



1997 SENATE BILL 399

January 15, 1998 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT** *to repeal* 15.04 (1) (h); and *to amend* 16.045 (5), 972.14 (2), 972.15 (2s)
2 and 978.05 (8) (b) of the statutes; **relating to:** disclosure of juvenile
3 adjudications in criminal sentencing proceedings; requests by a district
4 attorney for assistance in carrying out his or her duties; annual reports by state
5 agencies concerning records and forms management; and reports by the
6 department of administration concerning distribution and usage of gasohol and
7 alternative fuels in this state (suggested as remedial legislation by the
8 department of administration.)

Analysis by the Legislative Reference Bureau

This bill makes the following changes in current law:

1. Under current law, if a person under the age of 21 is convicted of a crime, the sentencing judge or, if applicable, the person preparing any presentence investigation report ordered by the judge must ask the person whether he or she was adjudicated delinquent in the 3-year period preceding the date on which the criminal complaint was issued against the person. This bill changes the 3-year period to a 4-year period to reflect the enactment of 1995 Wisconsin Act 27, which lowered from 18 to 17 the age at which an adult criminal court has jurisdiction over a person who violates the criminal law. Also, current law refers only to delinquency

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adjudications under the law that was in effect before the enactment of 1995 Wisconsin Act 77, which created a new juvenile justice code. This bill adds a reference to delinquency adjudications under the new juvenile justice code created by 1995 Wisconsin Act 77.

2. Under current law, a district attorney is responsible not only for prosecuting criminal actions but also for prosecuting certain forfeiture (civil monetary penalty) cases, certain criminal appeals and certain civil actions and special proceedings. Current law also specifies that a district attorney may request an assistant attorney general or a district attorney (or assistant and deputy district attorney) from another office to assist in investigating and prosecuting a criminal matter. This bill provides that a district attorney may request other district attorneys or assistant attorneys general to assist in the investigation and prosecution of any matter for which the district attorney is responsible.

3. Currently, the head of each state agency is required to file an annual report with the public records board containing such information concerning records and forms management as may be required by the board. This bill deletes this requirement.

4. Currently, the department of administration is required to report to the appropriate legislative standing committees concerning distribution and usage of gasohol and alternative fuels in this state no later than January 1 and July 1 of each year. This bill requires this report to be filed no later than April 30 of each year.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of administration and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 15.04 (1) (h) of the statutes is repealed.

NOTE: This statute requires agencies to file an annual report with the public records board, relative to records and forms management. Because the public records board no longer requires this report, this statute is obsolete.

2 **SECTION 2.** 16.045 (5) of the statutes is amended to read:

3 16.045 (5) The department shall encourage distribution of gasohol and
4 alternative fuels and usage of gasohol and alternative fuels by officers and employes

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1 who use personal motor vehicles on state business and by residents of this state
2 generally. The department shall report to the appropriate standing committees
3 under s. 13.172 (3) concerning distribution and usage of gasohol and alternative fuels
4 in this state, no later than ~~January 1 and July 1~~ April 30 of each year.

NOTE: This SECTION changes filing date deadline in current law for the department of administration's report to the legislature concerning distribution and usage of gasohol and alternative fuels from January 1 and July 1 of each year to April 30 of each year. According to the department of administration, it will be more time-effective and cost-effective to provide these reports on an annual basis, and will allow the report to be based on a full calendar year of information.

5 **SECTION 3.** 972.14 (2) of the statutes is amended to read:

6 972.14 (2) Before pronouncing sentence, the court shall ask the defendant why
7 sentence should not be pronounced upon him or her and allow the district attorney,
8 defense counsel and defendant an opportunity to make a statement with respect to
9 any matter relevant to the sentence. In addition, if the defendant is under 21 years
10 of age and if the court has not ordered a presentence investigation under s. 972.15,
11 the court shall ask the defendant if he or she has been adjudged delinquent under
12 ch. 48 or 938 or has had a similar adjudication in any other state in the ~~3~~ 4 years
13 immediately preceding the date the criminal complaint relating to the present
14 offense was issued.

15 **SECTION 4.** 972.15 (2s) of the statutes is amended to read:

16 972.15 (2s) If the defendant is under 21 years of age, the person preparing the
17 presentence investigation report shall attempt to determine whether the defendant
18 has been adjudged delinquent under ch. 48 or 938 or has had a similar adjudication
19 in any other state in the ~~3~~ 4 years immediately preceding the date the criminal
20 complaint relating to the present offense was issued and, if so, shall include that
21 information in the report.

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NOTE: In 1995 Wisconsin Act 27, the age at which an adult criminal court has jurisdiction over a person who violates the criminal law was lowered from age 18 to age 17. Also, in 1995 Wisconsin Act 77, many cross-references in other chapters of the statutes which had been to ch. 48, were changed to add an additional cross-reference to ch. 938, the new juvenile code.

The 2 preceding SECTIONS make cross-reference changes to ch. 938 which were omitted from 2 sections of ch. 972 regarding inquiries of past delinquency adjudications in presentencing proceedings. In addition, these SECTIONS require the sentencing judge or person preparing the presentence report to ask a person if he or she was adjudged delinquent in the last 4 years. According to the department of administration, these changes are necessary because currently, during the sentencing of a person who is under 21 years of age and when no presentencing investigation is undertaken, the court is only required to ask the defendant if he or she had been adjudged delinquent under ch. 48 within the last 3 years. Similarly, when a presentence investigation is being completed on a person under 21 years of age, the investigator is only required by the court to ask the defendant if he or she had been adjudged delinquent under ch. 48 within the last 3 years.

According to the department of administration, the intent of new ch. 938 is to have the judge consider adjudications of delinquency under ch. 938. After July 1, 1999, 3 years after the effective date of ch. 938, ch. 48 juvenile delinquency adjudications within the last 3 years would become an impossibility, thus requiring the addition of a reference to ch. 938 adjudications.

1 **SECTION 5.** 978.05 (8) (b) of the statutes is amended to read:

2 978.05 (8) (b) Hire, employ and supervise his or her staff and make appropriate
3 assignments of the staff throughout the prosecutorial unit. The district attorney
4 may request the assistance of district attorneys, deputy district attorneys or
5 assistant district attorneys from other prosecutorial units or assistant attorneys
6 general who then may appear and assist in the investigation and prosecution of
7 ~~criminal matters~~ any matter for which a district attorney is responsible under this
8 chapter in like manner as assistants in the prosecutorial unit and with the same
9 authority as the district attorney in the unit in which the action is brought. Nothing
10 in this paragraph limits the authority of counties to regulate the hiring, employment
11 and supervision of county employees.

NOTE: District attorneys perform many functions in addition to prosecuting crimes; they also perform such functions as the prosecutions of traffic and nontraffic forfeitures, seek the involuntary terminations of parental rights, seek protection and services for children, and perform a variety of civil procedures. According to the department of administration, the legislative intent of s. 978.05 (8) (b) was to allow an efficient way for a district attorney to obtain assistance from current state employe attorneys in performing his or her duties. Because the current statute allows this assistance to be

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provided only in the investigation and prosecution of criminal matters, it is too narrow.
This SECTION permits this assistance to be provided for a broader range of activities.

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(END)