



**2003 DRAFTING REQUEST**

**Bill**

Received: **01/08/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Mukasa**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - district attys  
Justice - criminal**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

**Pre Topic:**

DOA:.....Mukasa - BB0328,

**Topic:**

State Prosecutors Office

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/15/2003	kgilfoy 01/16/2003		_____			State
/1		kgilfoy 01/17/2003	rschluet 01/17/2003	_____	mbarman 01/17/2003		State
/2			rschluet	_____	sbasford		State

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/4	mdsida 01/31/2003	kgilfoy 01/31/2003	rschluet 01/31/2003	_____	lemery 01/31/2003		State
/5	mdsida 02/02/2003	wjackson 02/02/2003	rschluet 02/02/2003	_____	sbasford 02/03/2003		State
/6	mdsida 02/03/2003	wjackson 02/03/2003	jfrantze 02/03/2003	_____	sbasford 02/03/2003		State
/7	mdsida 02/05/2003	kgilfoy 02/05/2003 kgilfoy 02/05/2003	chaskett 02/05/2003 chaskett 02/05/2003	_____ _____ _____	lemery 02/05/2003		State
/8	rkite 02/07/2003	kgilfoy 02/07/2003	pgreensl 02/07/2003	_____	amentkow 02/07/2003		State
/9	mdsida 02/11/2003	wjackson 02/11/2003	pgreensl 02/11/2003	_____	sbasford 02/11/2003		

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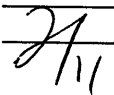
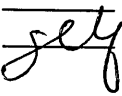
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2/11/03

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Justice - criminal

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/1		kgilfoy 01/17/2003	rschlue	2/4	mbarman 01/17/2003		State
/2		1/8 - 2/7 KMP	rschlue	ps	sbasford		State

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State Prosecutors Office

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*Handwritten signatures and dates:*  
 2/3 (signature)  
 3/6 (signature)  
 2/3 (signature)

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Handwritten signatures and initials, including 'rschluet' and 'sbasford', and the number '223' at the bottom.

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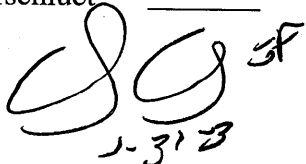
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1-17-3

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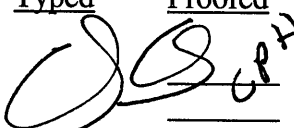
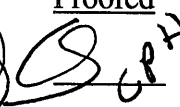
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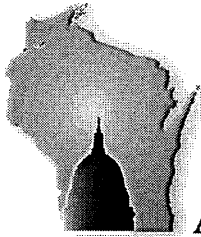
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**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

**JAMES E. DOYLE**  
GOVERNOR

**MARC MAROTTA**  
SECRETARY

Division of Executive Budget and Finance  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1736  
Fax (608) 267-0372  
TTY (608) 267-9629

**Date:** January 7, 2003

**To:** Stephen R. Miller, Chief  
Legislative Reference Bureau

**From:** Roger Mukasa  
Executive Policy and Budget Analyst  
Health and Public Safety Team

**Subject:** **Statutory Language Request for the 2003-05 Biennial Budget**  
475 – District Attorneys

Budget Office Request Title:

Department of Justice, State Prosecutors Office

Request Description:

The purpose is to move the State Prosecutors office (SPO) from the Department of Administration to the Department of Justice.

The following issues should be addressed:

- The State Prosecutors Office should be moved to the Department of Justice.
- Create the State Prosecutors Council, to oversee the State Prosecutors Office. The Council shall:
  - Be chaired by the Wisconsin Attorney General.
  - Be comprised of eight elected district attorneys, appointed by the Governor.
  - Appoint an executive director.
  - Develop rules and standards for determining when cases should be prosecuted or diverted for non-prosecutorial actions.
  - Develop procedures to determine when prosecutors should be deployed to different counties [please see 978.05(8)].

All incumbents and programs should be moved from the SPO/DOA to DOJ.

cc. James T. Johnston

BB 0328

Plc to Roge

Told him that rules are likely to be held unconstitutional.

Jones 226 Wis 2d 565  
Annals 168 ~ 453

But: Kurkierewicz 42-368

R - Make them advisory.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1373/0-11  
MGD: King

D Note

DOA:.....Mukasa - BB0328, State Prosecutor's Office

FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

1 AN ACT <sup>DON'T GEN. CAT.</sup> relating to: the budget.

*Analysis by the Legislative Reference Bureau*  
**COURTS, COURT PROCEDURE, AND ATTORNEYS**

**DISTRICT ATTORNEYS**

Generally, under current law, each county selects its own district attorney, but the district attorney and deputy and assistant district attorneys are state employees. DOA, through its State Prosecutor's Office, provides personnel, budget, and other types of management assistance to district attorney offices. With respect to individual cases, however, district attorneys have near-total discretion in deciding what cases to pursue and how to prosecute them. In working on those cases, district attorneys may request assistance from prosecutors in other counties, who may then serve in the same capacity as the district attorney who requested their assistance.

This bill creates a State Prosecutors Board, which is attached to DOJ. The board consists of the attorney general and eight district attorneys selected by the governor. Staffed by an executive director, the board has the following duties: 1) adopting advisory guidelines for district attorneys to use in determining when criminal cases should be prosecuted or diverted for nonprosecutorial programs; 2) issuing rules regarding the temporary reassignment of prosecutors to other counties; and 3) supervising the State Prosecutors Office.

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

FE-S

a

1 SECTION 1. 15.255 (3) of the statutes is created to read:

2 15.255 (3) STATE PROSECUTORS BOARD. (a) There is created a state prosecutors  
3 board which is attached to the department of justice under s. 15.03 and which

4 ~~(b) The state prosecutors board~~ shall consist of the following members:

5 1. The attorney general, who shall be ~~the~~ chair of the board. *chairperson*

6 2. Eight district attorneys appointed by the governor.

7 (c) 1. Subject to subd. 2, the district attorney members of the state prosecutors  
8 board shall be appointed for 4-year terms.

9 2. A person may not serve as a member of the board if he or she ceases to hold  
10 the office of attorney general or district attorney.

11 (d) Notwithstanding the provisions of any statute or ordinance, membership  
12 on the state prosecutors board does not disqualify a member from holding any other  
13 public office or employment.

INS  
2/13

14 SECTION 2. 16.004 (13) of the statutes is repealed.

15 SECTION 3. 17.11 (4) (intro.) of the statutes is amended to read:

16 17.11 (4) (intro.) If it is determined in the action or proceeding or is found upon  
17 the investigation that a district attorney or sheriff suspended under this section is  
18 not guilty of an offense, or has not willfully neglected or refused to perform his or her  
19 duties, as charged, that fact shall be certified by the governor to the department of  
20 administration justice if a district attorney is involved or to the county clerk of the  
21 sheriff's county if a sheriff is involved. Upon the certification, the district attorney  
22 or sheriff shall be:

History: 1989 a. 31; 1991 a. 316.

