



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0236/1
CMH:amn

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 231**

January 23, 2018 - Offered by Representative TUSLER.

1 **AN ACT** *to repeal* 978.001 (1p) and 978.11; *to amend* 13.093 (2) (a), 16.971 (9),
2 16.971 (10), 230.33 (1), 978.03, 978.045 (1g), 978.045 (1r) (bm) (intro.), 978.045
3 (2), 978.05 (9) and 978.12 (1) (c); and *to create* 13.0967, 15.105 (7), 15.77,
4 20.548, 20.923 (4) (f) 7x., 20.923 (6) (hs), 227.118, 227.19 (3) (em), 230.08 (2) (qp),
5 978.001 (1b), (1d) and (1n), 978.003, 978.004 and 978.005 of the statutes;
6 **relating to:** creation of a prosecutor board and a state prosecutors office and
7 making appropriations.

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

8 **SECTION 1.** 13.093 (2) (a) of the statutes is amended to read:
9 13.093 (2) (a) Any bill making an appropriation, any bill increasing or
10 decreasing existing appropriations or state or general local government fiscal
11 liability or revenues, and any bill that modifies an existing surcharge or creates a

1 new surcharge that is imposed under ch. 814, shall, before any vote is taken thereon
2 by either house of the legislature if the bill is not referred to a standing committee,
3 or before any public hearing is held before any standing committee or, if no public
4 hearing is held, before any vote is taken by the committee, incorporate a reliable
5 estimate of the anticipated change in appropriation authority or state or general
6 local government fiscal liability or revenues under the bill, including to the extent
7 possible a projection of such changes in future biennia. The estimate shall also
8 indicate whether any increased costs incurred by the state under the bill can be
9 mitigated through the use of contractual service contracts let in accordance with
10 competitive procedures. For purposes of this paragraph, a bill increasing or
11 decreasing the liability or revenues of the unemployment reserve fund is considered
12 to increase or decrease state fiscal liability or revenues. Except as otherwise
13 provided by joint rules of the legislature or this paragraph, such estimates shall be
14 made by the department or agency administering the appropriation or fund or
15 collecting the revenue. The legislative council staff shall prepare the fiscal estimate
16 with respect to the provisions of any bill referred to the joint survey committee on
17 retirement systems which create or modify any system for, or make any provision for,
18 the retirement of or payment of pensions to public officers or employees. The director
19 of state courts shall prepare the fiscal estimate with respect to the provisions of any
20 bill that modifies an existing surcharge or creates a new surcharge that is imposed
21 under ch. 814. The executive director of the state prosecutors office shall prepare the
22 fiscal estimate with respect to the provisions of any bill that affects prosecutors or
23 the state prosecutors office, including bills modifying or creating crimes or
24 sentencing practices. When a fiscal estimate is prepared after the bill has been
25 introduced, it shall be printed and distributed as are amendments.

1 **SECTION 2.** 13.0967 of the statutes is created to read:

2 **13.0967 Review of bills affecting state prosecutors office.** Any bill that
3 is introduced in either house of the legislature that directly affects the state
4 prosecutors office shall have a notation to that effect on its jacket when the jacket is
5 prepared. When a bill that has that notation on the jacket is introduced, the
6 legislative reference bureau shall submit a copy of the bill to the state prosecutors
7 office.

8 **SECTION 3.** 15.105 (7) of the statutes is created to read:

9 **15.105 (7) STATE PROSECUTORS OFFICE.** There is created a prosecutors office that
10 is attached to the department of administration under s. 15.03. The executive
11 director shall be appointed by the prosecutor board.

12 **SECTION 4.** 15.77 of the statutes is created to read:

13 **15.77 Prosecutor board.** There is created a prosecutor board consisting of
14 11 members, appointed for staggered 3-year terms, as follows:

15 **(1)** From each district under s. 752.11 (1) (b), (c), and (d), 2 district attorneys
16 appointed by a majority of district attorneys from the district.

17 **(2)** From the district under s. 752.11 (1) (a), the district attorney and a deputy
18 district attorney appointed by the district attorney.

19 **(3)** Two nonelected prosecutors, each from a different county, appointed by a
20 majority of nonelected prosecutors. Under this subsection, “prosecutor” does not
21 include a special prosecutor appointed under s. 978.045 or 978.05 (8) (b).

