

2001 DRAFTING REQUEST

Bill

Received: 09/06/2001

Received By: mdsida

Wanted: Soon

Identical to LRB:

For: Sheryl Albers (608) 266-8531

By/Representing: Scott Southworth

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters: mdsida

Subject: Public Defender

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Provide the public defender office with funding and positions for a conflicts office

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	mdsida 09/18/2001	jdye 09/19/2001	pgreensl 09/20/2001	_____	lrb_docadmin 09/20/2001	lrb_docadminState 10/02/2001	

FE Sent For:

<END>

→ At Intro.

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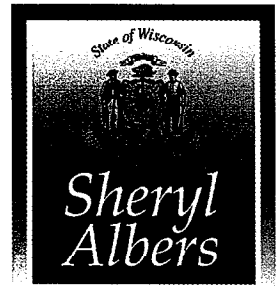
See Attached

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FE Sent For:

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To: LRB – Drafting
From: Representative Sheryl K. Albers
Date: September 6, 2001
Subject: Office of the State Public Defender

Please draft legislation that will restore the funding, positions and policy item(s) related to the Office of the State Public Defender (SPD) in the 2001-03 budget (Act 16) that Governor McCallum vetoed. The budget bill sent to the governor reflected the bipartisan plan for the SPD prepared and adopted by the Joint Committee on Finance via 16-0 votes on Alternative 5b of LFB paper #246 and JCF Motion #1637. After reviewing the veto message and information received from the budget office of the State Public Defender, it appears that the governor's vetoes eliminated the following:

- 1) \$2,894,800 in FY 01-02, and \$373,100 in FY 02-03 (total = \$3,267,900) from the “trial representation” line of the SPD’s budget in the Chapter 20 schedule [specifically, §20.550 (1) (c)].
- 2) 43.3 GPR positions for general representation:
 - 30.0 attorneys
 - 7.5 legal secretaries
 - 4.3 investigators
 - 1.5 client services specialists
- 3) 16.0 GPR positions for the conflicts office:
 - 10.0 attorneys
 - 1.0 attorney supervisor
 - 3.0 legal secretaries
 - 1.5 investigators
 - 0.5 client services specialist
- 3) The reporting requirements to the JCF.

The list above is not necessarily all-inclusive. If something related to the Office of the State Public Defender was eliminated by a veto, I would like to have that included in this legislation in order to meet the JCF’s / Legislature’s pre-veto intent. I have included a copy of LFB Paper #246, JCF Motion #1637, page 135 of Act 16 (Chapter 20 schedule displaying the veto of the dollar amounts), Governor McCallum’s veto message relating to the SPD, and an SPD table delineating the budget situation of the “trial representation” and “private bar” lines of the chapter 20 schedule throughout the budget process. Please feel free to contact my office with any questions.

Note that I would like to have this legislation introduced on Wednesday, September 12, 2001. Thank you.



Legislative Fiscal Bureau

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

June 5, 2001

Joint Committee on Finance

Paper #246

Base Budget Reduction (Public Defender)

[LFB 2001-03 Budget Summary: Page 527, #2]

CURRENT LAW

Under current law, the following Public Defender appropriations are GPR state operations appropriations: (a) program administration; (b) appellate representation; (c) trial representation; (d) private bar and investigator reimbursement; (e) private bar and investigator payments; administration costs; and (f) transcript and record payments. The adjusted base for all Public Defender GPR state operations appropriations is \$64,738,600 GPR annually.

GOVERNOR

Reduce the base budgets for state operations for a number of agencies by 5% annually. In total, the proposed reduction generates general fund savings of \$41,355,000 in 2001-02 and \$41,069,900 in 2002-03. Thus, the Governor's budget reduces base level appropriations by \$8.4 million for the biennium. A total of 44 agencies, including the State Public Defender, would be subjected to a reduction.

Reduce the State Public Defender's (SPD's) largest GPR state operations appropriation, trial representation, by \$3,236,900 GPR annually. This amount represents 5% of the agency's total GPR adjusted base for state operations.

DISCUSSION POINTS

1. The cost of providing indigent defense is generally borne by the state. The SPD provides legal representation for eligible indigent defendants who are formally accused of crimes or are defendants in certain specified civil matters. The SPD also represents indigent defendants

seeking certain post-conviction relief. 1995 Act 27 (the 1995-97 biennial budget act) eliminated SPD representation of clients in cases where there is no clear constitutional right to representation. Act 27 eliminated SPD representation in cases involving conditions of confinement, early representation, certain sentence modifications and certain appeals. In addition, representation was limited for paternity and nonpayment of child support cases, probation and parole modifications, and revocations. Representation for parents whose children are alleged to be in need of protection or services (CHIPS) was also eliminated, except for parents who are themselves minors.

