



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #461

Pay Progression -- Assistant Attorneys General (Justice)

[LFB 2019-21 Budget Summary: Page 254, #12]

CURRENT LAW

Under 2011 Act 238 and 2013 Act 20, assistant district attorneys (ADAs) and deputy district attorneys (DDAs) are compensated pursuant to a merit-based pay progression plan under which prosecutors may receive annual salary adjustments. Act 20 also established a pay progression plan for assistant state public defenders (ASPDs) and assistant attorneys general (AAGs) that mirrors the pay progression plan provided to assistant and deputy district attorneys. The merit-based pay progression plan consists of 17 hourly salary steps, with each step equal to one-seventeenth of the difference between an attorney's lowest hourly salary and the attorney's highest possible annual salary. Notwithstanding the creation of a 17 hourly salary step pay progression plan, District Attorneys, the State Public Defender, and the Attorney General may: (a) deny annual salary increases to individual ADAs, DDAs, ASPDs, and AAGs; or (b) increase the salary of individual ADAs, DDAs, ASPDs, and AAGs by up to 10% per year. In order to be eligible for pay progression, individuals generally must have served the state as an ADA, DDA, ASPD, or AAG for a continuous period of 12 months or more.

The Department of Justice (DOJ) has utilized existing resources, including discretionary settlement funds, to support salary adjustments for AAGs. Under 2017 Act 369, discretionary settlement funds are required to be deposited into the general fund. This provision is currently under litigation.

The Department of Justice is currently authorized 101.40 AAG and AAG supervisor positions, including 78.25 GPR attorneys, 18.9 PR attorneys, and 4.25 FED attorneys.

GOVERNOR

Provide funding equal to a 2% increase for all AAGs on January 1, 2020 and 2021. No amounts are provided in compensation reserves for AAGs for a general wage adjustment (2%/2% for other state employees in 2019-21). Rather, the 2%/2% amounts are included in DOJ's budget and may be distributed at the discretion of the Attorney General.

The bill provides \$70,100 GPR, \$15,600 PR, and \$3,500 FED in 2019-20 and \$141,500 GPR, \$31,600 PR, and \$6,200 FED in 2020-21 to support pay progression plan for assistant attorney general attorneys.

DISCUSSION POINTS

1. On May 28, 2019, the Committee addressed the issue of pay progression funding related to the District Attorneys, State Public Defender, and DOJ in budget paper #270-Revised. On that date, the Committee adopted a motion to provide pay progression funding of 2% in January, 2020, and an additional 2% in January, 2021, for the District Attorneys and State Public Defender. Pay progression funding for DOJ was set aside to be reviewed with other Justice budget issues. This paper addresses only the pay progression associated with DOJ.

2. Under the 2017-19 state employee compensation plan established by the Division of Personnel Management in the Department of Administration (DOA), the minimum hourly salary for AAGs is \$25.14 per hour (\$52,291 annually), while the maximum salary for these employees is \$60.74 per hour (\$126,339 annually). Generally, the compensation plan allows DOJ to hire AAGs at a rate up to \$42.94 per hour (\$89,315 annually).

3. The pay progression plan for AAGs exists to increase employee retention by creating a path for experienced attorneys to move from the minimum salary level to the maximum salary level. The pay progression plan consists of 17 hourly salary steps, with each step equal to one-seventeenth of the difference between the minimum salary level and the maximum salary level. One full salary step totals \$2.09 per hour, or \$4,356 annually. Notwithstanding the creation of these 17 steps, AAGs may, at the discretion of their supervisor, receive up to a 10% increase in their salary on an annual basis until the attorney reaches the maximum allowable salary under the compensation plan. Once an attorney reaches the maximum salary level, the attorney may no longer receive salary adjustments under the pay progression plan. Under the pay progression plan, AAGs are eligible to receive a salary adjustment after having been employed in such a position for 12 continuous months.

4. Table 1 identifies funding provided to the District Attorneys and the SPD for pay progression during the 2013-15, 2015-17, and 2017-19 biennia, as well as a brief description of how the funding was utilized. Table 1 also identifies amounts recommended in the bill for pay progression during the 2019-21 biennium. Note that similar information for funding allocated for AAG's for pay progression from 2014-15 through 2017-18 is provided in Table 2.

