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AGENCY: DOC (Community Corrections)

Paper #: 354

ISSUE: Intensive Sanctions

ALTERNATIVE: A3 (take no action), B3 (take no action)

SUMMARY: Truth in sentencing nearly eliminated Intensive Sanctions. Would have to modify statutory language and screw around with Truth in Sentencing.

BY: Tanya



Legislative Fiscal Bureau

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May 31, 2001 Joint Committee on Finance Paper #354

Intensive Sanctions Program (DOC -- Community Corrections)

CURRENT LAW

A person may be sentenced by the court to the intensive sanctions program for a felony offense occurring between August 15, 1991, and December 30, 1999. A person sentenced for a felony occurring on or after December 31, 1999: (a) may not be sentenced to the program; (b) is not eligible for the program while serving the confinement portion of a bifurcated sentence; and (c) may be placed in the program as a condition of extended supervision.

GOVERNOR

No provision.

DISCUSSION POINTS

1. The Department of Corrections administers the intensive sanctions program. The program is designed to provide: (a) punishment that is less costly than ordinary imprisonment and more restrictive than ordinary probation or parole supervision or extended supervision; (b) component phases that are intensive and highly structured; and (c) a series of component phases for each participant that is based on public safety considerations and a participant's needs for punishment and treatment. The component phases are required to include one or more of the following sanctions: (a) confinement; (b) intensive or other field supervision; (c) electronic monitoring; (d) community service; (e) restitution; and (f) other programs as prescribed by the Department.

2. A person may be sentenced by the court to the intensive sanctions program for a felony offense occurring between August 15, 1991, and December 30, 1999. A person not

sentenced under a bifurcated sentence may also enter the intensive sanctions program if: (a) the person is a prisoner serving a felony sentence not punishable by life imprisonment and the Department of Corrections directs the person to participate in the program; or (b) the Parole Commission grants the person parole and requires the person to participate in the program as a condition of parole. Further, a person may be placed in the program if the Department and the person agree to his or her participation in the program as an alternative to revocation of probation, extended supervision or parole. Finally, a person sentenced for a felony occurring on or after December 31, 1999: (a) may not be sentenced to the program; (b) is not eligible for the program while serving the confinement portion of a bifurcated sentence; and (c) may be placed in the program as a condition of extended supervision.

3. In 1999 Act 9, the intensive sanctions program was modified to specify that a person who at any time has been convicted, adjudicated delinquent or found not guilty by reason of mental disease for a violent offense is not eligible for the program. As a result, individuals convicted of the following crimes may not be sentenced or placed in the program: (a) first-degree intentional homicide; (b) first-degree reckless homicide; (c) felony murder; (d) second-degree intentional homicide; (e) second-degree reckless homicide; (f) homicide by negligent handling of a dangerous weapon, explosives or fire; (g) homicide by intoxicated use of a vehicle or firearm; (h) homicide by negligent operation of a vehicle; (i) certain battery offenses causing substantial or great bodily harm; (j) certain battery offenses to an unborn child causing substantial or great bodily harm; (k) special circumstance battery offenses; (l) battery or threats to witnesses; (m) battery or threat to a judge; (n) mayhem; (o) first-, second- and third-degree sexual assault; (p) reckless injury; (q) intentional or reckless maltreatment of vulnerable adults; (r) abuse of residents of penal facilities; (s) certain abuse and neglect of patients and residents; (t) kidnapping; (u) certain intimidation of a witness or victim offenses; (v) certain endangering safety by use of a dangerous weapon offenses; (w) sale, use, possession or transportation of machine guns or other weapons; (x) recklessly endangering safety; (z) tampering with household products; (aa) damage to the property of any person who serves on a grand or petit jury because of a verdict or indictment; (bb) damage or threat to property of a witness; (cc) damage or threat to property of a judge; (dd) arson; (ee) damage of property by explosives; (ff) arson with intent to defraud; (gg) sale, use, possession, manufacture or transportation of molotov cocktails; (hh) armed burglary; (ii) carjacking; (jj) threats to injure or accuse of a crime; (kk) robbery; (ll) assaults by prisoners; (mm) bomb scares; (nn) first- or second-degree sexual assault of a child; (oo) repeated acts of sexual assault with the same child; (pp) physical abuse of a child; (qq) causing mental harm to a child; (rr) sexual exploitation of a child; (ss) incest with a child; (tt) child enticement; (uu) solicitation of a child for prostitution; and (vv) abduction of another's child. In addition to the crimes listed above, violent offenses also include a crime under federal law, the law of another state or, prior to October 29, 1999, any Wisconsin law that is comparable to the crimes listed above. The modifications enacted in Act 9 were first applicable to persons placed in or sentenced to the program on October 29, 1999.