22 **(4)** The attorney general or his or her designee.

23 **SECTION 5.** 16.971 (9) of the statutes, as affected by 2017 Wisconsin Act 59, is
24 amended to read:

1 16.971 (9) In conjunction with the public defender board, the prosecutor board,
 2 the director of state courts, and the departments of corrections and justice ~~and~~
 3 ~~district attorneys,~~ the department may maintain, promote and coordinate
 4 automated justice information systems that are compatible among counties and the
 5 officers and agencies specified in this subsection, using the moneys appropriated
 6 under s. 20.505 (1) (kh) and (kq). The department shall annually report to the
 7 legislature under s. 13.172 (2) concerning the department’s efforts to improve and
 8 increase the efficiency of integration of justice information systems.

9 **SECTION 6.** 16.971 (10) of the statutes is amended to read:

10 16.971 (10) The department shall maintain, and provide the department of
 11 justice and the state prosecutors office with general access to, a case management
 12 system that allows the state prosecutors office and district attorneys to manage all
 13 case-related information and share the information among prosecutors.

14 **SECTION 7.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
 15 the following amounts for the purposes indicated:

	2017-18	2018-19
20.548 Prosecutor board		
(1) COORDINATION AND ADMINISTRATION OF PROSECUTOR FUNCTIONS		
(a) Program administration	GPR A	-0- 225,000

20 **SECTION 8.** 20.548 of the statutes is created to read:

21 **20.548 Prosecutor board.** There is appropriated to the prosecutor board for
 22 the following program:

1 **(1) COORDINATION AND ADMINISTRATION OF PROSECUTOR FUNCTIONS.** (a) *Program*
2 *administration.* The amounts in the schedule for program administration costs of
3 the office of state prosecutors.

4 (g) *Gifts, grants, and proceeds.* All moneys received from gifts and grants and
5 all proceeds from services, conferences, and sales of publications and promotional
6 materials for the purposes for which made or received.

7 **SECTION 9.** 20.923 (4) (f) 7x. of the statutes is created to read:

8 20.923 (4) (f) 7x. State prosecutors office: executive director.

9 **SECTION 10.** 20.923 (6) (hs) of the statutes is created to read:

10 20.923 (6) (hs) State prosecutors office: legislative liaison.

11 **SECTION 11.** 227.118 of the statutes is created to read:

12 **227.118 Review of rules affecting state prosecutors office.** (1) REPORT
13 ON RULES AFFECTING STATE PROSECUTORS OFFICE. If a proposed rule directly affects the
14 state prosecutors office, the agency proposing the rule shall, prior to submitting the
15 proposed rule to the legislative council staff under s. 227.15, submit the proposed
16 rule to the state prosecutors office. The state prosecutors office shall prepare a report
17 on the proposed rule before it is submitted to the legislative council staff under s.
18 227.15. The state prosecutors office may request any information from other state
19 agencies, local governments, individuals, or organizations that is reasonably
20 necessary for the office to prepare the report. The state prosecutors office shall
21 prepare the report within 30 days after the rule is submitted to the office.

22 **(2) FINDINGS OF THE OFFICE TO BE CONTAINED IN THE REPORT.** The report of the
23 state prosecutors office shall contain information about the effect of the proposed
24 rule on the state prosecutors office.

1 **(3) APPLICABILITY.** This section does not apply to emergency rules promulgated
2 under s. 227.24.

3 **SECTION 12.** 227.19 (3) (em) of the statutes is created to read:

4 227.19 **(3)** (em) The report of the state prosecutors office, if the proposed rule
5 directly affects the state prosecutors office.

6 **SECTION 13.** 230.08 (2) (qp) of the statutes is created to read:

7 230.08 **(2)** (qp) The executive director and legislative liaison in the office of
8 state prosecutors.

9 **SECTION 14.** 230.33 (1) of the statutes is amended to read:

10 230.33 **(1)** A person appointed to an unclassified position by the governor,
11 elected officer, judicial body, or prosecutor board, or by a legislative body or
12 committee shall be granted a leave of absence without pay for the duration of the
13 appointment and for 3 months thereafter, during which time the person has
14 restoration rights to the former position or equivalent position in the department in
15 which last employed in a classified position without loss of seniority. The person
16 shall also have reinstatement privileges for 5 years following appointment to the
17 unclassified service or for one year after termination of the unclassified appointment
18 whichever is longer. Restoration rights and reinstatement privileges shall be
19 forfeited if the reason for termination of the unclassified appointment would also be
20 reason for discharge from the former position in the classified service.