23 SECTION 4. 19.01 (4) (bn) of the statutes is amended to read:

1           19.01 (4) (bn) Official oaths and bonds of all district attorneys shall be filed with  
2           the ~~secretary of administration~~ attorney general.

**History:** 1971 c. 154; 1977 c. 29 s. 1649; 1977 c. 187 ss. 26, 135; 1977 c. 305 s. 64; 1977 c. 449; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (13); 1983 a. 6, 192; 1983 a. 538 s. 271; 1989 a. 31; 1991 a. 39, 316; 1993 a. 399; 1997 a. 250; 1999 a. 32, 83; 2001 a. 61.

3           **SECTION 5.** 19.42 (5) of the statutes is amended to read:

4           19.42 (5) “Department” means the legislature, the University of Wisconsin  
5           System, any authority or public corporation created and regulated by an act of the  
6           legislature and any office, department, independent agency or legislative service  
7           agency created under ch. 13, 14 or 15, any technical college district or any  
8           constitutional office other than a judicial office. In the case of a district attorney,  
9           “department” means the department of ~~administration~~ justice unless the context  
10          otherwise requires.

**History:** 1973 c. 90; Stats. 1973 s. 11.02; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.42; 1977 c. 29, 223, 277; 1977 c. 447 ss. 35, 209; 1979 c. 34, 177, 221; 1981 c. 20, 269, 349, 391; 1983 a. 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 166 ss. 1 to 4, 16; 1983 a. 484, 538; 1985 a. 26; 1985 a. 29 s. 3202 (46); 1985 a. 304; 1987 a. 72, 119; 1987 a. 312 s. 17; 1987 a. 340, 365, 399, 403; 1989 a. 31, 338; 1991 a. 39, 189, 221, 269; 1993 a. 16, 263, 399; 1995 a. 27, 56, 274; 1997 a. 27; 1997 a. 237 ss. 19m, 722q; 1997 a. 298; 1999 a. 42, 65; 2001 a. 16, 104, 109.

11          **SECTION 6.** 20.455 (1) (ab) of the statutes is created to read:

12          20.455 (1) (ab) <sup>(I)</sup> (General program operations; state prosecutor.) The amounts in  
13          the schedule for general program operations related to ch. 978.

14          → note: bud ←  
15          **SECTION 7.** 20.475 (intro.) of the statutes is amended to read:

16          **20.475 District attorneys.** (intro.) There is appropriated to the department  
17          of ~~administration~~ justice for the following programs:

**History:** 1989 a. 31, 117, 122; 336; 1991 a. 39; 1993 a. 16; 1995 a. 27, 448; 1999 a. 9; 2001 a. 16.

18          **SECTION 8.** 20.475 (1) (d) of the statutes is amended to read:

19          20.475 (1) (d) *Salaries and fringe benefits.* The amounts in the schedule for  
20          salaries and fringe benefits of district attorneys and state employees of the office of  
21          the district attorney, for payments under s. 978.045 (2) (b) and, ~~beginning in the~~  
22          ~~1999–2000 fiscal year and ending in the 2003–04 fiscal year, for a payment of \$80,000~~  
            ~~in each fiscal year toward the department of administration’s~~ department’s



1 unfunded prior service liability under the Wisconsin retirement system that results  
2 from granting the creditable service under s. 40.02 (17) (gm).

History: 1989 a. 31, 117, 122; 336; 1991 a. 39; 1993 a. 16; 1995 a. 27, 448; 1999 a. 9; 2001 a. 16.

3 **SECTION 9. 20.505 (1) (a) of the statutes is amended to read:**

4 **20.505 (1) (a) *General program operations.*** The amounts in the schedule for  
5 administrative supervision, and policy and fiscal planning and management and  
6 ~~prosecution~~ services and to defray the expenses incurred by the building commission  
7 not otherwise appropriated.

NOTE: NOTE: Sub. (1) ~~(1)(a)~~ is amended eff. 9-1-03 by 1997 Wis. Act 27 to read:NOTE:

8 (1) SUPERVISION AND MANAGEMENT.

History: 1971 c. 108, 125, 215; 1971 c. 270 s. 104; 1973 c. 90 and supp., 157, 305; 1975 c. 39 ss. 179 to 184f, 735 (5); 1975 Ex. Order No. 24; 1975 c. 224, 397; 1977 c. 29; 1977 c. 196 ss. 70, 131; 1977 c. 377 s. 30; 1977 c. 418 s. 929 (1), (55); 1979 c. 32 s. 92 (5); 1979 c. 34, 175, 221; 1979 c. 355 s. 241; 1979 c. 361; 1981 c. 20 ss. 400b to 421, 2202 (57) (b); 1981 c. 44 s. 3; 1981 c. 62, 121; 1981 c. 202 s. 23; 1981 c. 314, 374, 391; 1983 a. 27 ss. 439 to 456, 2202 (1); 1983 a. 36, 187, 282, 371, 393; 1985 a. 29, 31, 57, 120, 296, 297, 332; 1987 a. 27 ss. 296n, 296q, 297b, 297d, 299a to 299r, 300a, 301a, 418 to 432; 1987 a. 142, 147, 342, 399; 1989 a. 31, 56, 107, 122, 336, 339, 345, 366; 1991 a. 39 s. 469, 593q to 614; 1991 a. 105, 269, 315; 1993 a. 16 ss. 470g, 470m, 470r, 488 to 506m; 1993 a. 33, 75, 193, 349, 358, 374, 414, 437, 477, 491; 1995 a. 27, 56, 201, 216, 225, 227, 370, 403; 1997 a. 3; 1997 a. 27 ss. 199, 227 to 229m, 233, 666g to 692; 1997 a. 237, 283; 1999 a. 5, 9, 24, 52, 105, 113, 148, 185; 2001 a. 16 ss. 684d, 685d, 800 to 905; 2001 a. 104, 109.

