



2003 ASSEMBLY BILL 641

November 10, 2003 – Introduced by Representatives HUBER, M. LEHMAN, SHERMAN, F. LASEE, J. LEHMAN, AINSWORTH and HAHN, cosponsored by Senator DECKER. Referred to Committee on Judiciary.

1 **AN ACT** *to renumber* 967.057; *to renumber and amend* 778.027; *to amend*
2 778.027 (title) and 967.057 (title); and *to create* 165.25 (11), 778.027 (1) and (2)
3 and 967.057 (1) of the statutes; **relating to:** prosecution decisions based on
4 certain payments by persons believed to have committed crimes or certain civil
5 offenses and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a prosecutor from dismissing or amending a criminal charge in exchange for a person's payment of a contribution to a crime prevention organization or a law enforcement agency's crime prevention fund. Current law similarly prohibits a prosecutor or any other attorney representing the state or a local government from dismissing or amending a citation or complaint in a civil case in exchange for such a payment if the citation or complaint alleges a violation punishable by a forfeiture.

Under this bill, if a prosecutor agrees not to charge a person with a crime based on the person's payment of money or promise to pay money to a person other than a victim of the crime, the prosecutor must describe the agreement in writing. Similarly, if a prosecutor or any other government attorney agrees not to charge a person with a violation punishable by a forfeiture based on the person's payment of money or promise to pay money to a person other than a victim of the violation, the prosecutor shall describe the agreement in writing. In either case the agreement must include: 1) a description of the conduct that formed the basis for the

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prosecutor's belief that the person committed a crime or the prosecutor's or the government attorney's belief that the person committed a violation punishable by a forfeiture; 2) a list of the crimes or violations with which the person would have been charged had a case against the person been brought; 3) the amount of money that the person is paying or promises to pay under the agreement; 4) who is or will be the ultimate recipient of that payment; 5) how and when the payment is being or will be made; and 6) any other conditions that the person must satisfy in order to avoid prosecution. The prosecutor or government attorney must file the agreement with the clerk of circuit court, unless the case involves the violation of a municipal ordinance and the municipality has established a municipal court. In that case, the agreement must be filed with the municipal court. In either case the agreement must be filed no later than the date on which the first payment under the agreement is made. Any person with whom such an agreement is filed must maintain it as a public record available for inspection and copying.

The Department of Justice is responsible for prosecuting violations of these requirements. If a prosecutor or government attorney violates one of the requirements, he or she must forfeit not more than 50% of the amount of the payment made or to be made under the agreement to which the violation relates. Any other person who violates the requirement regarding maintaining the agreement as a public record must forfeit not more than \$200.

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:

1 **SECTION 1.** 165.25 (11) of the statutes is created to read:

2 165.25 (11) ENFORCE REQUIREMENTS REGARDING CERTAIN DEFERRED PROSECUTIONS.

3 Prosecute violations of s. 778.027 (2) or 967.057 (1).

4 **SECTION 2.** 778.027 (title) of the statutes is amended to read:

5 **778.027** (title) ~~Dismissals for contributions to certain organizations or~~
6 **agencies Prosecution decisions based on payments by an offender.**

7 **SECTION 3.** 778.027 of the statutes is renumbered 778.027 (3) and amended to
8 read:

9 778.027 (3) A prosecutor ~~or an attorney representing the state or a political~~
10 ~~subdivision of the state~~ may not, in exchange for a person's payment of a contribution

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1 to an organization or agency specified in s. 973.06 (1) (f) 1., dismiss or amend a
2 citation or complaint alleging a violation ~~that provides for a forfeiture.~~

3 **SECTION 4.** 778.027 (1) and (2) of the statutes are created to read:

4 778.027 (1) In this section:

5 (a) "Prosecutor" includes an attorney representing the state or a political
6 subdivision of the state.

7 (b) "Violation" means a violation that provides for a forfeiture.

8 **(2)** (a) If a prosecutor agrees not to prosecute a person for a violation based on
9 the person's payment of money or promise to pay money to a person other than a
10 victim of the violation, the prosecutor shall describe the agreement in writing. The
11 prosecutor shall include all of the following in the agreement:

12 1. A description of the conduct that formed the basis for the prosecutor's belief
13 that the person committed a violation.

14 2. A list of the violations that the prosecutor would have alleged that the person
15 committed if the prosecutor had filed a complaint or citation.

16 3. The amount of money that the person is paying or promises to pay under the
17 agreement and who is or will be the ultimate recipient of that payment.

18 4. How and when the payment is being or will be made.

19 5. Any other conditions that the person must satisfy in order to avoid
20 prosecution.

21 (b) If the violation is of a municipal ordinance and the municipality has
22 established a municipal court, the prosecutor shall file the agreement described in
23 par. (a) with the municipal court. Otherwise, the prosecutor shall file the agreement
24 with the clerk of circuit court. In either case the prosecutor shall file the agreement
25 no later than the date on which the first payment under the agreement is made.

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1 (c) Any person with whom such an agreement is filed under this paragraph
2 shall maintain it as a public record available for inspection and copying under s.
3 19.35 (1).

4 (d) A prosecutor who violates this subsection shall forfeit not more than 50%
5 of the amount of any payment made or to be made under the agreement to which the
6 violation relates.

7 **SECTION 5.** 967.057 (title) of the statutes is amended to read:

8 **967.057** (title) ~~**Dismissals for contributions to certain organizations**~~
9 ~~**and agencies**~~ **Prosecution decisions based on payments by an offender.**

10 **SECTION 6.** 967.057 of the statutes is renumbered 967.057 (2).

11 **SECTION 7.** 967.057 (1) of the statutes is created to read:

12 **967.057 (1)** (a) If a prosecutor agrees not to prosecute a person for a crime based
13 on the person's payment of money or promise to pay money to a person other than
14 a victim of the crime, the prosecutor shall describe the agreement in writing. The
15 prosecutor shall include all of the following in the agreement:

16 1. A description of the conduct that formed the basis for the prosecutor's belief
17 that the person committed a crime.

18 2. A list of the crimes that the prosecutor would have alleged that the person
19 committed if the prosecutor had filed a complaint or information or had sought an
20 indictment.

21 3. The amount of money that the person is paying or promises to pay under the
22 agreement and who is or will be the ultimate recipient of that payment.

23 4. How and when the payment is being or will be made.

24 5. Any other conditions that the person must satisfy in order to avoid
25 prosecution.