2. Under current law, when an accused has a constitutional right to counsel and meets the financial eligibility standards of the SPD, the SPD must provide counsel to the accused. The SPD's caseload, therefore, is non-discretionary. The statutory standards to determine indigency were established in 1987 and have not been updated. As a result, a person with an income level below the current federal poverty guidelines may not meet the financial standards for SPD representation, yet cannot afford to hire a private attorney. In such cases, the court may appoint an attorney, at county expense, to assure that the individual's constitutional right to counsel is satisfied.

3. Increasingly, courts are appointing counsel for individuals who do not qualify for SPD representation, yet the court determines the individuals cannot afford counsel. In 1999, 69 counties voluntarily reported court-appointed counsel costs to the Director of State Courts of \$4,078,900 for four types of cases: (a) adult criminal; (b) mental commitment or emergency detention; (c) CHIPS parents; and (d) other (the "other" category is not defined). In 2000, 65 counties reported court-appointed counsel costs of \$4,486,300 for the above four case types.

4. Under the bill, the SPD's largest state operations appropriation, trial representation, is reduced by \$3,236,900 GPR annually. Although the reduction is initially assigned to the trial representation appropriation, the bill does allow the SPD to submit an alternative plan to the Department of Administration (DOA) allocating the required reduction among its sum certain GPR state operations appropriations. The bill does not change current law which requires the SPD to provide counsel to an accused when the accused has a constitutional right to counsel and meets the SPD financial eligibility standards.

5. Under current law, when the SPD determines that an accused has a right to SPD representation, the case is either assigned to an SPD staff attorney or to a private attorney (the private bar). In 1999-00, 58.5% of new cases were assigned to SPD staff and 41.5% of new cases were assigned to the private bar.

6. It is projected that the SPD caseload (the number of cases assigned to SPD staff and the private bar) for the upcoming biennium will remain constant. As a result, it is not anticipated that the SPD will be able to address the recommended reduction through declining caseloads.

7. Given projections that the SPD caseload is not expected to decline, other options to manage base budget reductions could be considered. One option would be to reduce the SPD's nondiscretionary caseload by lowering the financial eligibility standards. However, these financial standards of poverty are tied to 1987 Aid to Families with Dependent Children income guidelines.

As a result, an individual with an income below the current federal poverty guidelines may already not qualify for SPD representation. If the Committee were to lower the SPD financial eligibility standards further, courts would likely increase the number of counsel hired at county expense to meet the state's constitutional obligation to provide counsel to defendants who cannot afford counsel. While the state retains private bar attorneys at the rate of \$40 per hour, counties are required to pay counsel \$70 per hour or more under Supreme Court Rule. Wisconsin units of government as a whole could end up paying more for constitutionally-required indigent defense if the state lowered the SPD financial eligibility standards.

8. As part of standard budget adjustments, the Department of Administration (DOA) requires most state agencies to budget a 3% turnover rate for agency positions in each appropriation with 50 or more employees. In 2000-01, DOA required the SPD and 14 other state agencies to generate a 7% turnover rate for agency positions and lapse the additional revenues to the general fund.

9. In meeting the DOA requirement, SPD indicates that it was able to manage the required GPR lapses in 2000-01 by keeping attorney positions vacant, without increasing private bar costs, through a one-time change in private bar billing policy. In prior fiscal years, the SPD has paid private bar attorneys entering into misdemeanor case contracts at the beginning of the contract before the work was done. In 2000-01, the SPD began paying for the contract work at the end of the contract. This change provided one-time savings that allowed the SPD to manage the 2000-01 required GPR lapses.

10. Approximately 90% of the SPD's budget is for salary, fringe benefit and private bar costs. Certain supplies and services costs, such as rent, remain relatively fixed. As a result, cost saving measures would have to cut salary, fringe benefit or private bar costs. Because such a large portion of the agency's budget is devoted to personnel costs, the SPD argues that the 5% reduction could not be realized.

11. On the other hand, a number of other agencies subject to the 5% reduction also have a significant portion of their budgets devoted to salaries and fringe benefits. The fact that approximately 90% of their budget is devoted to compensation is not unique to the SPD.

12. If it is viewed that the SPD's mission would not permit a reduction of the magnitude of that recommended by the Governor, but that some reduction should be applied, some percentage other than 5% could be adopted. Each 1% of the SPD's base budget equals \$647,400 annually.

13. If the Committee believes that it would be unwise to implement the reduction amount of SB 55, the Committee could consider reducing the SPD's supplies and services budget in all of its appropriations. If reduced by 5% annually, these reductions would generate \$328,900 GPR annually.