9 **SECTION 10. 20.923 (6) (ac) of the statutes is renumbered 20.923 (6) (dq) and**  
10 **amended to read:**

11 **20.923 (6) (dq) Administration Justice, department of: deputy and assistant**  
12 **district attorneys.**

History: 1971 c. 18, 125, 164; 1971 c. 270 ss. 98, 104; 1971 c. 307, 321; 1973 c. 90, 156, 243, 333; 1975 c. 28; 1975 c. 39 ss. 236c to 247, 735 (5); 1975 Ex. Order No. 24; 1975 c. 189, 199, 224, 422; 1977 c. 29 ss. 399g to 406d, 1649, 1650m, 1654 (8) (e), 1656 (43); 1977 c. 44; 1977 c. 187 ss. 29, 30, 31, 135; 1977 c. 196 ss. 74 to 76m, 131; 1977 c. 203, 272, 277, 418, 447, 449; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 32 s. 92 (1); 1979 c. 34, 89, 189; 1979 c. 221 ss. 201m to 218, 2202 (13); 1979 c. 361; 1981 c. 20 ss. 587 to 592g, 2202 (33) (b), (c), (56) (a); 1981 c. 96 ss. 16, 67; 1981 c. 121, 127, 347, 353; 1981 c. 390 s. 252; 1983 a. 27, 46, 121, 192, 371, 378; 1985 a. 18, 23; 1985 a. 29 ss. 603 to 607, 3202 (22) (a); 1985 a. 34, 332; 1987 a. 6, 27, 82, 119, 306, 340, 354, 399, 403; 1989 a. 31, 56, 107, 208, 219, 336; 1991 a. 39, 269; 1993 a. 12, 16, 75, 123, 144, 184, 294, 349, 399, 490; 1995 a. 27 ss. 1193 to 1217m, 9130 (4), 9216 (19); 1995 a. 37, 216, 225; 1997 a. 2, 3, 27, 29, 41, 194, 237; 1999 a. 9, 42, 102, 186; 2001 a. 16, 19, 29, 109.

13 **SECTION 11. 40.05 (2) (bz) of the statutes is amended to read:**

14 **40.05 (2) (bz)** The employer contribution rate determined under par. (b) for the  
15 department departments of administration and justice shall be adjusted to reflect  
16 the cost of granting creditable service under s. 40.02 (17) (gm) and that rate shall be  
17 sufficient to amortize the unfunded prior service liability of the ~~department of~~  
18 administration those departments over the remainder of the 40-year amortization  
19 period under par. (b).

History: 1981 c. 96, 274, 278, 386; 1983 a. 9 s. 6; 1983 a. 27, 30; 1983 a. 46 ss. 2 to 4, 7; 1983 a. 140; 1983 a. 141 ss. 7 to 12, 20; 1983 a. 290, 504, 538; 1985 a. 29, 119, 135, 225; 1987 a. 27, 83, 107, 309, 356, 363; 1987 a. 403 s. 256; 1989 a. 13, 14, 31, 119, 122, 166, 182, 189, 230, 336, 355, 359; 1991 a. 32, 39, 107, 113, 141, 152, 189, 269; 1995 a. 27, 81, 88, 89, 240, 302; 1997 a. 35, 58, 149; 1999 a. 9, 11, 13, 104; 2001 a. 16.

20 **SECTION 12. 48.09 (5) of the statutes is amended to read:**

1           48.09 (5) By the district attorney or, if designated by the county board of  
 2 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133  
 3 or 48.977. If the county board transfers this authority to or from the district attorney  
 4 on or after May 11, 1990, the board may do so only if the action is effective on  
 5 September 1 of an odd-numbered year and the board notifies the department of  
 6 ~~administration~~ justice of that change by January 1 of that odd-numbered year.

History: 1977 c. 354; 1985 a. 176; 1989 a. 336; 1993 a. 246; 1995 a. 77, 275; 1997 a. 292.

7           **SECTION 13.** 111.815 (3) of the statutes is amended to read:

8           111.815 (3) With regard to collective bargaining activities involving employees  
 9 who are assistant district attorneys, the secretary of the department shall maintain  
 10 close liaison with the department of ~~administration~~ justice.

History: 1977 c. 196; 1983 a. 27 s. 2200 (15); 1985 a. 42; 1989 a. 31; 1995 a. 27; 2001 a. 16, 104.

11           **SECTION 14.** 938.09 (2) of the statutes is amended to read:

12           938.09 (2) By the district attorney or, if designated by the county board of  
 13 supervisors, by the corporation counsel, in any matter concerning a civil law  
 14 violation arising under s. 938.125. If the county board transfers this authority to or  
 15 from the district attorney on or after May 11, 1990, the board may do so only if the  
 16 action is effective on September 1 of an odd-numbered year and the board notifies  
 17 the department of ~~administration~~ justice of that change by January 1 of that  
 18 odd-numbered year.

History: 1995 a. 77.

19           **SECTION 15.** 938.09 (5) of the statutes is amended to read:

20           938.09 (5) By the district attorney or, if designated by the county board of  
 21 supervisors, by the corporation counsel, in any matter arising under s. 938.13. If the  
 22 county board transfers this authority to or from the district attorney on or after  
 23 May 11, 1990, the board may do so only if the action is effective on September 1 of

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1 an odd-numbered year and the board notifies the department of ~~administration~~  
2 justice of that change by January 1 of that odd-numbered year.

3 History: 1995 a. 77.

3 **SECTION 16.** 978.03 (1) of the statutes is amended to read:

4 978.03 (1) The district attorney of any prosecutorial unit having a population  
5 of 500,000 or more may appoint 5 deputy district attorneys and such assistant  
6 district attorneys as may be requested by the department of ~~administration~~ justice  
7 and authorized in accordance with s. 16.505. The district attorney shall rank the  
8 deputy district attorneys for purposes of carrying out duties under this section. The  
9 deputies, according to rank, may perform any duty of the district attorney who  
10 appointed him or her, under the district attorney's direction, or any duty of the  
11 district attorney to whose prosecutorial unit he or she is assigned under s. 978.14 (1)  
12 (c) by the state prosecutors board. In the absence or disability of the district attorney,  
13 the deputies, according to rank, may perform any act required by law to be performed  
14 by the district attorney. Any such deputy must have practiced law in this state for  
15 at least 2 years prior to appointment under this section.

16 History: 1989 a. 31; 1991 a. 39; 1999 a. 9; 2001 a. 16.

16 **SECTION 17.** 978.03 (1m) of the statutes is amended to read:

17 978.03 (1m) The district attorney of any prosecutorial unit having a population  
18 of 200,000 or more but not more than 499,999 may appoint 3 deputy district  
19 attorneys and such assistant district attorneys as may be requested by the  
20 department of ~~administration~~ justice and authorized in accordance with s. 16.505.  
21 The district attorney shall rank the deputy district attorneys for purposes of carrying  
22 out duties under this section. The deputies, according to rank, may perform any duty  
23 of the district attorney who appointed him or her, under the district attorney's  
24 direction, or any duty of the district attorney to whose prosecutorial unit he or she

1 is assigned under s. 978.14 (1) (c) by the state prosecutors board. In the absence or  
2 disability of the district attorney, the deputies, according to rank, may perform any  
3 act required by law to be performed by the district attorney. Any such deputy must  
4 have practiced law in this state for at least 2 years prior to appointment under this  
5 section.

