

**1999 DRAFTING REQUEST**

**Bill**

Received: **10/5/98**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Coomber**

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

Drafter: **olsenje**

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Subject: **Public Defender**

Extra Copies:

**Topic:**

DOA:.....Coomber - Supervisors' caseloads

**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 10/23/98	gilfokm 10/23/98	ismith 10/23/98	_____	lrb_docadmin 11/3/98		
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FE Sent For:

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**DIN#** 5103

**Subject:** Supervisory Caseload Relief

8440

**Intent:** To provide relief from statutory caseloads for 10.0 FTE Attorney-Supervisors.

**Related Stat. Citations:** Modify s.977.08(5) to exempt 10.0 FTE Attorney Supervisors from the budgetary caseload calculation, effective July 1, 2000.

**Office of the State Public Defender  
1999-2001 Biennial Budget Request  
Decision Item Request #5103**

Appn. No. 104

**Title of Request:** Supervisory Caseload Relief

- I. **Request/Objective:** The State Public Defender proposes exempting 10.0 FTE Attorney Supervisor positions from statutory caseload requirements, in order to assure sufficient capacity to supervise staff and manage the agency without increasing staff attorney caseload.
  
- II. **Benefit:** The intent of this request is to provide the SPD with the resources to effectively and efficiently manage its 37 trial offices, particularly in light of additional managerial responsibilities that the SPD has taken on in the last four years. The major managerial duties promoted by this decision item include supervision and training of SPD staff, contributions of SPD managers to planning and development of innovative means of reducing costs in the criminal justice system, and monitoring inquiries and complaints about private attorneys who accept appointments from the SPD.
  
- III. **Background:** The SPD Trial Division has 460.35 FTE, including 228.75 FTE represented staff attorneys and 52.25 non-represented Attorney-Supervisors. The Division comprises 37 local offices, serving all 72 Wisconsin counties and appointing attorneys in approximately 115,000-120,000 cases annually. The Division has one attorney administrator; all other attorney positions in the Division are required by statute (Sec. 977.08(5), Stats.) to carry, for budgeting purposes, a caseload.

The Division also has 6.0 FTE Regional Office Administrators (ROAs), who are responsible for certain administrative and supervisory functions for six of the division's thirteen regions. It is important to point out that the ROAs do not have legal training, and therefore are not able to supervise attorney performance.

The statutory annual caseload for Trial Division attorneys is: fifteen first-degree homicides, 184.5 other felonies, 492 misdemeanors, or 246 other cases. A strict interpretation of current law suggests that any supervisory or management capacity in the Trial Division, over and above the 1.0 FTE administrator and 6.0 FTE ROAs (a 1:65 manager/supervisor to staff ratio), requires higher individual staff caseloads in order to achieve the division's overall caseload requirement.

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- IV. Analysis of Need:** As noted above, some of the major responsibilities of SPD supervisors include supervision and training of SPD staff, contributions of SPD managers to planning and development of innovative means of reducing costs in the criminal justice system, and monitoring inquiries and complaints about private attorneys who accept appointments from the SPD.

Supervision of attorney staff includes annual performance evaluations, which in turn require observation of staff attorneys in court, review of their interactions with clients, review of their written work product, and familiarity with their adherence to agency policies and procedures. Supervision also entails investigation of complaints about staff attorneys and any other possible work rule violations.

Training of attorney staff similarly requires knowledge of their respective skill levels, as well as the ability to keep current on legal developments and to coordinate relevant training. Mentoring of new attorneys, which includes orientation to agency policies and to the local court system, is an important component of training.

In the regions without ROAs, supervising attorneys have the same responsibilities for all SPD staff, including investigators, client service specialists, and clerical staff. Even in those regions with ROAs, many aspects of supervising non-attorney staff remain the responsibility of attorney supervisors. For example, when performance, workload, or disciplinary issues arise that relate to the type of legal representation provided to clients (or that involve legal interpretations of state statutes or administrative rules), the judgment of an attorney is often required.

SPD managers participate in and contribute to local initiatives that improve the criminal justice system. For example, the supervisor of the Green Bay SPD office has served on committees that have studied various options to deal with jail overcrowding. The supervisor of the Waukesha SPD office recently participated in a multi-agency task force that developed a county work crew for county jail inmates (the program not only provided work experience, but also reduced jail costs by allowing the inmates to earn good time to reduce their incarceration time). However, the necessity of carrying a caseload, in conjunction with other supervisory responsibilities, has limited the time available for SPD managers to participate fully in these types of multi-agency initiatives. This decision item will allow SPD managers to provide the benefit of their extensive experience and expertise to such initiatives.

Another important managerial function is the oversight of the private attorneys (approximately 1400 statewide) who accept SPD appointments. The 1994 report of the Legislative Audit Bureau (LAB) recommended that

the SPD increase its training and monitoring of private attorneys. Thus, SPD managers should have time available to organize training programs, to observe private attorneys in court, to answer questions from private attorneys, and to investigate complaints about their performance. Although local managers maintain logs of complaints in an effort to discover and document performance problems, they do not have sufficient time available for full implementation of the LAB recommendations. This decision item will provide additional time to SPD managers to perform this oversight function as recommended in the LAB report.

Section 978.03, Stats., sets forth a formula for the number of authorized deputy district attorney positions. The formula authorizes 22 deputy district attorney positions. In addition, there are 68.45 FTE district attorney positions that, to the extent determined by the incumbents, perform supervisory and administrative work in lieu of handling a full-time caseload. Thus, a great discrepancy exists between the supervisory positions authorized for district attorney offices and those authorized for the SPD.