14. Another potential approach to managing the recommended reduction is to shift more indigent defense cases to either SPD staff or the private bar, depending on whether SPD staff or the

private bar provides representation more cost effectively. For budgetary purposes, the statutes provide an annual caseload standard for SPD attorneys to meet that has been converted into a weighted point system. Based on an analysis that assigned all SPD costs of providing indigent representation to either SPD staff or the private bar, the estimated cost of the private bar is \$813 per weighted point and the estimated cost of SPD staff is \$779 per weighted point. As a result, it is anticipated that savings could result if indigent defense cases were shifted from the private bar to SPD staff.

15. The Committee could consider providing an additional \$1,690,500 GPR in 2001-02, \$1,982,900 GPR in 2002-03 and 37.5 GPR positions annually (25.0 assistant public defenders, 8.0 legal secretaries, 3.5 investigators and 1.0 client services specialist) to the SPD's trial representation appropriation, and delete \$728,400 GPR in 2001-02 and \$2,913,600 GPR in 2002-03 from the private bar and investigator reimbursement appropriation. For the biennium, this alternative would require an additional \$31,400 GPR, but in 2002-03, would save \$930,700 GPR (annualized cost savings).

16. The Committee could also consider the creation of a conflicts office in the SPD that would handle cases that the trial division could not handle due to a conflict. Under current rules of ethics governing attorneys, public defenders generally may not represent multiple defendants who have conflicting interests. Such conflicts cases, as well as other indigent defense cases if the number of conflicts cases was insufficient, could be assigned to a newly-created conflicts office.

17. The SPD indicates it would place a conflicts office in Milwaukee where there is the largest caseload and where the most conflicts are generated. In an effort to avoid legal problems, the SPD would place the office under its assigned counsel division, as opposed to its trial division, so that the newly-created conflicts office would have the necessary separation from the trial division.

18. Under current Supreme Court Rule 20:1.10, governing the ethical conduct of attorneys, there is ambiguity as to the permissibility of a conflicts office in the SPD and how it would have to be structured so as to avoid problems with this rule. The rule provides that if an attorney in a firm could not represent a client due to a conflict of interest, the entire firm would also be precluded from representing the client due to the attorney's conflict of interest. The comment to the rule provides that, "lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units." The question unresolved in Wisconsin courts or by the Wisconsin Supreme Court is what would the SPD have to do to qualify the conflicts office as a "separate unit." In 1990, the Wisconsin State Bar's Standing Committee on Professional Ethics responded to an opinion request by the SPD and advised the SPD to petition the Wisconsin Supreme Court for an amendment to the rule to clarify matters on the permissibility of a conflicts office.

19. The SPD believes, however, that such a conflicts office would be permissible so long as it: (a) had its own separate office; (b) included attorneys, support staff and supervisors who were entirely separate from the trial division; and (c) kept all conflicts files separate from trial

division files, with access limited to conflicts office employees.

20. The Committee could consider providing an additional \$734,400 GPR in 2001-02, \$863,300 GPR in 2002-03 and 16.0 GPR positions annually (10.0 assistant public defenders, 1.0 attorney supervisor, 3.0 legal secretaries, 1.5 investigators and 0.5 client services specialist) to the SPD, and delete \$311,800 GPR in 2001-02 and \$1,247,000 GPR in 2002-03 from the private bar and investigator reimbursement appropriation. For the biennium, this alternative would require an additional \$38,900 GPR, but in 2002-03, would save \$383,700 GPR (annualized cost savings). Costs are higher than private bar savings in the first year because it takes, on average, six months for a case assigned to the private bar to be completed and the resulting bill to be paid. In 2001-02, there would be: (a) a period of overlap when the SPD would be paying both higher private bar costs for cases already assigned to the private bar as well as paying new staff salaries and fringe benefits; and (b) one-time costs associated with the creation of new staff positions.

21. During briefings on the SPD's budget, questions were raised regarding collection efforts that are made by the agency or on the agency's behalf. Under administrative rule, an SPD client may elect to prepay, within 30 days of appointment of counsel by the state public defender, an optional prepayment amount based on the type of case as follows: (a) first-degree intentional homicide, \$500; (b) other class A or B felony, \$100; (c) sexual predator, \$100; (d) other felony, \$50; (e) commitment, \$25; (f) protective placements under Chapter 55, \$50; (g) misdemeanor, \$50; (h) parole/probation revocation, \$50; (i) termination of parental rights, \$50; (j) special proceeding, \$25; (k) paternity, \$50; (l) appellate/plea, \$50; and (m) appellate/trial, \$100. If a client prepays, the client is not liable for any additional payment for public defender legal counsel for that case. Internal SPD collections are largely based on these upfront payments. SPD's collection efforts (largely based on prepayment) have netted the following amounts: (a) \$825,938 in 1997-98; (b) \$851,654 in 1998-99; (c) \$863,665 in 1999-00; and (d) an estimated \$928,100 in 2000-01.

