

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/25/99**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Senate Democratic Caucus**

By/Representing: **Walter**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **MGD**

Pre Topic:

SDC:.....Walter - Caucus # 2018,

Topic:

DOJ SVP attorney position

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>
/1	olsenje 06/25/99	jgeller 06/26/99	ismith 06/27/99	_____	lrb_docadmin 06/27/99		

FE Sent For:

<END>

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/1	olsenje	1 6/26 jlg	IS 6/27	IS JF 6/27			

FE Sent For:

<END>

yes

61308

SDC

Agency: Justice

caucus number 2018

duplicate flag:
duplicate with:

Other reference numbers: Paper 376 alt A3	LFB Sum #:
bill number/amendment number:	
LRB draft #	LRB P-draft:

description: Paper 376, Alt A3. Modify Gov's recommendation by providing an additional \$58,400 annually and 1.0 attorney position to DOJ.

other notes

drafting instructions:

more instructions:

Agency: Justice

Number of Amendments: 1

455 (1). (a)



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 5, 1999

Joint Committee on Finance

Paper #376

Prosecutors For Sexually Violent Person Commitment Cases (District Attorneys and Justice)

[LFB 1999-01 Budget Summary: Page 188, #2 and Page 382, #7]

CP201K

CURRENT LAW

1997 Act 27 created 2.0 assistant district attorney (ADA) project positions to prosecute sexually violent person (sex predator) commitments. Act 27 also created, in the Department of Justice, 2.0 trial attorney project positions and 0.5 project paralegal to prosecute sexually violent person cases, and 2.0 attorney project positions for appellate work regarding sexually violent person cases. All positions will terminate on June 30, 1999.

GOVERNOR

Provide \$152,500 and 2.0 positions annually to make permanent two assistant district attorney project positions, one in Brown County and the other in Milwaukee County, which prosecute cases under the sexually violent person commitment law (Chapter 980). (Funding and position authority for the project positions are deleted as noncontinuing elements under the standard budget adjustments.) Under the bill, the positions would statutorily be required to prosecute sexually violent person commitment proceedings exclusively. These positions would be authorized, by statute, to file and prosecute these cases in any county throughout the state. The bill also requires district attorneys to maintain records of the time spent on Chapter 980 prosecutions, and to submit an annual report to the Department of Administration (DOA) summarizing those records. DOA would be required to maintain this information. The recordkeeping and reporting requirements would sunset on July 1, 2001.

Provide \$283,500 and 3.5 positions annually to convert 3.5 project positions related to sexually violent commitment (Chapter 980) cases to permanent status within the Department of Justice (DOJ). (Funding and position authority for 4.5 project positions are removed as non-continuing items under the standard budget adjustments). The 3.5 positions include 2.0 attorney

positions for the appellate unit to handle appeals associated with sexually violent person (sex predator) cases; and 1.0 trial attorney position and 0.5 paralegal position to prosecute sexually violent person commitment cases. Note that 1.0 project trial attorney position, also created in Act 27, would not be converted to a permanent position and would, therefore, terminate on June 30, 1999.

DISCUSSION POINTS

Trial Attorneys

1. The Governor's recommendation would make permanent 2.0 ADA project positions and 1.0 of the 2.0 DOJ attorney project positions that prosecute sexually violent persons. Although one ADA position is assigned to Brown County and the other to Milwaukee County, both positions are regional prosecutors and therefore, can prosecute sexually violent person (SVP) commitment cases in other counties. For example, the Brown County ADA is currently prosecuting cases in Waupaca and Kewaunee counties, and offers technical assistance (such as supplying forms and providing consultation) to 17 counties in northeast Wisconsin. The Milwaukee County district attorney's office had agreed to handle cases in Milwaukee, Ozaukee, and Washington counties. However, according to DOJ, the workload in Milwaukee County alone prohibits that SVP prosecutor from handling cases from other counties. DOJ officials indicate that the SVP prosecutors in DOJ have taken four of Milwaukee County's pending cases, and will take four new referrals for Milwaukee County to help reduce the Milwaukee County ADA's workload.

2. When the project positions were created two years ago, the constitutionality of the sexual predator law was uncertain. The U.S. Supreme Court has considered the constitutionality of a similar law in Kansas and has ruled that the Kansas law is constitutional. As a result, the Governor recommends that three of the four positions convert to permanent status.

3. Since 1994, when the SVP commitment law took effect, DOJ has received 297 SVP referrals from the Department of Corrections (DOC) and seven DAs have directly petitioned the court for SVP commitments. The table below identifies the status of these 304 cases.

New Referrals Not Yet Filed	8
Pending	75
Referral Withdrawn by DOC	1
Prosecution Denied	19
Dismissals	52
Commitments	<u>149</u>
	304

4. Since the law's inception, DOJ has prosecuted 47 of these cases, Milwaukee County has prosecuted 72 cases and Brown County, 30 cases. The remaining cases have been handled by other DA offices. Since June 1, 1998, when the two DOJ attorney positions were hired, DOJ has

handled 25 of the 46 SVP cases received from DOC (54%), Milwaukee County has handled 11 of the cases (24%), Brown County has handled five of the cases (11%) and five of the cases have been handled by other counties (11%). The number of new referrals has stabilized at approximately four to five per month.

5. Under the bill, statutory language would be created to: (a) specify that, at the request of a district attorney, the SVP ADA could file and prosecute SVP commitment proceedings in any prosecutorial unit in the state; and (b) specify that the SVP ADAs could engage only in the prosecution of SVP commitment proceeding under chapter 980. Both these provisions reflect legislative intent and current practice.

