

## CHAPTER 978

## DISTRICT ATTORNEYS

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**978.001 Definitions.** In this chapter:

(1) "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.

**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 each even-numbered year. The regular term of office for each district attorney is 2 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, Forest, Green Lake, Pepin, Richland, Rusk, Trempealeau or Vernon county.

History: 1989 a. 31 ss. 2900, 2900c.

**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.

**978.03 Deputies and assistants in certain prosecutorial units. (1)**

The district attorney of any prosecutorial unit having a population of 200,000 or more 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) or (2) must be an attorney admitted to practice law in this state and may perform any duty required by law to be performed by the district attorney. The district attorney of the prosecutorial unit under sub. (1) or (2) may appoint such temporary counsel as may be authorized by the department of administration.

History: 1989 a. 31.

**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 may perform any duty required by law to be performed by the district attorney.

History: 1989 a. 31.

**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.

(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.

History: 1989 a. 117.

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**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.

*History:* 1989 a. 117.

**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.

(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.

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

(4) **GRAND JURY.** When requested by a grand jury under s. 756.15, 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.

(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 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.

*NOTE:* The reference to 180.847 (3m) (b) above is obsolete. 1989 Wis. Act 303 repealed and recreated ch. 180, stats. The successor provision, 180.1502 (5) (b), sets forth no duties for the district attorney.

(b) Enforce the provisions of all general orders of the department of industry, labor and human relations 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 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 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 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 (1) by September 1 of each even-numbered year.

*History:* 1989 a. 31, 117, 336.

**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, assistant district attorney or special district attorney 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 deputy district attorney, assistant district attorney or full-time 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 may engage in a private practice of law.

(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.

(6) No district attorney, deputy district attorney or assistant district attorney may appear in civil actions or proceed-

ings under ss. 46.25 (7), 59.07 (97), 767.075, 767.08, 767.45 and 767.65.

History: 1989 a. 31, 117.

**978.11 Budget and transition. (1) BUDGET.** The department of administration shall prepare the budget of the prosecution system and submit it in accordance with s. 16.42.

**(2) TRANSITION; SUPPORT ENFORCEMENT. (a)** To respond to exceptional circumstances in the transitional period, beginning January 1, 1990, and ending December 31, 1990, in which a county may require assistance in the operation of its support enforcement functions, the department of administration shall authorize assistant district attorneys with support enforcement experience to assist the county in training and overseeing any attorneys responsible for support enforcement under s. 59.458 (1). An assistant district attorney shall provide the assistance upon the authorization of the department of administration.

(b) Paragraph (a) does not apply after December 31, 1990.

History: 1989 a. 31

**978.12 Salaries and benefits of district attorney and state employes in office of district attorney. (1) SALARIES. (a) District attorneys.** District attorneys shall be compensated based on the following percentages of the dollar value of the midpoint of the salary range for executive salary group 6, as determined under s. 20.923 (1), except that no district attorney may receive a salary that is greater than the salary established for the attorney general under s. 20.923 (2):

1. For prosecutorial units having a population of more than 500,000, 114%.
2. For prosecutorial units having a population of more than 250,000 but not more than 500,000, 95%.
3. For prosecutorial units having a population of more than 100,000 but not more than 250,000, 90%.
4. For prosecutorial units having a population of more than 75,000 but not more than 100,000, 85%.
5. For prosecutorial units having a population of more than 50,000 but not more than 75,000, 80%.
6. For prosecutorial units having a population of more than 35,000 but not more than 50,000, 75%.
7. For prosecutorial units having a population of more than 25,000 but not more than 35,000, 70%.
8. For prosecutorial units having a population of more than 15,000 but not more than 25,000, 65%.
9. For prosecutorial units having a population of not more than 15,000, 60%.

(b) *Deputy district attorneys.* Deputy district attorneys shall be employed outside the classified service. The state shall pay a salary to deputy district attorneys which shall not exceed the maximum of any pay range to which assistant district attorney positions are assigned, except that a deputy district attorney may receive additional compensation for supervisory duties in accordance with supplementary provisions for supervisory and managerial employes in the state compensation plan.

(c) *Assistant district attorneys.* Assistant district attorneys shall be employed outside the classified service. For purposes of salary administration, the secretary of employment relations 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 s. 111.93 (3), 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 secretary of employment relations.

**(2) STATE SENIORITY.** A county employe who is transferred to state employment under 1989 Wisconsin Act 31 shall have his or her seniority with the state computed by treating the employe'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 employe 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 employe's unused balance of sick leave accrued with the county by which the employe 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 employe would have accrued in state service for the same period, if the employe 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 employe shall have his or her sick leave accrued with the state computed on the basis of the employe's total service times one-half the rate for accrued 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 employe or the employe's dependents.

**(4) ANNUAL LEAVE.** Annual leave for the district attorney 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 prorated from the effective date of the employe'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 employe 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 employes shall be determined separately when the calculations are actuarially available from the Wisconsin retirement system and adopted by the employe trust funds board and other respective retirement systems.