4. In September, 1997, the Department of Corrections administratively discontinued the use of the intensive sanctions program. As a result, the Department no longer administratively transfers offenders to intensive sanctions or uses the program as an alternative to the revocation of probation or parole. In addition, offenders are no longer paroled to the program. The number of

offenders in the program has decreased from a high of 1,628 offenders in the community in September, 1997, to 37 in May, 2001.

5. In SB 55, funding and positions associated with the intensive sanctions program (\$3,183,300 GPR in 2001-02 and \$3,185,400 GPR and 24.0 GPR positions annually) are reallocated to support increased community corrections resources in the probation, extended supervision and parole program.

6. In February, 1998, a review panel appointed by the Governor to evaluate the intensive sanctions program issued its recommendations. The panel expressed a number of concerns and criticisms of the program related to program administration, uses of the program and its mission. The panel's recommendations, generally, would have shifted the focus of the program to the supervision of high risk offenders after completion of their prison sentence (a "strict supervision" model). This proposal would have changed the statutory focus of the program from punishment that is less costly than ordinary imprisonment and more restrictive than ordinary probation or parole supervision, to an intensive probation and parole supervision program for high risk offenders at mandatory release from prison. To the extent that the panel's recommendations did not allow for earlier release of offenders to community supervision, but rather allowed for more intensive supervision of high risk offenders upon release, the "strict supervision" model would not have resulted in reduced costs.

7. In August, 1999, the Criminal Penalties Study Committee (a Committee created to recommend modifications to the bifurcated sentencing structure created in 1997 Act 283) recommended that community supervision of offenders serving extended supervision sentences be designed in a manner similar to the intensive sanctions review panel's "strict supervision" model. The Criminal Penalties Study Committee made no recommendations that would have allowed the intensive sanctions program to be utilized under a bifurcated sentence prior to an offender reaching the court-imposed extended supervision sentence.

8. To the extent that inmates are placed in the intensive sanctions program and are subsequently placed in the community, institutional prison populations are reduced. According to Corrections' 2000 Annual Fiscal Report, the annual cost per offender in the intensive sanctions program in 1999-00 was \$11,400, compared with the average cost of a correctional facility placement of \$22,600 annually. Currently, out-of-state contract prison beds cost \$16,100 annually.

9. As designed, the intensive sanctions program provided staffing at a one agent for every 25 offenders ratio, with approximately \$2,400 annually for the purchase of services for offenders. In addition, security supervision was provided on a one correctional officer to every 68 offender basis. Under the probation, extended supervision and parole program, agents currently have a budgeted caseload of approximately 54 offenders and a purchase of services budget of approximately \$237 per offender. Further, the probation, extended supervision and parole program does not utilize correctional officers.

10. Since the intensive sanctions program is designed to be "less costly than ordinary

imprisonment," the Committee could consider making some statutory modifications to the program to allow it to be used under bifurcated sentencing and providing funding and staff to support some modest level of program participation. Given that the program has been administratively discontinued and that funding and positions are reallocated under the bill to probation and parole staffing and purchase of services for offenders, it is assumed that additional resources would need to be provided in order for the intensive sanction program to be utilized in the 2001-03 biennium.

11. Given that state correctional institutions currently exceed operating capacity, inmate population growth is generally addressed by placing inmates in out-of-state contract beds. The following table indicates potential program costs and corresponding contract bed reductions that could be made if the intensive sanctions program was reestablished. The cost estimates assume that offenders will begin entering the program in January, 2002. During this period Corrections could begin to prepare for program initiation, identify offenders sentenced to prison for crimes occurring before December 31, 1999, who would be eligible for administrative transfer or parole to the program and inform the courts of the program as a revised sentencing option.