TABLE 1

**Funding Appropriated for Pay Progression for the District Attorneys
and the State Public Defender, 2013-14 through 2020-21**

<u>Fiscal Year</u>	<u>District Attorneys</u>		<u>State Public Defender</u>	
	<u>Appropriated Amount</u>	<u>Utilization of Funding</u>	<u>Appropriated Amount</u>	<u>Utilization of Funding</u>
2013-14	\$1,018,400	Increase salaries of eligible attorneys to the next hourly salary step.	\$997,000	Increase salaries of eligible attorneys to the next hourly salary step.
2014-15	3,625,500	Increase salaries of certain attorneys by, on average, 6.6%, and provide other attorneys a one-time lump sum of \$2,000.	1,978,600	Increase salaries of eligible attorneys by, on average, 4.4%.
2015-16	0		0	
2016-17	556,900	Increase salaries for eligible attorneys by, on average, 2%.	481,300	Increase salaries for eligible attorneys by, on average, 2%
2017-18	1,005,700	Amounts may be utilized at the discretion of the District Attorneys. However, funding was intended to increase salaries of eligible attorneys by \$1.97 per hour.	1,280,300	Amounts may be utilized at the discretion of the State Public Defender. However, funding was intended to increase salaries of eligible attorneys by, on average 5%.
2018-19	2,606,000	Amounts may be utilized at the discretion of the District Attorneys. However, funding was intended to increase salaries of eligible attorneys by \$1.97 per hour.	2,607,300	Amounts may be utilized at the discretion of the State Public Defender. However, funding was intended to increase the salaries of eligible attorneys by 5%.
2019-20*	273,600	Amounts may be utilized at the discretion of the District Attorneys. However, funding is intended to fund a, on average, 2% increase on January 1, 2020.	300,300	Amounts may be utilized at the discretion of the State Public Defender. However, funding is intended to fund a 2% increase on January 1, 2020.
2020-21*	817,400	Amounts may be utilized at the discretion of the District Attorneys. However, funding is intended to fund a, on average, 2% increase on January 1, 2021.	903,100	Amounts may be utilized at the discretion of the State Public Defender. However, funding is intended to fund a 2% increase on January 1, 2021.

*Information related to 2019-20 and 2020-21 are based on amounts approved by JFC on May 28, 2019.

TABLE 2

**Funding Utilized for Pay Progression for the Assistant Attorneys General
2014-15 through 2017-18**

<u>Fiscal Year</u>	<u>Funded Amount</u>	<u>% Increase over Base</u>
2015	\$405,122	8.41%
2016	410,779	8.66
2017	384,550	6.59
2018	283,046	3.64

5. When budgeting for salary adjustments under the pay progression plan, greater amounts are typically appropriated in the second year of the biennium when compared to the first year of the biennium to support both: (a) any salary increases awarded in the first year of the biennium; and (b) any additional salary increases provided in the second year of the biennium. Ongoing support for any salary increases provided during the 2019-21 biennium will likely be included in the full funding of continuing position salaries and fringe benefits standard budget adjustment included in the 2021-23 biennial budget bill.

6. The Department of Justice does not have a separate GPR appropriation to support salary adjustments for assistant attorneys general under the pay progression plan. Until 2018, DOJ supported salary adjustments through the utilization of existing resources, including discretionary settlement funds. Discretionary settlement funds were amounts received by DOJ as a result of certain litigation that may be expended by DOJ for any purpose permitted by state law, at the discretion of the Attorney General.

Attorney Retention

7. In LFB Paper #270 information is provided on attorney retention and reasons for separation for ADAs, SPD, and AAGs under discussion points #6 through #16 and in Appendices III and IV.

Pay Progression Provisions Under the Bill

8. The bill provides the Department of Justice with funding in order to support salary increases for AAGs under the pay progression plan. While DOJ would have discretion in administering pay progression amounts, the appropriated amounts under the bill are intended to support a 2% per hour pay increase to AAGs eligible under the pay progression plan on January 1, 2020 and 2021. Total funding for pay progression for DOJ is provided on a one-time basis, and would, therefore, not be included in the agency base budget for the 2021-23 biennium.

9. *Budget Bill.* Given the benefits of reducing attorney turnover, the Committee could provide funding to DOJ to support salary adjustments under the pay progression plan. Funding could be provided in the manner recommended by the budget bill [Alternative 1]. This alternative is intended to provide a 2% increase in 2019-20 and another 2% increase in 2020-21. This would result in AAG pay progression funding totaling \$70,100 GPR, \$15,600 PR, and \$3,500 FED in 2019-20 and \$141,500 GPR, \$31,600 PR, and \$6,200 FED in 2020-21. Funding for pay progression would be provided on a one-time basis.