(b) *Employes generally.* District attorneys and state employes of the office of district attorney shall be included within the provisions of the Wisconsin retirement system under ch. 40 as a participating employe of that office, except that the district attorney and state employes of the office of district attorney in a county having a population of 500,000 or more have the option provided under par. (c).

(c) *District attorney employes in counties having a population of 500,000 or more.* The district attorney and state employes 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 employes of the office of district attorney shall be paid by the state treasurer 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 employes of the office of district attorney and

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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 employes 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 employes of the office of district attorney shall be given the same consideration as other elected county officials and county employes 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 employe 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.

5. Notwithstanding any other provisions of the retirement system established under chapter 201, laws of 1937, if a district attorney or state employe of the office of district attorney in a county having a population of 500,000 or more who does not have vested benefit rights under the retirement system established under chapter 201, laws of 1937, becomes a participating employe under the Wisconsin retirement system under ch. 40 as provided in this subsection, the participating employe may, on a form developed by the department of employe trust funds in consultation with that county, elect to transfer from the retirement system established under chapter 201, laws of 1937, an amount equal to all employer contributions made on his or her behalf, not including any employer contributions for unfunded prior service liability made on the basis of his or her earnings, to the retirement system established under chapter 201, laws of 1937, together with all interest actually accrued on those contributions, to the employer required contribution account provided for by s. 40.05 (2). An election under this subdivision constitutes a full and complete waiver of any right to any benefit from the retirement system established under chapter 201, laws of 1937, for any benefit accrued or service rendered under that retirement system prior to the election. Any provision in the retirement system established under chapter 201, laws of 1937, for repurchasing benefits or service forfeited shall not apply to the benefits and service transferred under this subdivision.

(6) OTHER FRINGE BENEFITS. (a) District attorneys and state employes of the office of district attorney shall be included within all insurance benefit plans under ch. 40, except as authorized in this paragraph. Alternatively, the state shall provide insurance benefit plans for district attorneys and state employes in the office of district attorney in the manner provided in this paragraph. 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 a retirement, deferred compensation or employe-funded reimbursement account plan 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 cov-

ered 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 fringe benefit 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 paragraph 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 paragraph no later than March 1, 1990. An election under this paragraph 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 paragraph, 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 paragraph may terminate that election, and shall then be included within all insurance benefit plans under 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 insurance benefit plan under ch. 40.

**History:** 1989 a. 31, 117, 336.

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

**978.13 Operational expenses of district attorney offices.**

(1) The state shall assume financial responsibility for all of the following:

(a) Payment of salaries and fringe benefits for district attorneys, deputy district attorneys and assistant district attorneys and compensation and disbursements of acting district attorneys.

(b) In counties having a population of 500,000 or more, the one-time purchase of office equipment for 3 prosecutors and 2 clerks in the district attorney's office and 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. 161. The state treasurer shall pay the amount authorized under this paragraph to the county treasurer pursuant to a voucher submitted by the district attorney to the department of administration from the appropriations under s. 20.475 (1) (c) and (v).

(2) Except as provided in sub. (1), each county in a district attorney's prosecutorial unit has financial responsibility for the operation of the district attorney's office, including, but not limited to, all of the following:

(a) Adequate office space in or near the county courthouse for district attorney operations in the county.

(b) The necessary maintenance services for the upkeep and repair of the office space.

(c) Necessary utilities for the office space.

(d) A sufficient law library and subscriptions to legal books and publications necessary for the performance of the duties

of the district attorney. Books and publications under this paragraph shall remain assets and property of the county.

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

(f) Office equipment and supplies.

History: 1989 a 31, 117, 122, 336.

**978.14 County transition payments.** (1) For the period beginning January 1, 1990, and ending December 31, 1992, counties shall make payments to the state as part of a transition toward state assumption of costs relating to the prosecution system. As a basis for those payments, the department of administration shall determine the monthly amount that each county pays as of December 31, 1989, for salaries and fringe benefits, associated with county positions relating to the prosecution system that become state positions under 1989 Wisconsin Act 31.

(2) Each county shall make the following payments to the state treasurer for deposit under s. 20.475 (1) (g):

(a) For calendar year 1990, 9 times its monthly amount. The county shall make at least 50% of the payment before July 1, 1990, and the balance of the payment before January 1, 1991.

(b) For calendar year 1991, 6 times its monthly amount. The county shall make at least 50% of the payment before July 1, 1991, and the balance of the payment before January 1, 1992.

(c) For calendar year 1992, 3 times its monthly amount. The county shall make at least 50% of the payment before July 1, 1992, and the balance of the payment before January 1, 1993.

(3) Upon request, counties shall provide the department of administration with information necessary to implement this section. If a county fails to make a required payment under sub. (2), the department may withhold any aid payment to the county. The aid withheld may not exceed the amount the county owes the state under sub. (2).

History: 1989 a 31.