<u>Alternative</u>	<u>2001-02</u>		<u>2002-03</u>		<u>2001-03</u>
	<u>Amount</u>	<u>Positions</u>	<u>Amount</u>	<u>Positions</u>	<u>Amount</u>
300 Offenders:					
Program Costs	\$493,500	6.75	\$1,791,000	21.50	\$2,284,500
Contract Bed Offset	<u>-396,400</u>	<u>0.00</u>	<u>-3,182,200</u>	<u>0.00</u>	<u>-3,578,600</u>
Total	\$97,100	6.75	-\$1,391,200	21.50	-\$1,294,100
400 Offenders:					
Program Costs	\$697,300	9.25	\$2,206,700	29.00	\$2,904,000
Contract Bed Offset	<u>-566,300</u>	<u>0.00</u>	<u>-4,421,400</u>	<u>0.00</u>	<u>-4,987,700</u>
Total	\$131,000	9.25	-\$2,214,700	29.00	-\$2,083,700

12. In the table, the number of offenders (300 or 400) was established at a level that: (a) would generate cost savings; and (b) was assumed to be reasonable to achieve within the 2001-03 biennium.

13. The Committee should note that while the truth-in-sentencing law prohibits the use of the intensive sanctions program as part of the confinement portion of a bifurcated sentence, a person serving a bifurcated sentence may be eligible for the challenge incarceration program ("boot camp") if the sentencing court specifies that he or she is eligible. If an eligible person successfully completes the challenge incarceration program, a judge is required to reduce the prison portion of the sentence so the person is released to supervision, while the supervision portion of the sentence is increased by a corresponding amount, resulting in the same total sentence length.

14. If the Committee wishes, the intensive sanctions program could be modified in a manner similar to the challenge incarceration program to permit intensive sanctions to be used as an

alternative to a prison placement for offenders sentenced for crimes occurring on or after December 31, 1999. The following modifications could be made:

a. Delete the requirement that a judge may not sentence an individual to the intensive sanctions program for an offense that occurs on or after December 31, 1999.

b. Delete the provision that an offender convicted of an offense that occurs on or after December 31, 1999 is not eligible for the program while serving the confinement portion of a bifurcated sentence.

c. Allow a judge at sentencing to determine if an offender is eligible for the program. Allow a sentencing judge to determine the date at which an offender may be eligible for release to the community portion of the program but specify that this may be no sooner than one year (the minimum amount of time an offender must serve in prison under a bifurcated sentence) or longer than two years (under current law, the maximum confinement time under the intensive sanction program is two years for offenses occurring before December 31, 1999).

d. Require that the determination to place a person sentenced under a bifurcated sentence in the community portion of the intensive sanctions program is solely the discretion of the sentencing court, based on a recommendation from the Department of Corrections at the time of the potential placement decision.

e. Provide that if a judge decides to hold a hearing regarding a potential intensive sanctions community placement, the court would be required to provide victim notification and allow victim statements at the hearing.

f. Provide that if a judge decides to hold a hearing regarding a potential intensive sanctions community placement, the court would be required to notify the district attorney in the county that originally prosecuted the case.

ALTERNATIVES TO BILL

A. Intensive Sanctions Program Funding

1. Provide \$493,500 and 6.75 positions in 2001-02 and \$1,791,000 and 21.5 positions in 2002-03 to staff and fund the intensive sanctions program to support a population of 300 offenders. Reduce prison contract bed funding by \$396,400 in 2001-02 and \$3,182,200 in 2002-03 associated with decreased prison populations.

<u>Alternative 1</u>	<u>GPR</u>
2001-03 FUNDING (Change to Bill)	-\$1,294,100
2002-03 POSITIONS (Change to Bill)	21.50

2. Provide \$697,300 and 9.25 positions in 2001-02 and \$2,206,700 and 29.0 positions in 2002-03 to staff and fund the intensive sanctions program to support a population of 400 offenders. Reduce prison contract bed funding by \$566,300 in 2001-02 and \$4,421,400 in 2002-03 associated with decreased prison populations.

Alternative 2	GPR
2001-03 FUNDING (Change to Bill)	- \$2,083,700
2002-03 POSITIONS (Change to Bill)	29.00

3. Take no action.

B. Statutory Modifications

1. Modify current statutory language related to use of the intensive sanctions program under truth-in-sentencing to: (a) delete the requirement that a judge may not sentence an individual to the intensive sanctions program for an offense that occurs on or after December 31, 1999; (b) delete the provision that an offender convicted of an offense that occurs on or after December 31, 1999 is not eligible for the program while serving the confinement portion of a bifurcated sentence; (c) allow a judge at sentencing to determine if an offender is eligible for the program; (d) allow a sentencing judge to determine the date at which an offender may be eligible for release to the community portion of the program, but specify that this may be no sooner than one year or longer than two years; (e) require that the determination to place a person sentenced under a bifurcated sentence in the community portion of the intensive sanctions program is solely the discretion of the sentencing court, based on a recommendation from the Department of Corrections at the time of the potential placement decision; (f) specify that if a judge decides to hold a hearing regarding a potential intensive sanctions community placement, the court is required to provide victim notification and to allow victim statements at the hearing; and (g) specify that if a judge decides to hold a hearing regarding a potential intensive sanctions community placement, the court is required to notify the district attorney in the county that originally prosecuted the case.

