the position of district attorney, deputy district attorney or assistant district attorney as state service.

(3) SICK LEAVE. A county employee who is transferred to state employment under 1989 Wisconsin Act 31 shall have his or her sick leave accrued with the state computed by treating the employee's unused balance of sick leave accrued with the county by which the employee was most recently employed in the position or positions of district attorney, deputy district attorney or assistant district attorney as sick leave accrued in state service, but not to exceed the amount of sick leave the employee would have accrued in state service for the same period, if the employee is able to provide adequate documentation in accounting for sick leave used during the accrual period with the county. If there is a formal plan of sick leave in county service but no adequate documentation in accounting, the employee shall have his or her sick leave accrued with the state computed on the basis of the employee's total service times one−half the rate for accrual of sick leave in state service. Sick leave which transfers under this subsection is not subject to a right of conversion, under s. 40.05 (4) or otherwise, upon death or termination of creditable service for payment of health insurance benefits on behalf of the employee or the employee's dependents.

(4) ANNUAL LEAVE. Annual leave for the district attorney is governed by s. 230.35 (1r). Annual leave for other state employees of the office of district attorney shall be accrued at the rate provided in s. 230.35 using the employee's state service computed under sub. (2). Annual leave shall be earned on a calendar year basis prorated from the effective date of the employee's transfer for the balance of the calendar year.

(5) RETIREMENT. (a) *Definition.* In this subsection, "required employer contribution rate" means the total amount paid to the Wisconsin retirement fund for similar participants, including actuarially determined current costs, any prior service amortization costs and any amount of employee contributions presently paid by the employer. These required employer contribution rates are subject to annual redetermination by the actuaries of the respective retirement systems; however, the contribution rates for elected public officials and other employees shall be determined separately when the calculations are actuarially available from the Wisconsin retirement system and adopted by the employee trust funds board and other respective retirement systems.

(b) *Employees generally.* District attorneys and state employees of the office of district attorney shall be included within the provisions of the Wisconsin retirement system under ch. 40 as a participating employee of that office, except that the district attorney and state employees of the office of district attorney in a county having a population of 500,000 or more have the option provided under s. 978.12 (5) (c), 1997 stats.

(c) *District attorney employees in counties having a population of 500,000 or more.* The district attorney and state employees of the office of district attorney in a county having a population of 500,000 or more shall have the option of continuing as participants in the retirement system established under chapter 201, laws of 1937, as follows:

1. The salaries authorized under this section for the district attorney and the state employees of the office of district attorney shall be paid by the secretary of administration to the county treasurer pursuant to a voucher submitted by the district attorney to the department of administration. The county treasurer shall pay the amounts directly to the district attorney and state employees of the office of district attorney and the amounts paid shall be subject to the retirement system established under chapter 201, laws of 1937.

2. The state shall pay to the county treasurer in the manner specified in subd. 1. on behalf of the district attorney and state employees of the office of the district attorney the required employer contribution rate as provided under ch. 40 or the required employer contribution rate under chapter 201, laws of 1937, whichever rate is less. The county shall pay any portion of the required employer contribution rate not covered by the state payment. For future retirement benefits, the district attorney and state employees of the office of district attorney shall be given the same consideration as other elected county officials and county employees under the county's retirement system.

3. The option under this paragraph to remain under a county program shall be exercised in writing, on forms provided by the department of administration, not later than March 1, 1990, and the action shall apply retrospectively to January 1, 1990.

4. If the district attorney or a state employee of the office of district attorney does not elect to continue as a participant in the retirement system established under chapter 201, laws of 1937, he or she may not receive retirement benefits under that system during his or her employment with the state.

(6) OTHER FRINGE BENEFITS. (a) 1. District attorneys and state employees of the office of district attorney shall be included within all insurance benefit plans under ch. 40, except as autho-

rized in this paragraph. Alternatively, the state shall provide insurance benefit plans for district attorneys and state employees in the office of district attorney in the manner provided in this paragraph.

2. A district attorney or other employee of the office of district attorney who was employed in that office as a county employee on December 31, 1989, and who received any form of fringe benefits other than a retirement, deferred compensation or employee−funded reimbursement account plan as a county employee, 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 employees 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 employee. In a county having a population of 500,000 or more, the fringe benefit plans shall include health insurance benefits fully paid by the county for each retired employee 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 employee, for the duration of the employee's life. An employee may make an election under this subdivision no later than January 31, 1990, except that an employee who serves as an assistant district attorney in a county having a population of 500,000 or more may make an election under this subdivision no later than March 1, 1990. An election under this subdivision shall be for the duration of the employee's employment in the office of district attorney for the same county by which the employee was employed or until the employee terminates the election under subd. 4., at the same cost to the county as the county incurs for a similarly situated county employee.