10. *Bill and Technical Modifications.* Amounts calculated for pay progression under the bill are based on payroll data from August, 2018. Funding for AAGs under the bill was intended to support a 2% increase on January 1, 2020 and 2021, but would only support a 2% increase on January 1, 2020.

If the Committee wishes to provide the pay progression levels recommended by the budget bill for AAGs, but also wishes to account for these issues, the Committee could modify pay progression funding to support a 2% salary increase in January 2020 and 2021 by increasing AAG funding by \$12,900 GPR, \$1,200 PR, and \$1,600 FED in 2019-20 and \$110,600 GPR, \$20,400 PR, and \$9,200

FED in 2020-21 [Alternative 2]. Alternative 2 would result in AAG pay progression funding totaling \$83,000 GPR, \$16,800 PR, and \$5,100 FED in 2019-20 and \$252,100 GPR, \$52,000 PR, and \$15,400 FED in 2020-21. This alternative is consistent with what was provided to ADAs and ASPDs under Motion #103.

11. If the Committee wishes to provide pay progression, but at a lower level than that recommended by the budget bill for AAGs, the Committee could modify pay progression funding to support a 1% salary increase in January 2020 and 2021 by reducing AAG funding by \$28,600 GPR, \$7,200 PR, and \$900 FED in 2019-20 and \$15,400 GPR, \$5,700 PR, and increasing by \$1,500 FED in 2020-21 [Alternative 3]. Alternative 3 would result in AAG pay progression funding totaling \$41,500 GPR, \$8,400 PR, and \$2,600 FED in 2019-20 and \$126,100 GPR, \$25,900 PR, and \$7,700 FED in 2020-21.

12. *One-Step Increase for AAGs.* The Committee could increase the amounts provided to AAGs and support a one-step increase (\$2.09 per hour) on July 1, 2019-20 and 2020-21. In order to provide a step increase (and account for the issues identified under discussion point #10), the Committee could increase AAG funding by \$292,500 GPR, \$52,300 PR, and \$17,800 FED in 2019-20 and \$553,500 GPR, \$93,800 PR, and \$28,900 FED in 2020-21 [Alternative 4]. This alternative would result in AAG pay progression funding totaling \$362,600 GPR, \$67,900 PR, and \$21,300 FED in 2019-20 and \$695,000 GPR, \$125,400 PR, and \$35,100 FED in 2020-21.

13. *Various Percentage Increase.* Alternatively, the Committee may wish to provide AAG with funding to support a different level of pay increase, as compared to what is provided under the bill. Under the pay progression plan, the maximum annual salary increase that may be provided to an AAG is 10%. Appendix I identifies the cost of providing DOJ funding to support pay increases between 1% and 10% in July, 2019, and 2020 (rather than January 1, 2020, and 2021, under the bill) for AAGs as a reflection of a change to the bill. Appendix I also identifies the cost of providing one-full step under the pay progression plan (\$2.09 per hour). Appendix I identifies these costs if: (a) pay increases are provided in both years of the biennium; (b) pay increases are only provided in 2019-20; and (c) pay increases are only provided in 2020-21. Appendix II provides similar information for non-GPR fund sources within the Department of Justice.

14. *Delete Funding.* On the other hand, the Committee could decide to eliminate all funding for pay progression for AAGs [Alternative 5]. This alternative would reduce funding under the bill for DOJ by \$70,100 GPR, \$15,600 PR, and \$3,500 FED in 2019-20 and \$141,500 GPR, \$31,600 PR, and \$6,200 FED in 2020-21.

15. As pay progression is a commitment to move AAGs from the minimum hourly salary available to these employees (currently \$25.14 per hour) to the maximum available hourly salary available to these employees (currently \$60.74 per hour), pay progression is a substantial ongoing financial commitment for the state. Further, since the state must continue to support the cost of past salary increases, the annual cost of supporting the pay progression plan builds on itself. For example, the cost of supporting a 5% annual salary increase for AAGs under the pay progression plan would be \$292,500 GPR in 2019-20 and \$553,500 GPR in 2020-21. It is estimated that providing a similar 5% annual salary increase during the 2021-23 biennium would cost \$1,070,900 GPR in 2021-22 and \$1,353,500 GPR in 2022-23 through full funding of salary and fringe benefits and additional funding

for pay progression. The cost of pay progression for AAGs would still be higher than these estimates if funding is provided for 10% annual pay progression increases, as is allowable under current law.