2. Take no action.

Prepared by: Jere Bauer

Senator Burke
(Senator Plache)

CORRECTIONS -- COMMUNITY CORRECTIONS

Residence of Sex Offenders on Parole or Extended Supervision

Motion:

Move to adopt the provisions of LRB-2849/P1 which relates to the residence of offenders on parole and extended supervision convicted of serious sex offenses.

Note:

The motion (LRB-2489/P1) would require serious sex offenders to live in a residence approved by the Department of Corrections as a condition of extended supervision or parole. The motion would also establish criteria for the Department to consider when assessing the appropriateness of the residence.

MO#			
BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

Motion #1282

AYE 9 NO 7 ABS _____



Legislative Fiscal Bureau

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May 30, 2001

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Budget Issue Papers

Attached are 2001-03 budget issue papers, prepared by this office, on the following agencies:

- State Public Defender
- District Attorneys
- Department of Veterans Affairs -- General Agency Provisions
- Department of Veterans Affairs -- Trust Fund Programs and Veterans Benefits
- Educational Communications Board
- University of Wisconsin Hospitals and Clinics Authority
- University of Wisconsin System

These agencies have been scheduled for executive action by the Joint Committee on Finance on Friday, June 1. The meeting will begin at 10:00 a.m. in Room 411 South, State Capitol.

BL/sas
Attachments

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June 1, 2001

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825 Shared Revenue Modifications and Expenditure Restraint Funding Level

Shared Revenue and Tax Relief -- Direct Aid Payments

826 Direct Aid Payments -- Funding Level

827 Use of Census Figures in Shared Revenue and Mandate Relief Calculations

828 Utility Tax on Wholesale Merchant Plants

829 Shared Revenue Payments on Utility Property

830 Use of County Shared Revenue

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Shared Revenue and Tax Relief -- Property Tax Credits

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855 Repayment of GPR Start-Up Administrative Funding -- College Savings and College Tuition & Expenses Programs

856 Administrative Funding for College Savings and College Tuition and Expenses Programs

857 Appropriations Structure -- College Savings and College Tuition and Expenses Programs

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860 Court Commissioner Judicial Education

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870 Public Library Financial Assistance for Communications Hardware

871 E-rate Funding

872 Eligibility for Secured Correctional Facilities

873 Eligibility for Charter Schools

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881 Staff

Tobacco Settlement Securitization

885 Discussion of Tobacco Settlement Securitization

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Tourism

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- 891 Expand Heritage Tourism Grant Program
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- 895 Transportation Fund Condition Statement
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- 897 Revenue Bonding Increases -- Bonding Policy
- 898 Driver's License and Vehicle Registration Abstract Fees
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- 905 General Transportation Aid -- Funding Level
- 906 Grants to Local Professional Football Stadium Districts
- 907 Mass Transit Operating Assistance -- Funding Level
- 908 Supplemental Mass Transit Aids
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- 910 Transportation Economic Assistance Program -- Funding Level
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- 912 Local Roads Improvement Program -- Basic Allocation
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- 914 Kenosha Transit Parking Facility

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- 931 Automated Oversize/Overweight Permit Issuance System
- 932 Special License Plate Issuance Fees

Transportation -- State Patrol

- 935 DNR Payments for DOT Radio Services

Transportation -- Other Divisions

- 940 Safe-Ride Grant Program
- 941 Funding for Payments for Municipal Services

University of Wisconsin Hospital and Clinics Authority

- 945 Bonding Authority

University of Wisconsin Hospital and Clinics Board

University of Wisconsin System

- 950 Funding for UW-Madison
- 951 Funding for UW-Milwaukee
- 952 Information Technology and Biotechnology Courses
- 953 Tuition Revenue Expenditure Authority
- 954 Position Authority
- 955 Agricultural Stewardship Initiative
- 956 UW-Madison Intercollegiate Athletics
- 957 Career Counseling and Advising Services
- 958 La Crosse Health Science Center Operating Costs
- 959 Depreciation Offset for General Purpose Revenue Funds