History: 1989 a. 31; 1991 a. 39; 1999 a. 9; 2001 a. 16.

6 **SECTION 18.** 978.03 (2) of the statutes is amended to read:

7 978.03 (2) The district attorney of any prosecutorial unit having a population  
8 of 100,000 or more but not more than 199,999 may appoint one deputy district  
9 attorney and such assistant district attorneys as may be requested by the  
10 department of ~~administration~~ justice and authorized in accordance with s. 16.505.  
11 The deputy may perform any duty of the district attorney who appointed him or her,  
12 under the district attorney's direction, or any duty of the district attorney to whose  
13 prosecutorial unit he or she is assigned under s. 978.14 (1) (c) by the state prosecutors  
14 board. In the absence or disability of the district attorney, the deputy may perform  
15 any act required by law to be performed by the district attorney. The deputy must  
16 have practiced law in this state for at least 2 years prior to appointment under this  
17 section.

History: 1989 a. 31; 1991 a. 39; 1999 a. 9; 2001 a. 16.

18 **SECTION 19.** 978.03 (3) of the statutes is amended to read:

19 978.03 (3) Any assistant district attorney under sub. (1), (1m) or (2) must be  
20 an attorney admitted to practice law in this state and, except as provided in ss.  
21 978.043 and 978.044, may perform any duty required by law to be performed by the  
22 district attorney appointing him or her or a district attorney to whose prosecutorial  
23 unit he or she is assigned under s. 978.14 (1) (c) by the state prosecutors board. The  
24 district attorney of the prosecutorial unit under sub. (1), (1m), or (2) may appoint

1 such temporary counsel as may be authorized by the department of ~~administration~~  
2 justice.

3 History: 1989 a. 31; 1991 a. 39; 1999 a. 9; 2001 a. 16.

3 **SECTION 20.** 978.04 of the statutes is amended to read:

4 **978.04 Assistants in certain prosecutorial units.** The district attorney of  
5 any prosecutorial unit having a population of less than 100,000 may appoint one or  
6 more assistant district attorneys as necessary to carry out the duties of his or her  
7 office and as may be requested by the department of ~~administration~~ justice  
8 authorized in accordance with s. 16.505. Any such assistant district attorney must  
9 be an attorney admitted to practice law in this state and, except as provided in s.  
10 978.043, may perform any duty required by law to be performed by the district  
11 attorney appointing him or her or a district attorney to whose prosecutorial unit he  
12 or she is assigned (under s. 978.14 (1) (c)) by the state prosecutors board.

13 History: 1989 a. 31; 1999 a. 9.

13 **SECTION 21.** 978.043 of the statutes is amended to read:

14 **978.043 Assistants for prosecution of sexually violent person**  
15 **commitment cases.** The district attorney of the prosecutorial unit that consists of  
16 Brown County and the district attorney of the prosecutorial unit that consists of  
17 Milwaukee County shall each assign one assistant district attorney in his or her  
18 prosecutorial unit to be a sexually violent person commitment prosecutor. An  
19 assistant district attorney assigned under this section to be a sexually violent person  
20 commitment prosecutor may engage only in the prosecution of sexually violent  
21 person commitment proceedings under ch. 980 and, ~~at the request of the district~~  
22 ~~attorney of the prosecutorial unit~~ as directed by the state prosecutors board under

1 s. 978.14 (1) (c), may file and prosecute sexually violent person commitment  
2 proceedings under ch. 980 in any prosecutorial unit in this state.

3 History: 1999 a. 9.

**SECTION 22.** 978.044 (2) (b) of the statutes is amended to read:

4 978.044 (2) (b) Provide assistance to the district attorney in other counties  
5 relating to the establishment of restorative justice programs, as described in par. (a)  
6 as directed by the state prosecutors board under s. 978.14 (1) (c).

7 History: 2001 a. 16.

**SECTION 23.** 978.044 (3) of the statutes is amended to read:

8 978.044 (3) ~~REPORT TO DEPARTMENT OF ADMINISTRATION JUSTICE.~~ Annually, on a  
9 date specified by the department of ~~administration justice~~, the district attorneys of  
10 Milwaukee county and the county selected under sub. (4) shall each submit to the  
11 department of ~~administration justice~~ a report summarizing the records under sub.  
12 (2) (c) covering the preceding 12-month period. The department of ~~administration~~  
13 ~~justice~~ shall maintain the information submitted under this subsection by the  
14 district attorney.

15 History: 2001 a. 16.

**SECTION 24.** 978.045 (1g) of the statutes is amended to read:

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

1 provided by that department, of the district attorney's or the court's inability to  
 2 obtain assistance from another prosecutorial unit or from an assistant attorney  
 3 general.

History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27.

4 **SECTION 25.** 978.045 (2) (b) of the statutes is amended to read:

5 978.045 (2) (b) The department of administration justice shall pay the  
 6 compensation ordered by the court from the appropriation under s. 20.475 (1) (d).

History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27.

7 **SECTION 26.** 978.05 (1) of the statutes is amended to read:

8 978.05 (1) CRIMINAL ACTIONS. Except as otherwise provided by law, prosecute  
 9 all criminal actions before any court within his or her prosecutorial unit. In  
 10 determining whether to prosecute a case, the district attorney shall consider the  
 11 guidelines adopted by the state prosecutors board under s. 978.14 (1) (b). The district  
 12 attorney, however, is not bound by those guidelines, and there is no right to appeal  
 13 based on a prosecutor's decision to depart in any way from any guideline.

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.

14 **SECTION 27.** 978.05 (8) (b) of the statutes is amended to read:

15 978.05 (8) (b) Hire, employ, and supervise his or her staff and, subject to ss.  
 16 978.043 and 978.044, make appropriate assignments of the staff throughout the  
 17 prosecutorial unit. The district attorney may request the assistance of district  
 18 attorneys, deputy district attorneys, or assistant district attorneys from other  
 19 prosecutorial units or assistant attorneys general who then may appear and assist  
 20 in the investigation and prosecution of any matter for which a district attorney is  
 21 responsible under this chapter in like manner as assistants in the prosecutorial unit  
 22 and with the same authority as the district attorney in the unit in which the action

1 is brought. Nothing in this paragraph limits the authority of counties to regulate the  
2 hiring, employment, and supervision of county employees.

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.

3 **SECTION 28. 978.05 (9) of the statutes is amended to read:**

4 **978.05 (9) BUDGET.** Prepare a biennial budget request for submission to the  
5 department of justice 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.

6 **SECTION 29. 978.11 of the statutes is amended to read:**

7 **978.11 Budget.** The department of ~~administration~~ justice shall prepare the  
8 budget of the prosecution system and submit it in accordance with s. 16.42.