The supervisory responsibilities in SPD offices are comparable to those in district attorney offices. In fact, the SPD supervisors have additional responsibilities regarding financial eligibility screening, responding to client complaints, and monitoring private-bar performance. This decision item is a necessary step toward parity with district attorney offices in terms of recognizing the need for managers in the agency's local offices.

The State Public Defender proposes relieving 10.0 FTE Attorney Supervisor positions from caseload beginning in FY2001, and relieving an additional 10.0 FTE Attorney Supervisor positions from caseload during the 2001-2003 and the 2003-2005 biennia. This would acknowledge an average supervisor-to-staff ratio in the Trial Division of 1:26 in FY2001, a ratio of 1:16 in 2003, and of 1:11.5 in FY2005. 2000?

## V. Alternatives

### A. Hire Staff Attorney Positions to Handle the Supervisors' Caseloads

The SPD could add 10.0 FTE staff attorneys to handle the caseload formerly handled by the 10.0 supervisory positions. Salaries, fringe benefits, rent and supplies would cost over \$500,000 per year. Secretarial support (3.0 FTE legal secretary positions) and additional office space would also be needed to support these positions.

B. Hire 7.0 FTE Regional Office Administrators

The SPD could add 7.0 FTE regional office administrators (ROAs) instead of funding attorney supervisory positions. The Trial Division would then have 1.0 ROA for each of its thirteen regions. The annual cost of this alternative would be \$360,200.

The 6 ROAs hired after creation of their positions in 1995 have proven beneficial in performing a number of important administrative functions that supervising attorneys did not have available time to perform fully. However, as noted above, non-attorney supervisors are limited in their ability to supervise or evaluate legal work or to interpret applicable law. In addition, because the Department of Employment Relations (over the objection of the SPD and arguably in contravention of the legislative intent behind the original authorization of the positions) has recently downgraded the ROA positions, the SPD anticipates difficulty in the recruitment and retention of ROAs.

- C. Status quo. As noted previously, a strict interpretation of current law suggests that the SPD Trial Division is expected to manage well with a manager/supervisor to staff ratio of 1:65. In fact, this does not provide even 1.0 FTE supervisor per region. In reality, the State Public Defender does expect the Trial Division's 52.25 FTE Attorney Supervisors to perform supervisory and managerial duties, with the effect being higher average caseloads for represented staff attorneys.

- VI. **Fiscal Summary:** Removing 10.0 FTE Attorney Supervisors from the statutory caseload requirement would require increased funding of \$1,033,400 GPR for the Private Bar appropriation, beginning in the second year of the biennium.

977.08(5)

(5)

977.08(5)(a)

(a) The purpose of this subsection is to provide standards for use in budgetary determinations.

977.08(5)(b)

(b) (intro.) Except as provided in par. (bn), any of the following constitutes an annual caseload standard for an assistant state public defender in the subunit responsible for trials:

977.08(5)(b)1.

1. Felony cases not specified in subd. 1m.: 184.5.

977.08(5)(b)1m.

1m. First-degree intentional homicide cases: 15.

977.08(5)(b)2.

2. Misdemeanor cases: 492.

977.08(5)(b)3.

3. Cases not covered under subd. 1., 1m. or 2.: 246.

977.08(5)(bn)

(bn) (intro.) Beginning on October 14, 1997, and ending on June 30, 1999, any of the following constitutes an annual caseload standard for an assistant state public defender in the subunit responsible for trials:

977.08(5)(bn)1.

1. Felony cases not specified in subd. 1m.: 184.5.

977.08(5)(bn)1m.

1m. First-degree intentional homicide cases: 15.

977.08(5)(bn)1r.

1r. Cases representing persons under ss. 980.05 and 980.06: 15.

977.08(5)(bn)2.

2. Misdemeanor cases: 492.

977.08(5)(bn)3.

3. Cases not covered under subd. 1., 1m., 1r. or 2.: 246.

977.08(5)(c)

(c) At the trial level, 67% of the felony and juvenile cases shall be handled within the office.





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0440/1

JEO: *KMS*

*Soor into editng 10/23*

DOA:.....Coomber - Supervisors' caseloads

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

*Don't Get Cost*  
1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

**PUBLIC DEFENDER**

Under current law, the state public defender (SPD) provides legal representation to indigent persons in criminal, delinquency and certain related cases. The SPD assigns cases either to staff attorneys in the agency's trial division or local private attorneys. A staff attorney working in the trial division is expected to meet one of the following annual caseload standards: 184.5 felony cases; 15 first-degree intentional homicide cases; 492 misdemeanor cases; 15 sexually violent person cases; or 246 of all other cases.

This bill provides that beginning <sup>on</sup> July 1, 2000, the SPD may exempt up to ~~10~~ <sup>ten</sup> staff attorneys in the trial division from the annual caseload standards based on the need of those attorneys to perform other assigned duties.

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:*

2 SECTION 1. 977.08 (5) (b) (intro.) of the statutes is amended to read:





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0440/1  
JEO:kmg:ijs

DOA:.....Coomber - Supervisors' caseloads

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

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Under current law, the state public defender (SPD) provides legal representation to indigent persons in criminal, delinquency and certain related cases. The SPD assigns cases either to staff attorneys in the agency's trial division or local private attorneys. A staff attorney working in the trial division is expected to meet one of the following annual caseload standards: 184.5 felony cases; 15 first-degree intentional homicide cases; 492 misdemeanor cases; 15 sexually violent person cases; or 246 of all other cases.

This bill provides that beginning on July 1, 2000, the SPD may exempt up to ten staff attorneys in the trial division from the annual caseload standards based on the need of those attorneys to perform other assigned duties.

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

2 **SECTION 1.** 977.08 (5) (b) (intro.) of the statutes is amended to read:

