

1977 Assembly Bill 638

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## CHAPTER 260, Laws of 1977

AN ACT to repeal 165.55 (5) and (6) and 165.76; to amend 19.85 (1) (a), 59.245, 165.065 (1), 165.25 (7), 165.51, 165.70 (1) (d), 165.75 (3) (a) to (c), 165.78, 165.79 (2) and (3), 167.10 (12) and 802.06 (1); and to create 968.20 (3) of the statutes, relating to revising certain laws relating to government, law enforcement and the administration of justice.

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

SECTION 1. 19.85 (1) (a) of the statutes is amended to read:

19.85 (1) (a) Deliberating after concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

SECTION 2. 59.245 of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

**59.245** (title) **County telecommunication terminal.** ~~By July 1, 1970, every~~ Every county in the state shall have ~~a teletypewriter~~ a telecommunication terminal installed in a county law enforcement agency which is interconnected with the department of transportation, ~~the crime laboratory~~ and other county, municipal and governmental law enforcement agencies in the ~~teletypewriter communication~~ TIME (Transaction Information for Management of Enforcement) system. This section shall not preclude the connection and participation in the system of any governmental law enforcement agency and the requirements of this section shall be effective even though there are additions, deletions or modifications in the system.

SECTION 3. 165.065 (1) of the statutes is amended to read:

165.065 (1) ~~One~~ At least one assistant attorney general shall be assigned to the investigation and prosecution of violations arising under ch. 133 and shall carry out the duties imposed on the attorney general by ch. 133. All apparent violations of ch. 133 which come to the attention of any officer or agency of state government shall be reported to ~~this one of such~~ assistant ~~attorney~~ attorneys general. All officers and agencies shall cooperate with and assist the department of justice in the investigation and prosecution of such apparent violations.

SECTION 4. 165.25 (7) of the statutes is amended to read:

165.25 (7) KEEP RECORD OF ACTIONS. The department shall keep a record of all actions and demands prosecuted or defended by the department on behalf of the state and all related proceedings had in relation thereto. The department may dispose of public records in accordance with s. 16.61.

SECTION 5. 165.51 of the statutes is amended to read:

**165.51 Administrator.** The administrator of the division of criminal investigation shall be ex-officio the state fire marshal. ~~The administrator shall keep an itemized statement of all expenses incurred by him in the discharge of his duties; and shall audit all claims and vouchers for such expenses before they are submitted to the department of administration for payment.~~

SECTION 6. 165.55 (5) and (6) of the statutes are repealed.

SECTION 7. 165.70 (1) (d) of the statutes is amended to read:

165.70 (1) (d) Enforce and administer ~~ss. 165.51 and~~ s. 165.55.

SECTION 8. 165.75 (3) (a) to (c) of the statutes are amended to read:

165.75 (3) (a) The purpose of the laboratory is to establish, maintain and operate a crime laboratory ~~in order~~ to provide technical assistance to local law enforcement officers in the various fields of scientific investigation in the aid of law enforcement. Without limitation because of enumeration the laboratory shall maintain services and employ the necessary specialists, technical and scientific employes for the recognition and proper preservation, marking and scientific analysis of evidence material ~~to~~ in the investigation and prosecution of crimes in such fields as ballistics firearms identification, the comparison and identification of toolmarks, chemistry, handwriting comparison identification of questioned documents, metallurgy, comparative micrography, lie-detector or deception test operations, finger-printing microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and pathology forensic photography.

(b) The administrator and employes of the laboratory division of law enforcement services are not peace officers and shall have no power of arrest or to serve or execute criminal process, ~~nor shall they.~~ They shall not be appointed as deputy sheriffs nor in any manner clothed with and shall not be given police powers by appointment or election to any office. They Laboratory employes shall not undertake investigation of criminal conduct except upon the request of a sheriff, coroner, medical examiner, district attorney, chief of police, warden or superintendent of any state prison, attorney general or governor. The head of any state department agency may request investigations but in such cases the services shall be limited to the field of health, welfare and law enforcement responsibility which has by statute been vested in the particular state department agency.

(c) Upon such request the laboratory shall collaborate fully in the complete investigation of criminal conduct within its competence in the forensic sciences including field investigation at the scene of the crime and for this purpose may equip a mobile unit or units ~~including lie detectors or deception test equipment.~~

SECTION 9. 165.76 of the statutes is repealed.