16. The ultimate annual cost of pay progression, however, depends on turnover rates. A higher turnover rate reduces the annual cost of pay progression as more highly compensated attorneys would be replaced by lower compensated attorneys. It should be noted, however, that one of the goals of the pay progression plan is to reduce attorney turnover.

ALTERNATIVES

1. *Budget Bill.* Include the administration's recommendation to provide AAG pay progression funding totaling \$70,100 GPR, \$15,600 PR, and \$3,500 FED in 2019-20 and \$141,500 GPR, \$31,600 PR, and \$6,200 FED in 2020-21. Funding would be provided on a one-time basis. Funding under the bill was intended to support a 2% per hour pay increase to AAGs eligible under the pay progression plan on January 1, 2020 and 2021.

ALT 1	Change to	
	Base	Bill
GPR	\$211,600	\$0
PR	47,200	0
FED	<u>9,700</u>	<u>0</u>
Total	\$268,500	\$0

2. *Budget Bill with Technical Modification.* Provide AAG pay progression funding totaling \$83,000 GPR, \$16,800 PR, and \$5,100 FED in 2019-20 and \$252,100 GPR, \$52,000 PR, and \$15,400 FED in 2020-21. Funding would be provided on a one-time basis. Funding is intended to support a 2% per hour pay increase to AAGs eligible under the pay progression plan on January 1, 2020 and 2021.

ALT 2	Change to	
	Base	Bill
GPR	\$335,100	\$123,500
PR	68,800	21,600
FED	<u>20,500</u>	<u>10,800</u>
Total	\$424,400	\$155,900

3. *1% Increase.* Provide AAG pay progression funding totaling \$41,500 GPR, \$8,400 PR, and \$2,600 FED in 2019-20 and \$126,100 GPR, \$25,900 PR, and \$7,700 FED in 2020-21. Funding would be provided on a one-time basis. Funding is intended to support a 1% per hour pay increase to AAGs eligible under the pay progression plan on January 1, 2020 and 2021.

		Change to	
		Base	Bill
GPR	\$167,600	- \$44,000	
PR	34,300	- 12,900	
FED	<u>10,300</u>	<u>600</u>	
Total	\$212,200	- \$56,300	

4. *One-Step Increase.* Provide AAG pay progression funding totaling \$362,600 GPR, \$67,900 PR, and \$21,300 FED in 2019-20 and \$695,000 GPR, \$125,400 PR, and \$35,100 FED in 2020-21. Funding would be provided on a one-time basis. Funding is intended to support a one step (\$2.09) pay increase to AAGs eligible under the pay progression plan on July 1, 2019 and 2020.

		Change to	
		Base	Bill
GPR	\$1,057,600	\$846,000	
PR	193,300	146,100	
FED	<u>56,400</u>	<u>46,700</u>	
Total	\$1,307,300	\$1,038,800	

5. Take no action.

		Change to	
		Base	Bill
GPR	\$0	- \$211,600	
PR	0	- 47,200	
FED	<u>0</u>	<u>- 9,700</u>	
Total	\$0	- \$268,500	

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Appendices

APPENDIX I

Summary of GPR Pay Progression Costs During the 2019-21 Biennium for the Department of Justice By Percent Increase Pay Increases in 2019-20 and 2020-21, Change to Bill