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

9 **SECTION 30. 978.12 (5) (c) 1. of the statutes is amended to read:**

10 **978.12 (5) (c) 1.** The salaries authorized under this section for the district  
11 attorney and the state employees of the office of district attorney shall be paid by the  
12 state treasurer to the county treasurer pursuant to a voucher submitted by the  
13 district attorney to the department of ~~administration~~ justice. The county treasurer  
14 shall pay the amounts directly to the district attorney and state employees of the  
15 office of district attorney and the amounts paid shall be subject to the retirement  
16 system established under chapter 201, laws of 1937.

History: 1989 a. 31, 117, 336; 1991 a. 32, 39; 1993 a. 294; 1999 a. 9, 85.

17 **SECTION 31. 978.13 (1) (b) of the statutes, as affected by 2001 Wisconsin Act**  
18 **109, is amended to read:**

19 **978.13 (1) (b)** In counties having a population of 500,000 or more, the salary  
20 and fringe benefit costs of 2 clerk positions providing clerical services to the  
21 prosecutors in the district attorney's office handling cases involving felony violations  
22 under ch. 961. The state treasurer shall pay the amount authorized under this  
23 subsection to the county treasurer pursuant to a voucher submitted by the district



1 attorney to the department of ~~administration~~ justice from the appropriation under  
2 s. 20.475 (1) (i).

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.

3 **SECTION 32.** 978.13 (1) (c) of the statutes, as affected by 2001 Wisconsin Act 109,  
4 is amended to read:

5 978.13 (1) (c) In counties having a population of 500,000 or more, the salary and  
6 fringe benefit costs of clerk positions in the district attorney's office necessary for the  
7 prosecution of violent crime cases primarily involving felony violations under s.  
8 939.63, if a felony is committed while armed, and under ss. 940.01 to 940.03, 940.05,  
9 940.06, 940.225, 943.23 (1g), and 943.32 (2). The state treasurer shall pay the  
10 amount authorized under this subsection to the county treasurer pursuant to a  
11 voucher submitted by the district attorney to the ~~secretary of administration~~ department of justice  
12 from the appropriation under s. 20.475 (1) (i).

*department of*

*Stat-Keep*

*attorney general*

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.

13 **SECTION 33.** 978.13 (1) (d) of the statutes, as affected by 2001 Wisconsin Act  
14 109, is amended to read:

15 978.13 (1) (d) In counties having a population of 500,000 or more, the salary  
16 and fringe benefit costs of 2 clerk positions providing clerical services to the  
17 prosecutors in the district attorney's office handling cases involving the unlawful  
18 possession or use of firearms. The state treasurer shall pay the amount authorized  
19 under this subsection to the county treasurer from the appropriation under s. 20.475  
20 (1) (f) pursuant to a voucher submitted by the district attorney to the department of  
21 administration justice.

NOTE: NOTE: Sub. (1) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:NOTE:

- 22 (1) The state shall assume financial responsibility for all of the following:
- 23 (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
- 24 district attorney's office handling cases involving felony violations under ch. 961. The state treasurer shall pay the amount authorized under this paragraph to the county
- 25 treasurer pursuant to a voucher submitted by the district attorney to the department of administration from the appropriation under s. 20.475 (1) (i). The amount paid
- 26 under this paragraph may not exceed \$75,200 in the 1999-2000 fiscal year and \$77,500 in the 2000-01 fiscal year.
- 27 (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
- 28 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,
- 29 943.23 (1g), (1m) and (1r) and 943.32 (2). The state treasurer shall pay the amount authorized under this paragraph to the county treasurer pursuant to a voucher

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1373/lins  
MGD:.....

1 INSERT 4/8 ✓  
2 SECTION 1. 20.923 (4) (a) <sup>5.</sup> ~~of~~ ✓ of the statutes is created to read:  
3 20.923 (4) (a) <sup>5.</sup> ~~of~~ ✓ State prosecutors board: executive director.

4 INSERT 5/10B ✓  
5 SECTION 2. 230.08 (2) (sm) ✓ of the statutes is created to read:  
6 230.08 (2) (sm) The executive director of the state prosecutors board. ✓

7 INSERT 13/20 ✓  
8 SECTION 3. 1999 Wisconsin Act 9, section 9101 (4) (title) is renumbered 978.05  
9 (10) (title) of the statutes.

10 SECTION 4. 1999 Wisconsin Act 9, section 9101 (4) (a) (intro.) and 2. are  
11 consolidated, renumbered 978.05 (10) (a) of the statutes, and amended to read:

12 978.05 (10) (a) ~~In any case in which the district attorney files a sexually violent~~  
13 ~~person petition under section 980.02 (1) (b) of the statutes on or after the effective~~  
14 ~~date of this paragraph but before July 1, 2001, the district attorney shall maintain~~  
15 Maintain a record of the amount of time spent by the district attorney and by any  
16 deputy district attorneys or assistant district attorneys ~~doing all of the following:~~ If  
17 applicable, representing the state on petitions brought by the person who is the  
18 subject of the ~~petition~~ ✓ ~~petition~~ ✓ a petition for supervised release under section s. 980.08 of the  
19 statutes, as affected by this act, or for discharge under section s. 980.09 or 980.10 of  
20 the statutes if the subject of the petition is the petitioner and if the case is one in  
21 which the district attorney filed the petition under s. 980.02 (1) (b) on or after October  
22 29, 1999, but before July 1, 2001.

23 SECTION 5. 1999 Wisconsin Act 9, section 9101 (4) (a) 1. is repealed.

*Handwritten notes:*  
- "PPS: make these action: Act 4/8" (circled)  
- "con. r.n. a.m." (circled)  
- "23 con. r.p." (circled)

*action: Act 978.05*

1

**SECTION 6.** 1999 Wisconsin Act 9, section 9101 (4) (b) is renumbered 978.05 (10)

2 (b) of the statutes and amended to read:

3 978.05 (10) (b) Annually, on a date specified by the department of  
 4 administration ~~justice~~, the district attorney shall <sup>justice</sup> submit to the department of  
 5 administration a report summarizing the records under ~~paragraph~~ par. (a) covering  
 6 the preceding 12-month period. The department of ~~administration~~ shall maintain  
 7 the information submitted under this paragraph by district attorneys.

1 submitted by the district attorney to the secretary of administration from the appropriation under s. 20.475 (1) (i). The amount paid under this paragraph may not  
2 exceed \$94,400 in the 1999-2000 fiscal year and \$97,200 in the 2000-01 fiscal year.

3 (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  
4 district attorney's office handling cases involving the unlawful possession or use of firearms. The state treasurer shall pay the amount authorized under this paragraph  
5 to the county treasurer from the appropriation under s. 20.475 (1) (f) pursuant to a voucher submitted by the district attorney to the department of administration.  
6 The amount paid under this paragraph may not exceed the amount appropriated under s. 20.475 (1) (f).