SECTION 10. 165.78 of the statutes is amended to read:

**165.78 (title) Information center; training activities.** (1) The laboratory division of law enforcement services shall act as an ~~intelligence~~ a center for the clearance of information between law enforcement officers. In furtherance of this purpose it shall issue bulletins weekly or more often if occasion may require by mail, wire or radio, including information on property stolen and property recovered in communities of the state and in addition, shall operate a current modus operandi file on criminals operating in the state and such interstate criminals as will be likely to operate in the state or seek

~~refuge in the state. The laboratory or its telecommunication system. The division shall at all times collaborate and cooperate fully with the F.B.I. in its clearance of intelligence matters between law enforcement officers in the state and to that end shall at all times keep the F.B.I. fully informed of intelligence matters cleared through the laboratory exchange of information.~~

(2) The laboratory division shall cooperate and exchange information ~~and intelligence~~ with other similar organizations in other states.

(3) The laboratory division may prepare and conduct informational and training activities for the benefit of law enforcement officers and professional ~~law-medical~~ groups. ~~This may include the preparation and distribution of printed or graphic training aids. The laboratory may charge a reasonable fee for such materials and shall make such charge if the production cost of such materials exceeds \$1 per copy.~~

SECTION 11. 165.79 (2) and (3) of the statutes are amended to read:

165.79 (2) Upon the termination or cessation of the criminal proceedings, the privilege of the testimony findings obtained by the laboratory may be waived in writing by the administrator and the prosecutor involved in the proceedings. The administrator and employes of the laboratory may then be subpoenaed in civil actions in regard to any information and analysis of evidence previously obtained in such criminal investigation, but the laboratory shall not engage in any investigation requested solely for the preparation for trial of a civil matter. Upon appearance as a witness or receipt of a subpoena or notice to prepare for trial in a civil action, or appearance either with or without subpoena, the ~~experts~~ laboratory shall be compensated by the party at whose request the appearance or preparation was made in a reasonable amount to be determined by the trial judge, which fee shall be paid into the state treasury. In fixing such compensation the court may give consideration to the time spent in obtaining and analyzing the evidence for the purposes of criminal proceedings.

(3) At any preliminary examination a report of the laboratory's findings with reference to all or any part of the evidence submitted, certified as correct by the administrator or a person designated by the administrator, shall, when offered by the state or the accused, be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. The expert who made the findings need not be called as a witness unless ~~his~~ the expert's appearance is demanded by the opposing party, in which case the judge shall so order and adjourn the hearing to a time when the expert is available to testify.

SECTION 12. 167.10 (12) of the statutes is amended to read:

167.10 (12) The prohibitions and penalties provided in this section shall not apply to smoke novelties and party novelties which contain less than 20/500ths of a one-quarter grain of explosive mixture.

SECTION 13. 802.06 (1) of the statutes is amended to read:

802.06 (1) WHEN PRESENTED. A defendant shall serve an answer within 20 days after the service of the complaint upon the defendant unless a different time is prescribed under s. 802.10 (1) by the judge to whom the case has been assigned. If a guardian ad litem is appointed for a defendant, the guardian ad litem shall have 20 days after appointment to serve the answer. A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after the service upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer. The state or an ~~officer or~~ agency of the state or an officer or employe of the state in an action brought within the purview of ss. 895.45 and 895.46 shall serve an answer to the complaint or to a cross-claim or a reply to a counterclaim within 45 days after service of the pleading in which the claim is asserted. If any pleading is ordered by the court, it shall be served within 20 days after service of the order, unless the order otherwise directs.

Any of the times prescribed ~~herein in this paragraph~~ may be modified in the scheduling order under s. 802.10 (1) by the judge to whom the case has been assigned. The service of a motion permitted under sub. (2) alters these periods of time as follows, unless a different time is fixed by order of the court: ~~(a)~~ if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; ~~(b)~~ or if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

SECTION 14. 968.20 (3) of the statutes is created to read:

968.20 (3) (a) The custodian of a seized firearm if the firearm is not required for evidence or use in further investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding, shall make reasonable efforts to notify all persons who have or may have an interest in the firearm of the provisions of sub. (1). If, within 30 days after the notice, an application under sub. (1) is not made and the seized firearm is not returned by the officer under sub. (2), the seized firearm shall be shipped to and become property of the state crime laboratory. The administrator or a person designated by the administrator may destroy any material for which the laboratory has no use or arrange for the exchange of material with other public agencies. In lieu of destruction, shoulder weapons for which the laboratory has no use shall be turned over to the department of natural resources for sale and distribution of proceeds under s. 29.06.

(b) In this subsection, "administrator" has the meaning designated in s. 165.75 (1) (b).

SECTION 15. **Program responsibility.** In the list of program responsibilities specified for the department of justice in section 15.251 (intro.) of the statutes, reference to section "59.245" is inserted.

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