2021 SENATE BILL 514

August 19, 2021 – Introduced by Senators JOHNSON, LARSON, AGARD and ROYS, cosponsored by Representatives BOWEN, HONG, ANDERSON, BALDEH, BILLINGS, BROSTOFF, CABRERA, CONLEY, EMERSON, GOYKE, HEBL, MOORE OMOKUNDE, NEUBAUER, SHELTON and SINICKI. Referred to Committee on Judiciary and Public Safety.

1   AN ACT *to renumber and amend* 978.045 (1g); and *to amend* 175.47 (5) of the

2   statutes; **relating to:** prosecution decisions following deaths involving law

3   enforcement officers.

Analysis by the Legislative Reference Bureau

Current law requires an investigation following a death that involves a law enforcement officer and outlines specific requirements of the investigation. One requirement is that the investigators provide a report of the investigation to the district attorney of the county in which the death occurred, and that district attorney must determine whether to prosecute the officer. This bill requires instead that the district attorney provide the report to a special prosecutor appointed by the court and that special prosecutor then must determine whether to prosecute the officer.

For further information see the state and local 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:

4   **SECTION 1.** 175.47 (5) of the statutes is amended to read:

5   175.47 **(5)** (a) The investigators conducting the investigation under sub. (3) (a)

6   shall, in an expeditious manner, provide a complete report to the district attorney of

1   the county in which the officer-involved death occurred. <u>The district attorney that</u>

2   <u>receives the report shall request a judge to appoint a special prosecutor under s.</u>

3   <u>978.045 (1r) and shall provide the report to the special prosecutor. The special</u>

4   <u>prosecutor shall determine if there is a basis to prosecute the law enforcement officer</u>

5   <u>involved in the officer-involved death. If the special prosecutor files charges against</u>

6   <u>the officer, the special prosecutor shall be the prosecuting attorney in the case.</u>

7   (b) If the ~~district attorney~~ <u>special prosecutor appointed under par. (a)</u>

8   determines there is no basis to prosecute the law enforcement officer involved in the

9   officer-involved death, the investigators conducting the investigation under sub. (3)

10   (a) shall release the report, except that the investigators shall, before releasing the

11   report, delete any information that would not be subject to disclosure pursuant to a

12   request under s. 19.35 (1) (a).

13   **SECTION 2.** 978.045 (1g) of the statutes is renumbered 978.045 (1g) (a) and

14   amended to read:

15   978.045 **(1g)** (a) A court on its own motion may appoint a special prosecutor

16   under sub. (1r) ~~or~~<u>, and, notwithstanding sub. (1r) (bm), a court shall appoint a special</u>

17   <u>prosecutor in response to a request from a district attorney under s. 175.47 (5) (a).</u>

18   <u>Except as provided under s. 175.47 (5) (a),</u> a district attorney may request a court to

19   appoint a special prosecutor under ~~that subsection~~ <u>sub. (1r)</u>.

20   <u>(b)</u> Before a court appoints a special prosecutor on its own motion or at the

21   request of a district attorney for an appointment that exceeds 6 hours per case, the

22   court or district attorney shall request assistance from a district attorney, deputy

23   district attorney or assistant district attorney from other prosecutorial units or an

24   assistant attorney general. A district attorney requesting the appointment of a

25   special prosecutor, or a court if the court is appointing a special prosecutor on its own

1   motion, shall notify the department of administration, on a form provided by that

2   department, of the district attorney's or the court's inability to obtain assistance from

3   another prosecutorial unit or from an assistant attorney general. This paragraph

4   does not apply to a request from a district attorney under s. 175.47 (5) (a).

5   **SECTION 3. Initial applicability.**

6   (1) This act first applies to reports provided on the effective date of this

7   subsection.

8   **(END)**