21 **SECTION 15.** 978.001 (1b), (1d) and (1n) of the statutes are created to read:

22 978.001 **(1b)** “Board” means the prosecutor board.

23 **(1d)** “Executive director” means the executive director appointed under s.
24 978.003 (3).

25 **(1n)** “Office” means the state prosecutors office.

1 **SECTION 16.** 978.001 (1p) of the statutes is repealed.

2 **SECTION 17.** 978.003 of the statutes is created to read:

3 **978.003 Board; duties.** The board shall do all of the following:

4 (1) Submit the budget in accordance with s. 16.42 after the executive director
5 submits the budget to the board and the board approves it.

6 (2) At least annually submit to the joint committee on finance
7 recommendations on the allocation of prosecutor resources.

8 (3) Appoint an attorney with experience in criminal prosecution as the
9 executive director of the office.

10 (4) Oversee, and set policy initiatives for, the executive director.

11 (5) Review existing law or proposed legislation and make recommendations to
12 the legislature.

13 **SECTION 18.** 978.004 of the statutes is created to read:

14 **978.004 State prosecutors office executive director.** (1) The executive
15 director shall do all of the following:

16 (a) Manage and direct the office subject to the policy initiatives set under s.
17 978.003 (4).

18 (b) Prepare and submit to the board for its approval a budget and any personnel
19 and employment policies that the board requires.

20 (c) Prepare and submit to the board and other appropriate persons an annual
21 report of the activities of the office in the form that the board directs.

22 (d) Represent the board before the governor, the legislature, bar associations,
23 courts, and other appropriate entities.

24 (e) Appoint in the classified service an executive assistant and all other
25 employees of the office. Before making an appointment under this paragraph, the

1 executive director shall notify the board of any prospective appointment. If the board
2 does not object to the prospective appointment within 7 working days after
3 notification, the executive director may make the appointment. If the board objects
4 to a prospective appointment, the executive director may not make the appointment
5 until the board approves it.

6 (f) Prepare fiscal estimates on bills affecting prosecutors or the office, including
7 bills modifying or creating crimes or sentencing practices. To prepare a fiscal
8 estimate, the executive director shall consult with and obtain data from district
9 attorneys. The executive director shall transmit a draft fiscal estimate to the board.
10 If the board does not object to the draft fiscal estimate within 7 working days after
11 receiving it, the executive director may submit the fiscal estimate. If the board
12 objects to a draft fiscal estimate, the executive director may not submit the fiscal
13 estimate until the board approves it.

14 (2) The executive director may identify methods and practices for district
15 attorneys that promote professional competence, ethical practices, and
16 evidence-based practices.

17 **SECTION 19.** 978.005 of the statutes is created to read:

18 **978.005 Limits on board and executive director.** Neither the board nor
19 the executive director may make any decision regarding the handling of any case nor
20 interfere with any district attorney in carrying out professional duties. Neither the
21 board nor the office may interfere with or infringe upon the autonomy of a district
22 attorney or upon the authority of a district attorney to manage his or her own
23 prosecutorial unit.

24 **SECTION 20.** 978.03 of the statutes is amended to read:

1 **978.03 Deputies and assistants in certain prosecutorial units. (1)** The
2 district attorney of any prosecutorial unit having a population of 500,000 or more
3 may appoint 7 deputy district attorneys and such assistant district attorneys as may
4 be requested by the department of administration, or by the board, and authorized
5 in accordance with s. 16.505. The district attorney shall rank the deputy district
6 attorneys for purposes of carrying out duties under this section. The deputies,
7 according to rank, may perform any duty of the district attorney, under the district
8 attorney's direction. In the absence or disability of the district attorney, the deputies,
9 according to rank, may perform any act required by law to be performed by the
10 district attorney. Any such deputy must have practiced law in this state for at least
11 2 years prior to appointment under this section.