Veterans Affairs -- General Agency Provisions

- 970 In-House Servicing of the Primary Mortgage Loan Program Portfolio
- 971 Document Imaging of Agency Records
- 972 Establishment of Regional Service Delivery Centers
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- 974 Additional Unclassified Division Administrators

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Veterans Affairs -- Trust Fund Programs and Veterans Benefits

- 985 Educational Grants Reimbursement Rate Increase
- 986 Veterans Emergency Assistance Grant Program Modifications
- 987 Transportation Services Grant for Disabled Veterans
- 988 Milwaukee Veterans War Memorial Education Center Grant

Veterans Affairs -- Homes and Facilities for Veterans

- 995 Standard Budget Adjustments - Night and Weekend Differential
- 996 Supplies and Services
- 997 Staffing at the Veterans Home at King

Wisconsin Housing and Economic Development Authority

- 1005 Wisconsin Development Reserve Fund

Wisconsin Technical College System

- 1010 Technical and Occupational Program Grants
- 1011 Capacity Grant Program Transfer and Funding Reduction
- 1012 General Aids for Technical College Districts

Workforce Development -- Departmentwide

Workforce Development -- Employment, Training and Vocational Rehabilitation Programs

- 1025 Division of Community Services Programs
- 1026 Automated Work Permit System and Fee Increase
- 1027 Labor and Industry Review Commission -- Supplies and Services Funding
- 1028 Unemployment Insurance Tax and Wage and Reporting System Redesign
- 1029 Wisconsin Conservation Corps -- Funding for Crews
- 1030 Wisconsin Conservation Corps -- Corps Member Benefits
- 1031 Governor's Work-Based Learning Board -- Youth Apprenticeship Training Grants
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Temporary Assistance for Needy Families (TANF)

- 1040 TANF Overview
- 1041 Revised Estimates for Wisconsin Works (W-2) and TANF Related Programs

W-2 Agency Contracts

- 1042 W-2 Contract Allocations
- 1043 W-2 Contract Policy Issues
- 1044 W-2 Financial Oversight

Child Care

- 1045 Direct Child Care Program
- 1046 Program Reduction Options to Pay for Child Care Subsidies
- 1047 Programs to Improve Child Care Quality and Availability
- 1048 Child Care Licensing Funding (DHFS -- Children and Families)
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Other Current Programs in DWD and DHFS

- 1050 Kinship Care Funding (DHFS -- Children and Families)
- 1051 Food Stamps for Qualified Immigrants
- 1052 Fatherhood Initiative
- 1053 Public Assistance Collection Unit

DWD Appropriations Structure

- 1054 Federal Block Grant Appropriations
- 1055 Joint Committee on Finance Authority to Review Expenditures of Federal TANF and Child Care Block Grant Funds

Workforce Development -- Economic Support and Child Care (Other Than TANF Issues)

- 1056 Food Stamp Reinvestment
- 1057 Transfer of Medical Assistance Eligibility Administration to the Department of Health and Family Services

Workforce Development -- Child Support

- 1060 KIDS Computer System, Centralized Receipt and Disbursement Fee
- 1061 Use of Percentage-Expressed Child Support Orders in Wisconsin

Public Defender

Base Agency

(LFB Budget Summary Document: Page 527)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
4	Early Representation (Paper #720)

AGENCY: Public Defender

Paper #: 720

ISSUE: Allow for early representation

ALTERNATIVES: 1 (approve)

SUMMARY: WDDA unanimously supports the SPD's request. Could allow freedom to engage in settlement negotiations and resolve cases early and craft alternatives deemed appropriate by the prosecutor and defender.

BY: Tanya

1 OK
Garret-2



Legislative Fiscal Bureau

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June 1, 2001

Joint Committee on Finance

Paper #720

Early Representation (Public Defender)

[LFB 2001-03 Budget Summary: Page 528, #4]

CURRENT LAW

The State Public Defender (SPD) may not provide legal services or assign counsel to: (a) adults who are not in custody and have not yet been charged with a crime; and (b) juveniles who are not in custody and not yet subject to a proceeding under the Children's Code (Chapter 48) or the Juvenile Justice Code (Chapter 938) for which counsel is required or for which counsel may be appointed.

GOVERNOR

Authorize the SPD to provide (early) representation to: (a) adults who are not in custody and have not yet been charged with a crime; and (b) juveniles who are not in custody and not yet subject to a proceeding under the Children's Code (Chapter 48) or the Juvenile Justice Code (Chapter 938) for which counsel is required or for which counsel may be appointed.