22. If an SPD client does not prepay, the client is liable for a higher amount, which is based on the average cost of the type of case. DOA is responsible for collecting these costs from SPD clients after their cases have been concluded if there has been no payment activity for 120 days. DOA's collection efforts have netted the following amounts: (a) \$31,613 collected in 1997-98 on payment obligations of \$18,041,686; (b) \$38,774 collected in 1998-99 on payment obligations of \$17,558,437; (c) \$83,536 collected in 1999-00 on payment obligations of \$18,168,915; and (d) through mid-April, \$67,882 in 2000-01 on payment obligations of \$13,254,573.

23. DOA bids and awards contracts for collection of state agency accounts under which the collection agencies typically retain a percentage of monies they are able to collect, generally ranging from 13% to 30%.

24. For SPD collection work, DOA contracts with the State Collections Service (SCS). When SCS first began collecting monies owed to the SPD, it retained 17% of what it collected, but this was raised to 60% in 1997, as SCS was losing money processing SPD accounts. In 1998, DOA renegotiated with SCS so that it now retains 50% of the SPD monies it is able to collect. The

problems SCS has experienced in collecting SPD accounts may be due to the fact that an individual may be below the federal poverty guidelines but still not qualify for SPD representation. Also, a portion of the individuals are in jail or prison.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to reduce the SPD's largest GPR state operations appropriation, trial representation, by \$3,236,900 GPR annually.

2. Modify the budget of the SPD by any of the following amounts.

<u>Reduction %</u>	<u>Amount to be Restored to SB 55</u>	
	<u>2001-02</u>	<u>2002-03</u>
No reduction	\$3,236,900	\$3,236,900
1%	2,589,600	2,589,600
2%	1,942,200	1,942,200
3%	1,294,800	1,294,800
4%	647,400	647,400

3. Delete the Governor's recommendation. In addition, delete \$328,900 GPR annually, which represents a reduction of 5% annually of the SPD's supplies and services adjusted base.

<u>Alternative 3</u>	<u>GPR</u>
2001-03 FUNDING (Change to Bill)	\$5,816,000

4. Maintain current law.

<u>Alternative 4</u>	<u>GPR</u>
2001-03 FUNDING (Change to Bill)	\$6,473,800

5. In addition to any of the above alternatives, do any of the following:

a. Provide \$1,690,500 GPR in 2001-02, \$1,982,900 GPR in 2002-03 and 37.5 GPR positions annually (25.0 assistant public defenders, 8.0 legal secretaries, 3.5 investigators and 1.0 client services specialist) to allow SPD staff to handle more cases. Delete \$728,400 GPR in 2001-02 and \$2,913,600 GPR in 2002-03 from the private bar and investigator reimbursement appropriation.

Alternative 5A	GPR
2001-03 FUNDING (Change to Bill)	\$31,400
2002-03 POSITIONS (Change to Bill)	37.50

b. Provide \$734,400 GPR in 2001-02, \$863,300 GPR in 2002-03 and 16.0 GPR positions annually (10.0 assistant public defenders, 1.0 attorney supervisor, 3.0 legal secretaries, 1.5 investigators and 0.5 client services specialist) to create a conflicts office in the SPD. Delete \$311,800 GPR in 2001-02 and \$1,247,000 GPR in 2002-03 from the private bar and investigator reimbursement appropriation.

Alternative 5B	GPR
2001-03 FUNDING (Change to Bill)	\$38,900
2002-03 POSITIONS (Change to Bill)	16.00

ALT 5b - $\frac{A}{16}$ $\frac{N}{0}$

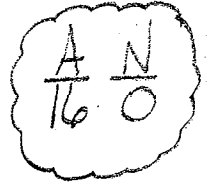
Prepared by: Paul Onsager

Representative Albers
Senator Moore
Representative Kaufert
Senator Plache

PUBLIC DEFENDER

Base Budget Reductions

[LFB Paper #246]



Motion:

Move to make the following provisions concerning the State Public Defender (SPD):

- a. Delete the Governor's recommendation and restore \$3,236,900 GPR annually to the SPD's trial representation appropriation.
- b. Require the SPD to lapse \$550,000 GPR annually, in total, from its GPR appropriations. Require the SPD to report quarterly to the Joint Committee on Finance on recognized savings. Direct the SPD to request additional funding through the s.13.10 process if a shortfall occurs in any appropriation.
- c. Delete \$418,000 GPR annually from the SPD's supplies, services and administrative budgets.
- d. Provide \$243,900 GPR in 2001-02, delete \$1,154,600 GPR in 2002-03 and provide 43.3 GPR positions annually (30.0 attorneys, 7.5 legal secretaries, 4.3 investigators and 1.5 client services specialists).
- e. Reduce the private bar and investigator reimbursement appropriation by \$40,600 GPR in 2001-02 and \$357,500 GPR in 2002-03 and raise the felony thresholds for the following crimes to \$2,500: (a) criminal damage to property; (b) graffiti; (c) theft; (d) fraud on hotel; (e) receiving stolen property; (f) fraudulent insurance; (g) credit card crimes; (h) retail theft; (i) theft of library materials; (j) unlawful receipt, loan payments; and (k) issuing a worthless check.