3. Subject to par. (b), if the employer's cost for fringe benefits described in subd. 2. for any employee described in subd. 2. 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. Subject to par. (b), if the employer's cost for such fringe benefits for any such employee 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. The cost of comparable coverage under ch. 40 shall equal the average cost of comparable coverage under ch. 40 for employees in the office of the state public defender, as contained in budget determinations approved by the joint committee on finance or the legislature under the biennial budget act for the period during which the costs are incurred.

4. An employee who makes the election under subd. 2. may terminate that election, and shall then be included within all insurance benefit plans under ch. 40, except that the department of employee trust funds may require prior written notice, not exceeding one year's duration, of an employee's intent to be included under any insurance benefit plan under ch. 40.

(b) Beginning in the 1999−2000 fiscal year and ending in the 2003−04 fiscal year, the state shall in each fiscal year reduce its reimbursement of the employer's cost for fringe benefits under par. (a) by $80,000.

History: 1989 a. 31, 117, 336; 1991 a. 32, 39; 1993 a. 294; 1999 a. 9, 85; 2003 a. 33 ss. 2798, 2800, 9160; 2007 a. 78, 224; 2011 a. 10, 238; 2013 a. 20; 2015 a. 55.

Continuing legal education fees and bar dues, mileage reimbursements, beeper pay, and cash payment for unused "casual days" were "fringe benefits" under sub. (6). Brown County Attys. Ass'n v. Brown County, 169 Wis. 2d 737, 487 N.W.2d 312 (Ct. App. 1992).

District attorneys are not "public officer[s]" within the meaning of the term in article IV, section 26 of the Wisconsin Constitution, and the legislature may increase or diminish salaries of district attorneys during terms of office. 79 Atty. Gen. 149.

An assistant district attorney on furlough pursuant to executive order is entitled to representation and indemnification if he or she is carrying out duties within the scope of his or her employment. OAG 9−09.

978.13 Operational expenses of district attorney offices. (1) Subject to sub. (1m), the state shall assume financial responsibility for all of the following:

(b) In counties having a population of 500,000 or more, the salary and fringe benefit costs of 2 clerk positions providing clerical services to the prosecutors in the district attorney's office handling cases involving felony violations under ch. 961. The secretary of administration shall pay the amount authorized under this subsection to the county treasurer pursuant to a voucher submitted by the district attorney to the department of administration from the appropriation under s. 20.475 (1) (i).

(c) In counties having a population of 500,000 or more, the salary and fringe benefit costs of clerk positions in the district attorney's office necessary for the prosecution of violent crime cases primarily involving felony violations under s. 939.63, if a felony is committed while armed, and under ss. 940.01 to 940.03, 940.05, 940.06, 940.225, 943.23 (1g), and 943.32 (2). The secretary of administration shall pay the amount authorized under this subsection to the county treasurer pursuant to a voucher submitted by the district attorney to the secretary of administration from the appropriation under s. 20.475 (1) (i).

(d) In counties having a population of 500,000 or more, the salary and fringe benefit costs of 2 clerk positions providing clerical services to the prosecutors in the district attorney's office handling cases involving the unlawful possession or use of firearms. The secretary of administration shall pay the amount authorized under this subsection to the county treasurer from the appropriation under s. 20.475 (1) (i) pursuant to a voucher submitted by the district attorney to the department of administration.

(1m) The amount paid under sub. (1) (b), (c), and (d) combined may not exceed the amount appropriated under s. 20.475 (1) (i).

(2) (a) In this subsection, "costs related to the operation of the district attorney's office" include costs that a prosecutorial unit must pay under s. 978.043 (2) but do not include costs for which a prosecutorial unit receives reimbursement under s. 978.043 (2).

(b) Except as provided in sub. (1), each county in a district attorney's prosecutorial unit has financial responsibility for all costs related to the operation of the district attorney's office, other than the salaries of the district attorney and other state employees in the district attorney's office, the compensation of special prosecutors and the cost of benefits under the Wisconsin retirement system and the insurance benefit plans under ch. 40 for which the district attorney and other state employees in the district attorney's office are eligible. The nature and level of materials, supplies, equipment, services and facilities provided for the district attorney's office by the county shall be adequate and sufficient to fulfill the responsibilities of that office.

History: 1989 a. 31, 117, 122, 336; 1991 a. 39; 1993 a. 16, 92; 1995 a. 27, 448; 1997 a. 27; 1999 a. 9; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25, 434.