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.

7 SECTION 34. 978.14 of the statutes is created to read:

8 978.14 State prosecutors board. (1) The state prosecutors board shall do  
9 all of the following:

10 (a) <sup>Appoint</sup> ~~Select~~ an executive director.

11 (b) Adopt advisory guidelines or standards for district attorneys to use in  
12 determining when criminal cases should be prosecuted or diverted ~~for~~ to  
13 nonprosecutorial programs.

14 (c) Promulgate and administer rules regarding the temporary assignment of  
15 <sup>district attorneys and</sup> deputy and assistant district attorneys from one prosecutorial unit to another.

16 (d) Supervise the office <sup>within</sup> the department of justice that is responsible for  
17 providing personnel, budget, and other types of management assistance to district  
18 attorney offices.

19 (2) Subject to authorization under s. 16.505, the state prosecutors board may  
20 hire staff to assist it in the performance of its duties.

21 SECTION 35. 1999 Wisconsin Act ~~9~~, section 9101 (4) (b) is amended to read:

22 (b) <sup>[1999 Wisconsin Act 9] Section 9101 (4)</sup> Annually, on a date specified by the department of administration justice,  
23 the district attorney shall submit to the department of administration justice a  
24 report summarizing the records under paragraph (a) covering the preceding  
25 12-month period. The department of administration justice shall maintain the  
26 information submitted under this paragraph by district attorneys.

27 SECTION 9101. Nonstatutory provisions; administration.

28 SECTION 9132. Nonstatutory provisions; justice.

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1 (1) UNFUNDED PRIOR SERVICE FOR ASSISTANT DISTRICT ATTORNEYS. The department  
 2 of justice shall pay \$80,000 in the 2003-04 fiscal year from the appropriation account  
 3 under section 20.475 (1) (d) of the statutes toward the department's unfunded prior  
 4 service liability under the Wisconsin retirement system that results from granting  
 5 the creditable service under section 40.02 (17) (gm) of the statutes.

6 (2) STATE PROSECUTORS BOARD; INITIAL TERMS. Notwithstanding section 15.255  
 7 (3) (a) 1. of the statutes, as created by this act, the first ~~four~~ <sup>(4)</sup> members of the state  
 8 prosecutors board shall be appointed for ~~two year~~ terms, subject to section 15.255 (3)  
 9 (c) 2. of the statutes, as created by this act. <sup>2-year</sup>

(END)

district attorney

4

6

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b

SDC:.....Walter - Caucus # 2728, State prosecutor's office  
 FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION  
**CAUCUS AMENDMENT**  
**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**  
**TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 30, line 14: delete lines 14 to 20 and substitute:

3 **SECTION ~~4071a~~<sup>#</sup>.** 16.003 (2) of the statutes is amended to read:

4 16.003 (2) STAFF. Except as provided in ss. 16.548, and 16.57, ~~978.03 (1), (1m)~~  
 5 and (2), ~~978.04~~ and ~~978.05 (8) (b)~~, the secretary shall appoint the staff necessary for  
 6 performing the duties of the department. All staff shall be appointed under the  
 7 classified service except as otherwise provided by law.

8 **2.** Page 61, line 9: delete "administration" and substitute "justice".

9 **3.** Page 63, line 8: after that line insert:

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1           **7.** Page 235, line 3: decrease the dollar amount for fiscal year 1999-00 by  
2           \$200,300 and decrease the dollar amount for fiscal year 2000-01 by \$200,300 for the  
3           purpose of decreasing funding for the general program operations related to district  
4           attorneys that are being transferred to the department of justice.

5           **8.** Page 369, line 3: after that line insert:

6           “SECTION 498c. 20.475 (intro.) of the statutes is amended to read:

7           **20.475 District attorneys.** (intro.) There is appropriated to the department  
8           of ~~administration~~ justice for the following programs.”.

9           **9.** Page 369, line 9: delete “administration’s” and substitute “justice’s”.

10          **10.** Page 369, line 16: delete “9101” and substitute “9130”.

11          **11.** Page 370, line 18: delete lines 18 to 23 and substitute:

12          ~~SECTION 509a.~~ SECTION 509a. 20.505 (1) (ab) of the statutes is renumbered 20.455 (1) (ab).”.

13          **12.** Page 415, line 7: after that line insert:

14          “SECTION 647L. 20.923 (6) (ac) of the statutes is amended to read:

15          20.923 (6) (ac) ~~Administration~~ Justice, department of: deputy and assistant  
16          district attorneys.”.

17          **13.** Page 535, line 3: delete “administration” and substitute “justice”.

18          **14.** Page 535, line 5: delete “administration” and substitute “justice”.

19          **15.** Page 645, line 22: after that line insert:

20          “SECTION 1130c. 48.09 (5) of the statutes is amended to read:

21          48.09 (5) By the district attorney or, if designated by the county board of  
22          supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133  
23          or 48.977. If the county board transfers this authority to or from the district attorney



1 on or after May 11, 1990, the board may do so only if the action is effective on  
2 September 1 of an odd-numbered year and the board notifies the department of  
3 ~~administration~~ justice of that change by January 1 of that odd-numbered year.”.

4 **16.** Page 1093, line 2: after that line insert:

5 “SECTION 2035g. 111.815 (3) of the statutes is amended to read:

6 111.815 (3) With regard to collective bargaining activities involving employes  
7 who are assistant district attorneys, the secretary of the department shall maintain  
8 close liaison with the department of ~~administration~~ justice.”.

9 **17.** Page 1174, line 2: after that line insert:

10 ~~SECTION 2286a~~ <sup>#</sup> 165.25 (2m) of the statutes is created to read:

11 165.25 (2m) PROSECUTION SERVICES. Provide general program operations  
12 related to ch. 978.

13 ~~SECTION 2286a~~ <sup>#</sup> 165.25 (3g) of the statutes is created to read:

14 165.25 (3g) UNFUNDED PRIOR SERVICE FOR ASSISTANT DISTRICT ATTORNEYS.  
15 Beginning in the 1999–2000 fiscal year and ending in the 2003–04 fiscal year, pay  
16 \$80,000 in each fiscal year from the appropriation account under s. 20.475 (1) (d)  
17 toward the unfunded prior service liability under the Wisconsin retirement system  
18 that results from granting the creditable service under s. 40.02 (17) (gm).”.

19 **18.** Page 1431, line 22: after that line insert:

20 “SECTION 3120m. 938.09 (2) of the statutes is amended to read:

21 938.09 (2) By the district attorney or, if designated by the county board of  
22 supervisors, by the corporation counsel, in any matter concerning a civil law  
23 violation arising under s. 938.125. If the county board transfers this authority to or  
24 from the district attorney on or after May 11, 1990, the board may do so only if the

Insert  
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1 action is effective on September 1 of an odd-numbered year and the board notifies  
2 the department of ~~administration~~ justice of that change by January 1 of that  
3 odd-numbered year.