Note:

This motion is in addition to the Committee's action to adopt Alternative 5b which created a conflicts office.

[Change to Bill: \$4,329,000 GPR and \$1,100,000 GPR-Lapse and 43.3 GPR Positions]

2001 Senate Bill 55

2001 Wisconsin Act 16

STATUTE, AGENCY AND PURPOSE	SOURCE	TYPE	2001-02	2002-03	
20.547 Personnel commission					
(1) REVIEW OF PERSONNEL DECISIONS					
(a) General program operations	GPR	A	859,700	861,900	
(h) Publications	PR	A	3,000	3,000	
(m) Federal aid	PR-F	C	-0-	-0-	
20.547 DEPARTMENT TOTALS					
GENERAL PURPOSE REVENUES			859,700	861,900	
PROGRAM REVENUE			3,000	3,000	
FEDERAL			(-0-)	(-0-)	
OTHER			(3,000)	(3,000)	
TOTAL-ALL SOURCES			862,700	864,900	
20.550 Public defender board					
(1) LEGAL ASSISTANCE					
(a) Program administration	GPR	A	2,375,600	2,388,100	
(b) Appellate representation	GPR	A	4,164,700	4,168,800	
(c) Trial representation	GPR	A	40,239,100 37,344,300	40,733,700 40,360,600	Vetoed In Part
(d) Private bar and investigator reimbursement	GPR	B	16,725,700	13,725,100	
(e) Private bar and investigator payments; administration costs	GPR	A	618,600	618,600	
(f) Transcripts, discovery and interpreters	GPR	A	1,339,100	1,339,100	
(fb) Payments from clients; administrative costs	PR	A	134,400	134,400	
(g) Gifts and grants	PR	C	-0-	-0-	
(h) Contractual agreements	PR-S	A	-0-	-0-	
(i) Tuition payments	PR	C	-0-	-0-	
(kj) Conferences and training	PR-S	A	127,800	127,800	
(L) Private bar and inv. reimbursement; payments for legal representation	PR	C	1,024,700	1,024,700	
(m) Federal aid	PR-F	C	-0-	-0-	
20.550 DEPARTMENT TOTALS					
GENERAL PURPOSE REVENUES			65,462,800	62,973,400	
PROGRAM REVENUE			1,286,900	1,286,900	
FEDERAL			(-0-)	(-0-)	
OTHER			(1,159,100)	(1,159,100)	
SERVICE			(127,800)	(127,800)	
TOTAL-ALL SOURCES			66,749,700	64,260,300	
20.566 Revenue, department of					
(1) COLLECTION OF TAXES					
(a) General program operations	GPR	A	44,231,500	45,265,200	
(g) Administration of county sales and use taxes	PR	A	3,089,900	3,089,900	
(ga) Cigarette tax stamps	PR	A	179,100	179,100	
(gb) Business tax registration	PR	A	1,467,200	1,467,200	
(gd) Administration of special district taxes	PR	A	336,700	336,000	
(ge) Administration of local professional football stadium districts	PR	A	210,900	141,000	
(gf) Administration of resort tax	PR	A	23,900	23,900	
(gg) Administration of local taxes	PR	A	305,900	305,900	

I am partially vetoing these provisions to increase the required balance transfer from 85 percent to 100 percent. This action is necessary to cover the lapse of \$875,200 in penalty assessment revenues to the general fund in fiscal year 2001-02 and to ensure that enough funding is available for ongoing programs that are supported by revenues from the penalty assessment surcharge.

23. Southern Oaks Girls School Mental Health Unit Funding

Section 9201 (5v)

This provision directs the Department of Administration secretary, to the extent permitted under federal regulations, to transfer \$433,100 PR-S in fiscal year 2001-02 and \$541,700 PR-S in fiscal year 2002-03 in federal Juvenile Accountability Incentive Block Grant funds from the Office of Justice Assistance to the Department of Corrections to operate the mental health unit at the Southern Oaks Girls School.

I am vetoing this provision because it is unnecessary to earmark these funds through the budget process. The Office of Justice Assistance has funding available for this purpose and these funds have already been allocated for this purpose.

STATE PUBLIC DEFENDER

24. Base Budget Reductions and Reporting Requirements

Sections 395 [as it relates to s. 20.550 (1) (c)] and 9139 (2q)

These provisions provide funding for the State Public Defender's office and require the State Public Defender to submit a quarterly report and a s. 13.10 request if a funding shortfall occurs in any of its appropriations.