DISCUSSION POINTS

1. In 1995 Act 27 (the 1995-97 biennial budget act), a series of statutory modifications were made to the SPD's authority associated with eliminating Public Defender representation in cases where there is no clear constitutional right to representation. This included eliminating the SPD's authority to provide representation to adults who are not in custody and have not been charged with a crime and juveniles who are not in custody and are not yet subject to a proceeding under Chapters 48 and 938 for which counsel is required or may be appointed. 1995 Act 27 reduced the private bar appropriation by \$133,100 GPR in 1995-96 and \$262,500 GPR in 1996-97 to reflect this statutory change.

2. In its budget request, the SPD requested \$141,600 GPR in 2001-02 and \$279,300 GPR in 2002-03 and statutory changes to authorize the SPD to provide early representation. The SPD indicated that the amount requested represented approximately the amount by which the SPD's budget was reduced in 1995 Act 27 when early representation was eliminated. The request further indicated that the costs of early representation "are likely to be offset by corresponding savings. These anticipated savings will result from fewer formal charges being filed, less serious charges being filed as a result of negotiated pre-charging settlements, and less attorney time spent on some cases as a result of earlier client contact." These cost savings were not, however, quantified. The bill provides no funding associated with the early representation provision. DOA indicates that it believes that the potential savings associated with early representation will result in no additional costs to the SPD.

3. Under Supreme Court Rule 20:3.8, a "prosecutor in a criminal case shall not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing." As a part of a broader petition, in January, 2000, the Wisconsin District Attorneys Association (WDAA) petitioned the Supreme Court to eliminate this prohibition. The Supreme Court has not acted on the petition and the rule remains in place and limits the ability of prosecutors to engage in settlement negotiations with unrepresented clients. To the extent the Governor's recommendation was adopted, this could increase the number of uncharged cases where prosecutors might have more freedom to engage in settlement negotiations with represented clients and resolve cases early.

4. The SPD strictly construes the current law prohibition against early representation of adults and juveniles. If an SPD client has been charged with one crime, but there are other potential charges against the SPD's client that have not yet been issued, the SPD will not provide counsel to the client in regards to the crimes that have not been formally charged. If the Governor's recommendation was adopted, the SPD would be able to negotiate on behalf of clients not only in regards to charged crimes, but in regards to uncharged crimes as well. This could improve the system's ability to resolve cases efficiently.

5. Finally, if early representation was allowed, public defenders could be working with prosecutors before individuals were charged, in cases where the prosecutor and the public defender deemed it appropriate, to divert some cases from the formal criminal system and craft alternatives to prosecution. Senate Bill 55 provides that the Secretary of Administration may allocate up to \$2 million in federal Byrne anti-drug enforcement grant and match money for a misdemeanor offender diversion program. Under the bill, SPD, in consultation with the Director of State Courts and the WDAA, would be required to develop alternative charging and sentencing options for misdemeanor crimes to divert offenders from imprisonment, and to submit a proposal to DOA by July 1, 2002. The SPD indicates that without the proposed statutory change allowing early representation, the options available for the SPD in developing this diversion program would be reduced.

6. In January, the executive board of the WDAA met and reviewed the budget requests of the SPD for the upcoming biennium. The WDAA executive board unanimously supported the SPD's request to permit representation of individuals who have been arrested for a crime but who

are not in custody and have not yet been charged.

7. A concern could be raised at expanding the SPD's authority to provide representation at the same time that base budget reductions are recommended. The bill would authorize, but not require, the SPD to provide early representation for adults and juveniles. Some might argue that with a discretionary early representation program, it might prove to be arbitrary in practice as to who receives early representation and who does not. On the other hand, a discretionary early representation program would better enable the SPD to control costs.

8. The SPD has indicated that if this recommendation were adopted, it would undertake a number of steps to control costs. The SPD expects the early representation cases to represent a small part of its caseload. Second, in order to avoid additional costs, early representation cases would be assigned to SPD staff rather than the private bar whenever possible. Third, early representation would not change the budgetary caseload standards for an SPD attorney if the case subsequently went forward, but rather the representation of that client from the pre-charge phase forward would count as one case. Fourth, the SPD would monitor the early representation cases and the costs associated with such representation. The SPD indicated that if early representation resulted in costs that the SPD could not absorb, the SPD would scale back or discontinue early representation.