12 **(1m)** The district attorney of any prosecutorial unit having a population of
13 200,000 or more but not more than 499,999 may appoint 3 deputy district attorneys
14 and such assistant district attorneys as may be requested by the department of
15 administration, or by the board, and authorized in accordance with s. 16.505. The
16 district attorney shall rank the deputy district attorneys for purposes of carrying out
17 duties under this section. The deputies, according to rank, may perform any duty
18 of the district attorney, under the district attorney's direction. In the absence or
19 disability of the district attorney, the deputies, according to rank, may perform any
20 act required by law to be performed by the district attorney. Any such deputy must
21 have practiced law in this state for at least 2 years prior to appointment under this
22 section.

23 **(2)** The district attorney of any prosecutorial unit having a population of
24 100,000 or more but not more than 199,999 may appoint one deputy district attorney
25 and such assistant district attorneys as may be requested by the department of

1 administration, or by the board, and authorized in accordance with s. 16.505. The
2 deputy may perform any duty of the district attorney, under the district attorney's
3 direction. In the absence or disability of the district attorney, the deputy may
4 perform any act required by law to be performed by the district attorney. The deputy
5 must have practiced law in this state for at least 2 years prior to appointment under
6 this section.

7 **(3)** Any assistant district attorney under sub. (1), (1m), or (2) must be an
8 attorney admitted to practice law in this state and, except as provided in s. 978.043
9 (1), may perform any duty required by law to be performed by the district attorney.
10 The district attorney of the prosecutorial unit under sub. (1), (1m), or (2) may appoint
11 such temporary counsel as may be authorized by the ~~department of administration~~
12 board.

13 **SECTION 21.** 978.045 (1g) of the statutes is amended to read:

14 978.045 **(1g)** A court on its own motion may appoint a special prosecutor under
15 sub. (1r) or a district attorney may request a court to appoint a special prosecutor
16 under that subsection. Before a court appoints a special prosecutor on its own motion
17 or at the request of a district attorney for an appointment that exceeds 6 hours per
18 case, the court or district attorney shall request assistance from a district attorney,
19 deputy district attorney or assistant district attorney from other prosecutorial units
20 or an assistant attorney general. A district attorney requesting the appointment of
21 a special prosecutor, or a court if the court is appointing a special prosecutor on its
22 own motion, shall notify the ~~department of administration, on a form provided by~~
23 ~~that department, of office that the district attorney's attorney or the court's inability~~
24 court, whichever is appropriate, is unable to obtain assistance from another
25 prosecutorial unit or from an assistant attorney general.

1 **SECTION 22.** 978.045 (1r) (bm) (intro.) of the statutes, as affected by 2017
2 Wisconsin Act 59, is amended to read:

3 978.045 **(1r)** (bm) (intro.) The judge may appoint an attorney as a special
4 prosecutor at the request of a district attorney to assist the district attorney in the
5 prosecution of persons charged with a crime, in grand jury proceedings, in
6 proceedings under ch. 980, or in investigations. Except as provided under par. (bp),
7 the judge may appoint an attorney as a special prosecutor only if the judge or the
8 requesting district attorney submits an affidavit to the ~~department of~~
9 ~~administration~~ office attesting that any of the following conditions exists:

10 **SECTION 23.** 978.045 (2) of the statutes is amended to read:

11 978.045 **(2)** If the ~~department of administration~~ office approves the
12 appointment of a special prosecutor under sub. (1r), the court shall fix the amount
13 of compensation for the attorney appointed according to the rates specified in s.
14 977.08 (4m) (b). The department of administration shall pay the compensation
15 ordered by the court from the appropriation under s. 20.475 (1) (d). The court, district
16 attorney, and the special prosecutor shall provide any information regarding a
17 payment of compensation that the department requests. Any payment under this
18 subsection earns interest on the balance due from the 121st day after receipt of a
19 properly completed invoice or receipt and acceptance of the property or service under
20 the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a)
21 compounded monthly.

22 **SECTION 24.** 978.05 (9) of the statutes is amended to read:

23 978.05 **(9)** BUDGET. Prepare a biennial budget request for submission to the
24 ~~department~~ executive director under s. ~~978.11~~ 978.004 (1) (b) by September 1 of each
25 even-numbered year.

1 **SECTION 25.** 978.11 of the statutes is repealed.