In my budget I recommended a five percent GPR state operations base budget cut for most state agencies and branches of government and I intended for all agencies and branches to absorb these reductions in their budgets. However, the Legislature partially restored the five percent cut to the State Public Defender's budget and added 59.3 FTE GPR positions. Funding was shifted from the private bar appropriation to the trial representation appropriation to fund these positions. The effect of the Legislature's changes results in base budget reductions of only 0.528 percent in fiscal year 2001-02 and 4.4 percent in fiscal year 2002-03.

I object to some of the modifications made to the five percent reduction and the creation of the 59.3 FTE GPR positions. I am vetoing this provision because additional savings are needed and a contribution by all state agencies is essential to this effort. By lining out the State Public Defender's s. 20.550 (1) (c) appropriation and writing in a smaller amount that deletes \$2,894,800 GPR in fiscal year 2001-02 and \$373,100 GPR in fiscal year 2002-03, I am vetoing section 395 [as it relates to s. 20.550 (1) (c)] to provide a base budget cut of five percent in each year of the biennium and I am deleting the funding for the additional 59.3 FTE GPR positions. Furthermore, I am requesting the Department of Administration secretary not to allot these funds and not to authorize the additional 59.3 FTE GPR positions. I am also vetoing section 9139 (2q) to remove the

*Governor McCallum's Veto Message
2001-03 Budget (Oct 16)*

report requirement because it is no longer applicable due to the reduction in funding. All agencies should have the same ability to make emergency requests under s. 13.10. Singling out the State Public Defender for a special report and s. 13.10 request authority is unnecessary and inequitable to other agencies faced with similar reductions.

Since 1997, the caseload for the State Public Defender has remained stable. However, during this same time period, the number of cases assigned to State Public Defender staff as a percentage of total cases has been reduced by 6.7 percent while the number of cases assigned to the private bar has increased by 6.7 percent. By returning to the 1997 assigned caseload ratios, the State Public Defender should be able to implement the base budget reductions without any reductions in positions. According to the State Public Defender, it is more efficient for State Public Defender staff to prosecute a case than the private bar. Therefore, I am requesting the State Public Defender to implement this reduction through improved efficiencies rather than personnel reductions.

SUPREME COURT

25. Court Interpreter Program

Sections 395 [as it relates to s. 20.680 (2) (a)] and 9147

These sections provide \$97,800 GPR in fiscal year 2001-02 and \$100,800 GPR in fiscal year 2002-03 and 1.0 FTE two-year project interpreter coordinator position.

I am vetoing section 9147 in its entirety because the cost is excessive. All branches of government need to prioritize and seek efficiencies in the use of taxpayer funding. By lining out the Supreme Court's s. 20.680 (2) (a) appropriation and writing in a smaller amount that deletes \$97,800 GPR in fiscal year 2001-02 and \$100,800 GPR in fiscal year 2002-03, I am vetoing the portion of the bill that funds the two-year project interpreter coordinator position. Furthermore, I am requesting the Department of Administration secretary not to allot these funds and not to authorize the additional 1.0 FTE position. My vetoes retain the \$456,200 GPR increase in the state reimbursement rate to counties for court interpreters.

26. Prison Impact Assessment

Sections 97m, 114v and 395 [as it relates to s. 20.765 (3) (d)]

These provisions require the Legislative Fiscal Bureau to provide prison impact assessments for any bill or, upon request, any bill draft that creates a felony or modifies the period of imprisonment for a felony. Funding and positions are also provided to support this requirement.

I am vetoing these provisions because the cost is excessive and other fiscal impact requirements included in the budget will provide estimates of the cost of criminal legislation. By lining out the Legislature's s. 20.765 (3) (d) appropriation and writing in a smaller amount that deletes \$101,500 GPR in fiscal year 2001-02 and \$113,300 GPR in fiscal year 2002-03, I am vetoing the requirements and the additional positions.

