

State of Misconsin 2009 - 2010 LEGISLATURE

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## ASSEMBLY AMENDMENT 3, TO 2009 ASSEMBLY BILL 78

April 17, 2009 – Offered by Representative GUNDRUM.

1	At the locations indicated, amend the bill as follows:
2	${f 1.}$ Page 2, line 2: delete the material beginning with that line and ending with
3	page 3, line 2, and substitute:
4	"895.46 (9) (a) The state shall reimburse a state officer or state employee for
5	reasonable attorney fees and costs incurred by the officer or employee in connection
6	with a John Doe proceeding under s. 968.26 (2) arising from the officer's or employee's
7	conduct in the performance of official duties if all of the following apply:
8	1. The officer or employee was acting within the scope of his or her employment.
9	2. The officer or employee is not convicted of a crime arising from the conduct
10	that is the subject of any criminal complaint issued under s. 968.26 (2) (d).
11	(b) The state shall reimburse a state officer or state employee for reasonable
12	attorney fees and costs incurred by the officer or employee in defending a criminal

1	complaint issued under s. 968.26 (2) (d) arising from the officer's or employee's
2	conduct in the performance of official duties if all of the following apply:
3	1. The officer or employee was acting within the scope of his or her employment.
4	2. The officer or employee is not convicted of a crime arising from the conduct
5	that is the subject of the criminal complaint issued under s. 968.26 (2) (d).".
6	<b>2.</b> Page 3, line 10: after " <u>district attorney</u> " insert " <u>or, if the complaint may</u>
7	relate to the conduct of the district attorney, to another prosecutor under s. 978.045".
8	<b>3.</b> Page 3, line 11: after " <u>the judge</u> " insert " <u>may appoint a prosecutor under s.</u>
9	978.045 to attend or participate in the proceeding. The extent to which the
10	prosecutor may attend or participate is within the judge's discretion. The judge".
11	<b>4.</b> Page 3, line 20: after "secret." insert " <u>The judge may allow the district</u>
12	attorney who requested the proceeding under sub. (1) or any prosecutor appointed
13	<u>under sub. (2) (c) to examine witnesses.</u> ".
14	<b>5.</b> Page 4, line 14: after "(b)" insert "1. In this paragraph, "district attorney"
15	includes a prosecutor to whom the judge has referred the complaint under par. (a).".
16	<b>6.</b> Page 4, line 14: before "If a" insert:
17	"2.".
18	7. Page 4, line 15: after "the referral," insert "unless the judge extends that
19	period for cause shown,".
20	8. Page 4, line 18: after "the matter" insert "that are in the custody of the
21	district attorney".

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1	9. Page 4, line 20: after "charges." insert "The judge may require a law
2	enforcement agency to provide to him or her any investigative reports that the law
3	enforcement agency has on the matter.".
4	<b>10.</b> Page 5, line 1: after "(d)" insert "1.".
5	<b>11.</b> Page 5, line 1: after "(b)," insert "if the judge does not appoint a prosecutor
6	under par. (c),".
7	12. Page 5, line 5: after "attorney" insert "or other prosecutor to whom the
8	judge referred the complaint under par. (a)".
9	<b>13.</b> Page 5, line 5: after that line insert:
10	"2. In a proceeding convened under par. (b), if the judge appoints a prosecutor
11	under par. (c), the prosecutor may issue charges.".
12	<b>14.</b> Page 6, line 2: after that line insert:
13	<b>"SECTION 7e.</b> 978.045 (1r) (i) of the statutes is created to read:
14	978.045 (1r) (i) A judge determines that a complaint received under s. 968.26
15	(2) (a) relates to the conduct of the district attorney to whom the judge otherwise
16	would refer the complaint.
17	SECTION 7g. 978.045 (1r) (j) of the statutes is created to read:
18	978.045 (1r) (j) A matter is forwarded under s. 968.26 (2) (b) to the judge.".
19	(END)