9. If, however, early representation proved to be cost effective, the SPD would continue early representation. The SPD indicated that while there may be some savings to the SPD from early representation (settling a case early for example), it would expect the savings to be felt system-wide.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to authorize the SPD to provide representation to: (a) adults who are not in custody and have not yet been charged with a crime; and (b) juveniles who are not in custody and not yet subject to a proceeding under the Children's Code (Chapter 48) or the Juvenile Justice Code (Chapter 938) for which counsel is required or for which counsel may be appointed.

2. Maintain current law.

Prepared by: Paul Onsager

MO# Alt. 1

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 9 NO 7 ABS

PUBLIC DEFENDER

Court Reporter Transcript Fees

Motion:

Move to increase transcript fees from parties requesting a transcript (excluding the state or any political subdivision) from \$1.75 per 25-line page for the original and 60¢ per 25-line page for each copy to \$2.25 and 50¢ respectively. Further, provide that for expedited transcripts, an additional fee of 75¢ per 25-line page for the original and 25¢ per 25-line page for each copy shall be charged to the party requesting the transcript. Define "expedited transcripts" as those transcripts that are requested by a party to be prepared within 7 days but are not required to be prepared within 7 days by rule or by statute.

MO#			
BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 13 NO 3 ABS _____

Public Defender

Base Agency

LFB Summary Items for Which No Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	Standard Budget Adjustments
5	Transcripts, Discovery and Interpreters Appropriation

LFB Summary Items to be Addressed in a Subsequent Paper

<u>Item #</u>	<u>Title</u>
2	Base Budget Reductions
3	Misdemeanor Offender Diversion Program

MO# _____

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 16 NO 0 ABS _____

District Attorneys

Base Agency

(LFB Budget Summary Document: Page 237)

LFB Summary Items for Which Issue Papers Have Been Prepared

Item #

Title

2

Elimination of Special Prosecution Clerks Fee and Appropriation (Paper #380)

-

Additional Prosecutors (Paper #381)

AGENCY: DAs

Paper #: 380

ISSUE: Elimination of Special Prosecution Clerks Fee and Appropriation

ALTERNATIVE: 3 (maintain current law). 2 only if 3 fails.

SUMMARY: Keeps it at the state level to collect the fee. MKE County and MKE DA both want to maintain current law.

Prepared by: Tanya

30K
Albers motion #2
Statewide



Legislative Fiscal Bureau

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May 21, 2001

Joint Committee on Finance

Paper #380

Elimination of Special Prosecution Clerks Fee and Appropriation (District Attorneys)

[LFB 2001-03 Budget Summary: Page 237, #2]

CURRENT LAW

A \$2 special prosecution clerks fee is assessed, in Milwaukee County only, whenever a person pays a fee for civil, small claims, forfeiture (except for safety belt use violations), wage earner or garnishment actions, or to file an appeal from municipal court, to file a third party complaint in a civil action or for filing a counterclaim or cross complaint in a small claims action. All moneys generated by the special prosecution clerks fee are deposited in the District Attorneys' other employees program revenue appropriation. This appropriation reimburses Milwaukee County for the salary and fringe benefits of 4.5 clerks in the Milwaukee County District Attorney's office who serve prosecutors handling violent crime and felony drug violations in Milwaukee County's speedy drug and violent crime courts.

GOVERNOR

Make the following changes: (a) delete \$174,700 PR annually and the other employees appropriation that provides reimbursement to the Milwaukee County District Attorney's office for clerks who serve prosecutors handling violent crimes and felony drug violations in Milwaukee County's speedy drug and violent crime courts; and (b) eliminate the \$2 special prosecution clerks fee, to first apply to cases filed on the effective date of the bill.

DISCUSSION POINTS

1. Currently, revenues generated by the \$2 special prosecution clerks fee are collected by the Milwaukee County Clerk of Court and then forwarded to the State Treasurer for deposit in the District Attorneys' other employees appropriation. Every six months the Department of Administration (DOA) reimburses the Milwaukee County District Attorney's office from the

District Attorneys' other employees appropriation for either the period of January through June (payments made in July) or July through December (payments made in January) for the salary and fringe benefits associated with the 4.5 clerk positions.

2. The executive budget book indicates that the intent of the Governor's provisions concerning the special prosecution clerks fee and appropriation was not to eliminate the fee, but rather to eliminate this reimbursement arrangement and instead allow Milwaukee County to directly retain the revenue from the special prosecution clerks fee. The bill, however, deletes the special prosecution clerks fee and related appropriation. Under current law, upon the deletion of this appropriation, the appropriation's unencumbered balance, reestimated to be \$149,400 on June 30, 2001, would lapse to the general fund.