Year one:	(1) Base	(2) Base w/ Std Adjs	(3) Gov's Cut	(4) Gov's Fecs	JFC Restore	JFC Conflict	JFC + Staff	JFC SS Cut	JFC Felonies	(5) JFC Changes	(6) JFC Recs	(7) Gov Veto	(8) Final Ch. 20	(9) Net Chng fr. (2)
103 Salaries	\$25,593,100	\$25,357,000	-\$3,236,900	\$22,120,100	\$3,236,900	\$486,800	\$1,155,500			\$4,879,200	\$26,999,300	-\$2,894,800	\$24,104,500	-\$1,252,500
LTE	\$101,000	\$101,000		\$101,000						\$0	\$101,000		\$101,000	\$0
Fringe	\$8,253,100	\$8,605,400		\$8,605,400		\$160,700	\$381,400			\$542,100	\$9,147,500		\$9,147,500	\$542,100
S&S	\$3,618,200	\$3,629,700		\$3,629,700		\$86,900	\$455,500	-\$180,900		\$361,500	\$3,991,200		\$3,991,200	\$361,500
Total	\$37,565,400	\$37,693,100	-\$3,236,900	\$34,456,200	\$3,236,900	\$734,400	\$1,992,400	-\$180,900	\$0	\$5,782,800	\$40,239,000	-\$2,894,800	\$37,344,200	-\$348,900
104 S&S	\$18,826,700	\$18,826,700		\$18,826,700		-\$311,800	-\$1,748,600		-\$40,600	-\$2,101,000	\$16,725,700		\$16,725,700	-\$2,101,000
Year two:														
103 Salaries	\$25,593,100	\$25,370,000	-\$3,223,900	\$22,133,100	\$3,236,900	\$649,100	\$1,540,700			\$5,426,700	\$27,559,800	-\$373,100	\$27,186,700	\$1,816,700
LTE	\$101,000	\$101,000		\$101,000						\$0	\$101,000		\$101,000	\$0
Fringe	\$8,253,100	\$8,608,100		\$8,608,100		\$214,200	\$508,600			\$722,800	\$9,330,900		\$9,330,900	\$722,800
S&S	\$3,618,200	\$3,629,700		\$3,629,700		\$293,200	\$293,200	-\$180,900		\$112,300	\$3,742,000		\$3,742,000	\$112,300
Total	\$37,565,400	\$37,708,800	-\$3,236,900	\$34,471,900	\$3,236,900	\$863,300	\$2,342,500	-\$180,900	\$6,261,800	\$40,733,700	\$40,733,700	-\$373,100	\$40,360,600	\$2,651,800
104 S&S	\$18,826,700	\$18,826,700		\$18,826,700		-\$247,000	-\$3,497,100		-\$357,500	-\$5,101,600	\$13,725,100		\$13,725,100	-\$5,101,600

*Prepared by the Office of
the State Public Defender*



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3735/1
RLR&MGD:.....

In 9/18/01
By 9/20/01 5 PM
2001 BILL

JLD

D-Note

Gen

- 1 AN ACT ...; relating to: positions for the office of the state public defender,
- 2 requiring quarterly reports, and making an appropriation. ✓

Analysis by the Legislative Reference Bureau

Under current law, the office of the state public defender (SPD) is responsible for providing legal representation to various indigent persons. If a person qualifies for legal representation by the SPD, the SPD either assigns an attorney employed by the office to represent the person or contracts with a private attorney to represent the person. If two potential SPD clients have conflicting or potentially conflicting interests, the SPD cannot represent both clients and, instead, must contract with private attorneys to represent at least one of the potential clients.

(JCF)

In budget determinations under 2001 Senate Bill 55 (the biennial budget bill), the joint committee on finance authorized and funded 43.3 new positions for the SPD for trial representation (30.0 attorneys, 7.5 legal secretaries, 4.3 investigators, and 1.5 client services specialists). The joint committee on finance also authorized and funded 16.0 new positions for creation of a conflicts office within the SPD to represent persons whose interests are in conflict or potentially in conflict with those of persons represented by the SPD's general trial representation unit. The 16.0 positions approved by the joint committee on finance for a conflicts office consisted of: 1.0 supervising attorney, 10.0 attorneys, 3.0 legal secretaries, 1.5 investigators, and 0.5 client services specialists. The biennial budget bill also included a provision directing the public defender board to submit quarterly reports on budget savings to the joint committee on finance, and to seek additional funding from the committee, if the appropriations for the public defender board are not sufficient. The Governor

* Wisconsin Act 16

JCF

JCF

BILL

vetoed the funding for the 59.3 positions and the requirement that the public defender board submit quarterly savings reports.

This bill increases the public defender board appropriation for trial representation by \$2,894,800 general purpose revenue in fiscal year 2001-02 and \$373,100 general purpose revenue in fiscal year 2002-03 for the purpose of funding the 43.3[✓] trial representation positions and the 16.0 conflicts office positions. The bill also requires the public defender board to submit quarterly reports on budget savings to ~~the joint committee on finance~~ ^{JCF} and to seek additional funding from ~~the committee~~ if the appropriations for the public defender board are not sufficient.

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:

1 **SECTION 1. Nonstatutory provisions.**

2 (1) At the end of each quarter in fiscal years 2001-02 and 2002-03[✓], the public
3 defender board shall submit to the cochairpersons of the joint committee on finance
4 a report of the amount of savings recognized by the public defender board during the
5 previous 3[✓] months. The public defender board shall request additional funding from
6 the joint committee on finance in accordance with the method provided under section
7 13.10[✓] of the statutes, if a shortfall occurs in any appropriation to the public defender
8 board.