<u>Percent Increase</u>	<u>2019-20</u>	<u>2020-21</u>	<u>2019-21 Biennium</u>
Pay Increases in 2019-20 and 2020-21, Change to Bill			
1%	\$12,900	\$27,800	\$40,700
2%	96,000	196,500	292,500
3%	178,300	345,000	523,300
4%	259,900	485,700	745,600
5%	331,800	621,100	952,900
6%	402,900	744,200	1,147,100
7%	470,300	861,700	1,332,000
8%	537,100	975,500	1,512,600
9%	601,400	1,086,400	1,687,800
10%	664,900	1,188,000	1,852,900
One Step Increase*	\$292,500	\$553,500	\$846,000
Pay Increase in 2019-20 Only, Change to Bill			
1%	\$12,900	-\$57,300	-\$44,400
2%	96,000	26,900	122,900
3%	178,300	110,400	288,700
4%	259,900	193,200	453,100
5%	331,800	266,300	598,100
6%	402,900	338,500	741,400
7%	470,300	407,100	877,400
8%	537,100	475,100	1,012,200
9%	601,400	540,500	1,141,900
10%	664,900	605,300	1,270,200
One Step Increase*	\$292,500	\$226,500	\$519,000
Pay Increase in 2020-21 Only, Change to Bill			
1%	-\$70,100	-\$57,300	-\$127,400
2%	-70,100	26,900	-43,200
3%	-70,100	110,400	40,300
4%	-70,100	193,200	123,100
5%	-70,100	266,300	196,200
6%	-70,100	338,500	268,400
7%	-70,100	407,100	337,000
8%	-70,100	475,100	405,000
9%	-70,100	540,500	470,400
10%	-70,100	605,300	535,200
One Step Increase*	-\$70,100	\$226,500	\$156,400

*One step under the pay progression plan totals \$2.09 per hour, or \$4,347 annually.

APPENDIX II

Summary of Pay Progression Costs During the 2019-21 Biennium for the Attorney Generals Pay Increases in 2019-20 and 2020-21, Change to Bill*

Percent Increase	Assistant Attorney Generals (PR)			Assistant Attorney Generals (FED)		
	2019-20	2020-21	2019-21 Biennium	2019-20	2020-21	2019-21 Biennium
Pay Increases in 2019-20 and 2020-21						
1%	\$1,200	\$3,400	\$4,600	\$1,600	\$4,100	\$5,700
2%	18,100	38,700	56,800	6,700	14,500	21,200
3%	34,900	63,900	98,800	11,800	20,000	31,800
4%	51,800	88,900	140,700	16,900	25,500	42,400
5%	63,900	110,200	174,100	19,800	31,100	50,900
6%	75,500	128,100	203,600	22,500	36,700	59,200
7%	87,200	142,800	230,000	25,100	42,400	67,500
8%	98,700	155,000	253,700	27,800	46,100	73,900
9%	108,600	167,200	275,800	30,500	49,800	80,300
10%	118,200	178,300	296,500	33,100	53,600	86,700
One Step Increase**	\$52,300	\$93,800	\$146,100	\$17,800	\$28,900	\$46,700
Pay Increase in 2019-20 Only						
1%	\$1,200	-\$14,200	-\$13,000	\$1,600	-\$1,100	\$500
2%	18,100	3,200	21,300	6,700	4,000	10,700
3%	34,900	20,600	55,500	11,800	9,100	20,900
4%	51,800	38,000	89,800	16,900	14,200	31,100
5%	63,900	50,600	114,500	19,800	17,100	36,900
6%	75,500	62,800	138,300	22,500	19,800	42,300
7%	87,200	75,000	162,200	25,100	22,400	47,500
8%	98,700	87,100	185,800	27,800	25,100	52,900
9%	108,600	97,500	206,100	30,500	27,800	58,300
10%	118,200	107,700	225,900	33,100	30,400	63,500
One Step Increase**	\$1,290,900	\$1,313,300	\$2,604,200	\$1,704,700	\$1,752,800	\$3,457,500
Pay Increase in 2020-21 Only						
1%	-\$15,600	-\$14,200	-\$29,800	-\$3,500	-\$1,100	-\$4,600
2%	-15,600	3,200	-12,400	-3,500	4,000	500
3%	-15,600	20,600	5,000	-3,500	9,100	5,600
4%	-15,600	38,000	22,400	-3,500	14,200	10,700
5%	-15,600	50,600	35,000	-3,500	17,100	13,600
6%	-15,600	62,800	47,200	-3,500	19,800	16,300
7%	-15,600	75,000	59,400	-3,500	22,400	18,900
8%	-15,600	87,100	71,500	-3,500	25,100	21,600
9%	-15,600	97,500	81,900	-3,500	27,800	24,300
10%	-15,600	107,700	92,100	-3,500	30,400	26,900
One Step Increase**	-\$15,600	\$1,313,300	\$1,297,700	-\$3,500	\$1,752,800	\$1,749,300

*The bill provides the AAG pay progression with \$15,600 PR and \$3,500 FED in 2019-20 and \$31,600 PR and \$6,200 FED in 2020-21.

**One step under the pay progression plan totals \$2.09 per hour, or \$4,347 annually.