3. Some might argue that to the extent that court fees serve as a barrier to the courtroom, elimination of the fee would reduce the barrier. However, elimination of the fee would leave unfunded 4.5 clerk positions who serve prosecutors handling violent crime and felony drug violations in Milwaukee County's speedy drug and violent crime courts.

4. Transferring retention of fee revenue to Milwaukee County and eliminating state reimbursement could be seen as a less cumbersome and more direct approach to funding the special clerks. However, the timing of the transfer could impact state and Milwaukee County revenues.

5. Under the bill, funding for state reimbursement to Milwaukee County would be eliminated beginning in 2001-02, the District Attorneys' other employees appropriation would be repealed upon the effective date of the bill, and the special prosecution clerks fee would be eliminated beginning with cases filed on the effective date of the bill. Since January through June costs are reimbursed in July and July through December costs reimbursed in January, the effect of the bill would be to retroactively eliminate reimbursement to Milwaukee County, effective January 1, 2001. In a letter to the Co-Chairs dated March 21, 2001, the State Budget Director indicated that this was not the Governor's intent and requested that the budget bill be modified to delay the effective date for repealing the state-administered special prosecution clerk fee to allow time for a smooth transition of the fee as a county-administered program.

6. In order to have the transfer of costs to Milwaukee County coincide with the receipt of revenues, the following alternative could be considered: (a) provide \$174,700 PR in 2001-02 to allow for reimbursement to Milwaukee County for calendar year 2001 costs; (b) repeal the District Attorneys' other employees appropriation, effective June, 30, 2002; and (c) do not eliminate the special prosecution clerks fee but instead provide that fee revenues be retained by Milwaukee County, beginning with cases filed on January 1, 2002. Under this alternative, Milwaukee County would begin receiving fee revenues on the same date that the costs of the 4.5 clerk positions would no longer be reimbursed by the state. It is estimated that under this alternative an unencumbered balance of \$72,000 would lapse to the general fund upon repeal of the appropriation on June 30, 2002.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) delete \$174,700 PR annually and repeal the District Attorneys' other employees appropriation that reimburses the Milwaukee County District Attorney's office for the salaries and fringe benefits of 4.5 special prosecution clerks; and (b) eliminate the \$2 special prosecution clerks fee that provides program revenue for the reimbursement, to first apply to cases filed on the effective date of the bill. It is estimated that \$149,400 would lapse to the general fund upon repeal of the program revenue appropriation.

<u>Alternative 1</u>	<u>GPR</u>	<u>PR</u>	<u>PR-Lapse</u>	<u>TOTAL</u>
2001-03 REVENUE (Change to Base) [Change to Bill]	\$149,400 \$149,400	-\$389,000 \$6,200	\$149,400 \$149,400	-\$389,000 \$6,200]
2001-03 FUNDING (Change to Base) [Change to Bill]	\$0 \$0	-\$349,400 \$0	\$0 \$0	-\$349,400 \$0]

2. Modify the Governor's recommendation as follows: (a) provide \$174,700 PR in 2001-02; (b) repeal the District Attorneys' other employees appropriation, effective June 30, 2002; and (c) provide that the \$2 special prosecution clerks fee will not be eliminated, but that revenue from the fee will be retained by Milwaukee County, for the costs of special clerks providing services to Milwaukee County prosecutors handling violent crime and felony drug violations, effective as of January 1, 2002, to first apply to cases filed on that date. Under this alternative, it is estimated that \$72,000 would lapse to the general fund upon repeal of the program revenue appropriation.

<u>Alternative 2</u>	<u>GPR</u>	<u>PR</u>	<u>PR-Lapse</u>	<u>TOTAL</u>
2001-03 REVENUE (Change to Base) [Change to Bill]	\$72,000 \$72,000	-\$291,800 \$103,400	\$72,000 \$72,000	-\$291,800 \$103,400]
2001-03 FUNDING (Change to Base) [Change to Bill]	\$0 \$0	-\$174,700 \$174,700	\$0 \$0	-\$174,700 \$174,700]

3. Maintain current law.

<u>Alternative 3</u>	<u>PR</u>
2001-03 REVENUE (Change to Base) [Change to Bill]	\$0 \$395,200]
2001-03 FUNDING (Change to Base) [Change to Bill]	\$0 \$349,400]

Prepared by: Paul Onsager