6. Under the Governor's recommendation, the sunset date for requiring district attorneys to maintain records of the time spent on Chapter 980 prosecutions and to submit an annual report to DOA summarizing those records would be extended from July 1, 1999 to July 1, 2001. The first annual reports, covering July 1, 1997 through June 30, 1998, showed that the Brown County DA office spent 1,213 hours prosecuting SVP cases, and the Milwaukee County DA office spent 1,857 hours on SVP cases. These hours do not include time spent by the SVP ADA consulting with or providing technical assistance to other counties regarding SVP prosecutions. The district attorney weighted caseload methodology assumes each prosecutor has 1,227 hours available each year for prosecuting cases. Since the SVP positions were not created until after budget passage in October, 1997, it appears that both DA offices are spending more time on SVP prosecutions than that available for one full-time position.

7. The Governor's recommendation eliminates 1.0 SVP prosecutor position within DOJ. DOJ reported spending 4,539 hours on SVP cases in calendar year 1998, or 2,270 hours per SVP prosecutor. If the Committee wishes to provide three SVP prosecutors, as the Governor recommended, and use workload as the basis for its decision, the DOJ prosecutor could be maintained and the Brown County prosecutor deleted, since Brown County has prosecuted the fewest cases and has spent the least amount of time on SVP cases.

8. It could also be argued that all four SVP prosecutors are needed, since all four prosecutors can demonstrate spending more than 1,227 hours on SVP cases annually. Consequently, the Committee may wish to make permanent all four SVP prosecutor positions (1.0 in Milwaukee County, 1.0 in Brown County, and 2.0 within DOJ).

Appellate Attorneys

9. In regard to the 2.0 SVP appellate attorneys, the following table shows the growth in caseload for SVP appellate cases.

Number of SVP Appeals Handled by DOJ Attorneys

<u>Fiscal Year</u>	<u>State Appeals Court*</u>	<u>State Supreme Court*</u>	<u>Federal District Court*</u>	<u>U.S. Supreme Court*</u>	<u>Total</u>
1995	26	1	0	0	27
1996	21	2	1	0	24
1997	25	3	2	1	31
1998	36	2	0	0	38
1999	34	10	2	0	46
TOTAL	142	18	5	1	166

*Includes Petitions for Review or Leave to Appeal, and Oral Arguments.

10. According to DOJ officials, appeals from SVP commitment cases arise not only from the initial commitment, but also from periodic reexaminations, allowed by statute, six months after commitment and every 12 months thereafter. DOJ officials indicate that the issues handled by the 2.0 appellate attorneys range from constitutional, evidentiary, and procedural. Many of the appeals cases are filed by unrepresented litigants, which adds to the workload of the DOJ attorneys. DOJ anticipates the number of SVP commitment appeals to continue to increase as additional persons are committed under chapter 980.

11. In addition to their casework, the 2.0 appellate attorneys participate in quarterly meetings with lawyers, clinicians and administrators from DOC and the Department of Health and Family Services to coordinate sex predator commitment procedures and related subjects, as well as consult with staff from those departments on Chapter 980 issues.

Statutory Provisions

12. The provision under the bill to statutorily prohibit the SVP ADA from doing any work other than work related to SVP prosecutions may be questioned as unnecessary and, potentially, problematic. This statutory prohibition would not allow a DA to temporarily assign the SVP ADA to fill in for another ADA when the need arises, such as if another ADA was absent due to illness or vacation. The Brown County DA office indicates that its SVP ADA is sometimes needed to handle felony and misdemeanor hearings due to a shortage of prosecutors that must cover ten criminal courts. This prohibition could be seen as putting an unnecessary constraint on DAs. An alternative to the statutory prohibition could be to broaden the reporting requirements to include time spent on SVP non-case activities, such as training and consultation, since these activities are also part of a SVP commitment ADA's duties. In addition, the Committee may wish to delete the sunset provision for the record-keeping and reporting requirements. The sunset date was created in case the U.S. Supreme Court found sexually violent person commitment laws unconstitutional. Since the U.S. Supreme Court has ruled that these laws are constitutional, and if these positions are converted to permanent status, the Committee may wish the record-keeping and reporting requirements to continue.

G/B

BILLMOTION#

A1

PREVAIL	FAIL
Burke	N
Decker	N
Jauch	N
Moore	N
Shibiski	N
Plache	N
Cowles	N
Panzer	N
Gard	N
Porter	N
Kaufert	N
Albers	N
Duff	N
Ward	N
Huber	N
Riley	N
AYES	16
NOES	0

Decker/Burke

BILLMOTION#

B2

PREVAIL	FAIL
Burke	N
Decker	N
Jauch	N
Moore	N
Shibiski	N
Plache	N
Cowles	N
Panzer	N
Gard	N
Porter	N
Kaufert	N
Albers	N
Duff	N
Ward	N
Huber	N
Riley	N
AYES	8
NOES	8

FAIL



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1308/1

JEO:.....

Soon

1
jlg

SDC:.....Walter – Caucus # 2018, DOJ SVP attorney position

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 218, line 3: increase the dollar amount for fiscal year 1999-00 by
3 \$58,400[✓] and increase the dollar amount for fiscal year 2000-01 by \$58,400 for the
4 purpose of increasing the authorized FTE positions of the department of justice by
5 1.0 GPR attorney position to prosecute sexually violent person commitment cases.

6

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1308/1
JEO:jl:g:ijs

SDC:.....Walter – Caucus # 2018, DOJ SVP attorney position

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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