4 **SECTION 3120n.** 938.09 (5) of the statutes is amended to read:

5 938.09 (5) By the district attorney or, if designated by the county board of  
6 **supervisors**, by the corporation counsel, in any matter arising under s. 938.13. If the  
7 county board transfers this authority to or from the district attorney on or after  
8 May 11, 1990, the board may do so only if the action is effective on September 1 of  
9 an odd-numbered year and the board notifies the department of ~~administration~~  
10 justice of that change by January 1 of that odd-numbered year.”.

11 **19.** Page 1447, line 3: after that line insert:

12 “**SECTION 3207w.** 978.03 (1) of the statutes is amended to read:

13 978.03 (1) The district attorney of any prosecutorial unit having a population  
14 of 500,000 or more may appoint 4 deputy district attorneys and such assistant  
15 district attorneys as may be requested by the department of ~~administration~~ justice  
16 and authorized in accordance with s. 16.505. The district attorney shall rank the  
17 deputy district attorneys for purposes of carrying out duties under this section. The  
18 deputies, according to rank, may perform any duty of the district attorney, under the  
19 district attorney’s direction. In the absence or disability of the district attorney, the  
20 deputies, according to rank, may perform any act required by law to be performed  
21 by the district attorney. Any such deputy must have practiced law in this state for  
22 at least 2 years prior to appointment under this section.

23 **SECTION 3207x.** 978.03 (1m) of the statutes is amended to read:

1           **978.03 (1m)** The district attorney of any prosecutorial unit having a population  
2 of 200,000 or more but not more than 499,999 may appoint 3 deputy district  
3 attorneys and such assistant district attorneys as may be requested by the  
4 department of ~~administration~~ justice and authorized in accordance with s. 16.505.  
5 The district attorney shall rank the deputy district attorneys for purposes of carrying  
6 out duties under this section. The deputies, according to rank, may perform any duty  
7 of the district attorney, under the district attorney's direction. In the absence or  
8 disability of the district attorney, the deputies, according to rank, may perform any  
9 act required by law to be performed by the district attorney. Any such deputy must  
10 have practiced law in this state for at least 2 years prior to appointment under this  
11 section.

12           **SECTION 3207y.** 978.03 (2) of the statutes is amended to read:

13           **978.03 (2)** The district attorney of any prosecutorial unit having a population  
14 of 100,000 or more but not more than 199,999 may appoint one deputy district  
15 attorney and such assistant district attorneys as may be requested by the  
16 department of ~~administration~~ justice and authorized in accordance with s. 16.505.  
17 The deputy may perform any duty of the district attorney, under the district  
18 attorney's direction. In the absence or disability of the district attorney, the deputy  
19 may perform any act required by law to be performed by the district attorney. The  
20 deputy must have practiced law in this state for at least 2 years prior to appointment  
21 under this section.”.

22           **20.** Page 1447, line 10: delete “administration” and substitute  
23 “administration justice”.

1           **21.** Page 1447, line 15: delete “administration” and substitute  
2           “administration justice and”.

3           **22.** Page 1447, line 21: delete “administration” and substitute “justice”.

4           **23.** Page 1448, line 4: delete “administration” and substitute “justice”.

5           **24.** Page 1449, line 6: after that line insert:

6           “**SECTION 3210L.** 978.045 (1g) of the statutes is amended to read:

7           978.045 (1g) A court on its own motion may appoint a special prosecutor under  
8           sub. (1r) or a district attorney may request a court to appoint a special prosecutor  
9           under that subsection. Before a court appoints a special prosecutor on its own motion  
10          or at the request of a district attorney for an appointment that exceeds 6 hours per  
11          case, the court or district attorney shall request assistance from a district attorney,  
12          deputy district attorney or assistant district attorney from other prosecutorial units  
13          or an assistant attorney general. A district attorney requesting the appointment of  
14          a special prosecutor, or a court if the court is appointing a special prosecutor on its  
15          own motion, shall notify the department of administration justice, on a form  
16          provided by that department, of the district attorney’s or the court’s inability to  
17          obtain assistance from another prosecutorial unit or from an assistant attorney  
18          general.

19          **SECTION 3210m.** 978.045 (2) (b) of the statutes is amended to read:

20          978.045 (2) (b) The department of administration justice shall pay the  
21          compensation ordered by the court from the appropriation under s. 20.475 (1) (d).”.

22          **25.** Page 1449, line 17: after that line insert:

23          “**SECTION 3211k.** 978.11 of the statutes is amended to read:

1           **978.11 Budget.** The department of ~~administration~~ justice shall prepare the  
2 budget of the prosecution system and submit it in accordance with s. 16.42.

3           **26.** Page 1449, line 24: after that line insert:

4           “**SECTION 3211q.** 978.12 (5) (c) 1. of the statutes is amended to read:

5           978.12 (5) (c) 1. The salaries authorized under this section for the district  
6 attorney and the state employes of the office of district attorney shall be paid by the  
7 state treasurer to the county treasurer pursuant to a voucher submitted by the  
8 district attorney to the department of ~~administration~~ justice. The county treasurer  
9 shall pay the amounts directly to the district attorney and state employes of the office  
10 of district attorney and the amounts paid shall be subject to the retirement system  
11 established under chapter 201, laws of 1937.”

12           **27.** Page 1452, line 6: delete “administration” and substitute “administration  
13 justice”.

14           **28.** Page 1452, line 17: delete “secretary of administration” and substitute  
15 “secretary of administration department of justice”.

16           **29.** Page 1453, line 3: delete “administration” and substitute “justice”.

17           **30.** Page 1468, line 17. ~~after that line insert:~~

18           #  
18           ⑩ TRANSFER OF OFFICE OF STATE PROSECUTOR.

19           #  
19           (a) *Positions and employes.* <sup>Ⓢ</sup>

20           #  
20           1. On the effective date of this subdivision, all full-time equivalent positions  
21 in the department of administration having duties primarily related to the general  
22 program operations of the prosecution system, as determined by the secretary of  
23 administration, are transferred to the department of justice.

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1 2. All incumbent employe<sup>e</sup>s holding positions specified in subdivision 1. are  
2 transferred on the effective date of this subdivision to the department of justice.

3 3. Employe<sup>e</sup>s transferred under subdivision 2. have all the rights and the same  
4 status under subchapter V of chapter 111 and chapter 230 of the statutes in the  
5 department of justice that they enjoyed in the department of administration  
6 immediately before the transfer. Notwithstanding section 230.28 (4) of the statutes,  
7 no employe<sup>e</sup> so transferred who has attained permanent status in class is required to  
8 serve a probationary period.