2 **SECTION 26.** 978.12 (1) (c) of the statutes is amended to read:

3 978.12 (1) (c) *Assistant district attorneys.* Assistant district attorneys shall be
4 employed outside the classified service. For purposes of salary administration, the
5 administrator of the division of personnel management in the department of
6 administration, in consultation with the office, shall establish one or more
7 classifications for assistant district attorneys in accordance with the classification
8 or classifications allocated to assistant attorneys general. Except as provided in ss.
9 111.93 (3) (b) and 230.12 (10), the salaries of assistant district attorneys shall be
10 established and adjusted in accordance with the state compensation plan for
11 assistant attorneys general whose positions are allocated to the classification or
12 classifications established by ~~the administrator of the division of personnel~~
13 ~~management in the department of administration~~ under this paragraph.

14 **SECTION 27. Nonstatutory provisions.**

15 (1) PROSECUTOR BOARD.

16 (a) *Initial terms for prosecutor board members.*

17 1. The department of administration and the state prosecutors office shall
18 administer and oversee the election of the initial members of the prosecutor board
19 by May 1, 2018. The initial members shall select an executive director of the
20 prosecutors office as provided under section 978.003 (3) of the statutes to begin on
21 the effective date of this subdivision.

22 2. Notwithstanding section 15.77 of the statutes, of the members of the
23 prosecutor board who are elected under subdivision 1. as initial members, one
24 member representing each district under section 752.11 (1) (b) and (d) of the statutes
25 and one member under section 15.77 (3) of the statutes shall serve for a one-year

1 term and one member representing the district under section 752.11 (1) (c) of the
2 statutes, one member under section 15.77 (2) of the statutes, and one member under
3 section 15.77 (3) of the statutes shall serve for a 2-year term.

4 (b) *Transfer of state prosecutors office.*

5 1. 'Assets and liabilities.' On the effective date of this subdivision, the assets
6 and liabilities of the department of administration that are primarily related to the
7 state prosecutors office, as determined by the secretary of administration, become
8 the assets and liabilities of the prosecutor board.

9 2. 'Tangible personal property.' On the effective date of this subdivision, all
10 tangible personal property, including records, of the department of administration
11 that is primarily related to the state prosecutors office, as determined by the
12 secretary of administration, is transferred to the prosecutor board.

13 3. 'Contracts.' All contracts entered into by the department of administration
14 that are primarily related to the state prosecutors office, as determined by the
15 secretary of administration, in effect on the effective date of this subdivision, remain
16 in effect and are transferred to the prosecutor board. The prosecutor board shall
17 carry out any such contractual obligations unless modified or rescinded by the
18 prosecutor board to the extent allowed under the contract.

19 4. 'Pending matters.' Any matter pending with the department of
20 administration that is primarily related to the state prosecutors office, as
21 determined by the secretary of administration, on the effective date of this
22 subdivision, is transferred to the prosecutor board, and all materials submitted to or
23 actions taken by the department of administration, with respect to the pending
24 matter are considered as having been submitted to or taken by the prosecutor board.

1 5. 'Rules and orders.' All rules promulgated for the department of
2 administration that are primarily related to the state prosecutors office, as
3 determined by the secretary of administration, that are in effect on the effective date
4 of this subdivision remain in effect until their specified expiration dates or until
5 amended or repealed by the prosecutor board.

6 (c) *Plan for office space for prosecutors office.*

7 1. The prosecutor board, in consultation with the department of
8 administration, shall, no later than March 1, 2018, submit to the joint committee on
9 finance a plan to house the prosecutors office in the space that, on the effective date
10 of this subdivision, is occupied by the director of the state prosecutors office.

11 2. The plan submitted under subdivision 1. shall include provisions for the
12 acquisition or release, as appropriate, of space; the relocation, if necessary, of staff
13 and tangible personal property; and any other provisions necessary for the
14 transition. The plan shall provide office space for a legislative liaison and a space
15 to accommodate meetings of the prosecutor board.

16 3. If the cochairpersons of the joint committee on finance do not notify the
17 prosecutor board within 14 working days after the date the plan is submitted under
18 subdivision 1. that the committee has scheduled a meeting to take place for the
19 purpose of reviewing the plan, the prosecutor board shall implement the plan. If,
20 within 14 working days after the date the plan is submitted under subdivision 1., the
21 cochairpersons of the joint committee on finance notify the prosecutor board that the
22 committee has scheduled a meeting for the purpose of reviewing the plan, the
23 prosecutor board shall incorporate into the plan all changes made by the committee
24 and implement the plan.

25 **SECTION 28. Fiscal changes.**