9 **SECTION 2. Appropriation changes.**

10 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
11 to the public defender board under section 20.550 (1) (c) of the statutes, as affected
12 by the acts of 2001, the dollar amount is increased by \$2,894,800[✓] for fiscal year
13 2001-02 and the dollar amount is increased by \$373,100[✓] for fiscal year 2002-03 to
14 increase the authorized FTE positions for the public defender board by 43.3[✓] GPR
15 positions for trial representation and 16.0 GPR[✓] positions for a conflicts office.

16

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0676?dn

MGD:.....

-3135

Wane jld

Scott:

As you know, Supreme Court Rule 20:1.10 (a) prohibits a lawyer in a firm from representing a person whose interests conflict with the interests of another person who is already represented by another member of the firm. But it is unclear whether, for the purposes of that rule, the Office of the State Public Defender (SPD) is a firm. Wisconsin courts have not addressed that issue; commentators and courts in other jurisdictions that have addressed it (either by looking at Rule 1.10 of the ABA Model Rules of Professional Conduct — the rule on which SCR 20:1.10 (a) is based — or another state's version of that rule) disagree. Compare *People v. Robinson*, 79 Ill. 2d 147 402 N.E.2d 157 (Ill. 1979) (individual lawyers with public defender office treated as separate firms) and G. Hazard and W. Hodes, *The Law of Lawyering: A Handbook on The Model Rules of Professional Conduct*, (2d ed. 1990), § 14.5 (public defender office should not automatically be considered a single firm) with American Law Institute, *Restatement of the Law Governing Lawyers* (2000) § 123 (rules regarding conflicts with affiliated lawyers apply to public defender offices in the same way as they do to private firms).

section

The State Bar of Wisconsin has also considered this issue. In 1990, in Ethics Opinion E-90-6, the State Bar considered a proposal under which the SPD would have established a conflicts office in Milwaukee. The office would have been similar, but not identical, to the conflicts office that would be established under this bill. The most important difference relates to s. 977.05 (4) (b) of the statute, which requires that the state public defender [b]e the chief legal officer of the office of the state public defender and make all final decisions regarding the disposition of any case handled by the office." This bill does not affect that provision, so the state public defender would be responsible under the statutes for the work of the conflicts office. By contrast, under the proposal considered by the State Bar in its ethics opinion, the statute would have been revised so that the state public defender could — and would — have delegated the authority to make final case decisions to the head of the conflicts office.

, stats.

plain

plain

SPD, state public defender

Even with that statutory change, the State Bar was unwilling to give the proposal its unqualified blessing. Although it indicated that the proposal "appeared workable," it suggested that the SPD "petition the Wisconsin Supreme Court for an amendment of the [Rules of Professional Conduct] to clarify its status as a 'firm' under the proposed arrangement." It concluded that the application of SCR 20:1.10 (a) "should be

addressed by the Wisconsin Supreme Court prior to the implementation of any SPD conflicts office." At the same time, the State Bar stated that the SPD is a "firm," suggesting that, without any change in s. 977.05 (4) (b), SCR 20:1.10 (a) may well apply.

A Wisconsin court considering this issue would not be bound by Ethics Opinion E-90-6. Thus, it might ultimately conclude that SCR 20:1.10 (a) is inapplicable if the conflicts office were separated from other units of the SPD in a way that protects client confidences and promotes client loyalty — regardless of whether the ~~state public defender himself~~ ^{or herself} retains ultimate responsibility for the office under the statutes. On the other hand, a court could conclude that, without any statutory changes, the SPD is a firm to which that rule applies. If it did, that might effectively end the conflicts office's ability to handle conflicts cases. See *Wheat v. United States*, 486 U.S. 153 (1988). (Such a determination may not necessarily require reversing convictions in cases in which the conflicts office had been involved, since the defendant would have to show that the conflict adversely affected his or her defense. *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980).)

There are at least two options that would make it the fate of the conflicts office more secure. First, you could amend s. 977.05 (4) (b) to require the ~~state public defender~~ to delegate the authority to make final case decisions to the head of the conflicts office. Second, you could establish the conflicts office as a subunit of the public defender board but prohibit it from being set up as a subunit of the ~~office of the state public defender~~.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

Handwritten annotations: "plain" (twice), "stats.", "delete", "SPD" (circled), and various arrows pointing to specific text elements.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3735/1dn

MGD:jld:pg

September 19, 2001

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addressed by the Wisconsin Supreme Court prior to the implementation of any SPD conflicts office." At the same time, the State Bar stated that the SPD is a "firm," suggesting that, without any change in s. 977.05 (4) (b), stats., SCR 20:1.10 (a) may well apply.

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Michael Dsida
Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

September 20, 2001

MEMORANDUM

To: Representative Albers

From: Robin L. Ryan, Legislative Attorney

Re: LRB-3735/1 Provide the public defender office with funding and positions for a conflicts office

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE
↳ 2 Oct 01

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-6927 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.