9 (b) *Assets and liabilities.* On the effective date of this paragraph, the assets and  
10 liabilities of the department of administration primarily related to the general  
11 program operations of the prosecution system, as determined by the secretary of  
12 administration, shall become the assets and liabilities of the department of justice.

13 (c) *Tangible personal property.* On the effective date of this paragraph, all  
14 tangible personal property, including records, of the department of administration  
15 that is primarily related to the general program operations of the prosecution  
16 system, as determined by the secretary of administration, is transferred to the  
17 department of justice.

18 (d) *Contracts.* All contracts entered into by the department of administration  
19 in effect on the effective date of this paragraph that are primarily related to the  
20 general program operations of the prosecution system, as determined by the  
21 secretary of administration, remain in effect and are transferred to the department  
22 of justice. The department of justice shall carry out any obligations under such a  
23 contract until the contract is modified or rescinded by the department of justice to  
24 the extent allowed under the contract.

#  
(e)

1 *Rules and orders.* All rules promulgated by the department of  
2 administration primarily related to the general program operations of the  
3 prosecution system that are in effect on the effective date of this paragraph shall  
4 become rules of the department of justice and shall remain in effect until their  
5 specified expiration dates or until amended or repealed by the department of justice.  
6 All orders issued by the department of administration primarily related to the  
7 general program operations of the prosecution system that are in effect on the  
8 effective date of this paragraph shall become orders of the department of justice and  
9 shall remain in effect until their specified expiration dates or until modified or  
10 rescinded by the department of justice.

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(f)

11 *Pending matters.* Any matter pending with the department of  
12 administration on the effective date of this paragraph that is primarily related to the  
13 general program operations of the prosecution system, as determined by the  
14 secretary of administration, is transferred to the department of justice and all  
15 materials submitted to or actions taken by the department of administration with  
16 respect to the pending matter are considered as having been submitted to or taken  
17 by the department of justice.

18 ~~31. Page 1469, line 9: delete lines 9 to 14.~~

19 ~~32. Page 1471, line 12: delete the material beginning with that line and~~  
20 ~~ending with page 1472, line 5.~~

21 ~~33. Page 1527, line 15: after that line insert:~~

22 ~~"(3c) REIMBURSEMENT TO MILWAUKEE COUNTY FOR COMPUTER PURCHASE. From the~~  
23 ~~appropriation under section 20.475 (1) (f) of the statutes, as created by this act, the~~  
24 ~~department of justice shall reimburse Milwaukee County \$12,000 in fiscal year~~

1 1999–2000 for the cost of purchasing computers to be used by prosecutors in the  
2 district attorney's office handling cases involving the unlawful possession or use of  
3 ~~firearms and by the clerks providing clerical services to those prosecutors.~~

4 ~~(d) INFORMATION CONCERNING SEXUALLY VIOLENT PERSON COMMITMENT CASES.~~

5 (a) In any case in which the district attorney files <sup>(d)</sup> a sexually violent person  
6 petition under section 980.02 (1) (b) of the statutes on or after the effective date of  
7 this paragraph but before July 1, 2001, the district attorney shall maintain a record  
8 of the amount of time spent by the district attorney and by any deputy district  
9 attorneys or assistant district attorneys doing all of the following:

10 1. <sup>If applicable,</sup> Prosecuting the petition through trial under section 980.05 of the statutes  
11 and, if applicable, commitment of the person subject to the petition under section  
12 980.06 of the statutes, as affected by this act.

13 2. If applicable, representing the state on petitions brought by the person who  
14 is the subject of the petition for supervised release under section 980.08 of the  
15 statutes, as affected by this act, or for discharge under section 980.09 or 980.10 of the  
16 statutes.

17 (b) Annually, on a date specified by the department of justice, the district  
18 attorney shall submit to the department of justice a report summarizing the records  
19 under paragraph (a) covering the preceding 12-month period. The department of  
20 justice shall maintain the information submitted under this paragraph by district  
21 attorneys.

22 (END)



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1373/Pdn

MGD:.....  
*King*

Roger:

- ✓ 1. As I mentioned on the phone, limiting the prosecutorial discretion of a district attorney by rule is probably unconstitutional. Therefore, the bill treats the standards promulgated by the State Prosecutors Board regarding prosecution and diversion as advisory guidelines.
- ✓ 2. The Department of Justice should be able to assign deputy and assistant district attorneys from one prosecutorial unit to another. There may be an argument, however, that DOJ may not direct the district attorney himself or herself to work elsewhere (even temporarily), given that the district attorney is a county officer under the constitution. If you want to avoid the risk of the rules being held unconstitutional on that ground, the bill could specify that the rules cover only deputy and assistant district attorneys.
- ✓ 3. The entity created by this draft has authority to issue directives that have the effect of law — namely, those relating to assignment of prosecutor positions. Therefore, it is more of a board than a council, *see* ss. 15.01 (1r) (defining “board”) and 227.01 (1) (defining “agency” — an entity having rule-making authority under ch. 227 — in a manner that excludes councils), and I have named it accordingly.
- ✓ 4. I originally intended to keep 1999 Wisconsin Act 9, section 9101 (4) (b) out of the statutes when amending it to reflect DOJ's new role with respect to district attorneys. That provision, however, imposes an ongoing duty on both DOJ and district attorneys. Individuals committed under ch. 980 before July 1, 2001, will be the subject of petitions for supervised release or discharge well into the future. Therefore, most of this provision originally should have been and now should be in the statutes. On the other hand, I assume that all prosecutions and commitments begun before July 1, 2001 (including those that were the subject of appeals), are now complete. Therefore, the bill repeals *par. (a) 1. of section 9101 (4)*

*paragraph*

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1373/1dn  
MGD:kmg:rs

January 16, 2003

Roger:

1. As I mentioned on the phone, limiting the prosecutorial discretion of a district attorney by rule is probably unconstitutional. Therefore, the bill treats the standards promulgated by the State Prosecutors Board regarding prosecution and diversion as advisory guidelines.
2. The Department of Justice should be able to assign deputy and assistant district attorneys from one prosecutorial unit to another. There may be an argument, however, that DOJ may not direct the district attorney himself or herself to work elsewhere (even temporarily), given that the district attorney is a county officer under the constitution. If you want to avoid the risk of the rules being held unconstitutional on that ground, the bill could specify that the rules cover only deputy and assistant district attorneys.
3. The entity created by this draft has authority to issue directives that have the effect of law — namely, those relating to assignment of prosecutor positions. Therefore, it is more of a board than a council, *see* ss. 15.01 (1r) (defining “board”) and 227.01 (1) (defining “agency” — an entity having rule-making authority under ch. 227 — in a manner that excludes councils), and I have named it accordingly.
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Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867