

☞ **07hr_JC-Au_Misc_pt23**



☞ Details: Legislative Audit Bureau Report 07-9: An Evaluation: Allocation of Prosecutor Positions,
Department of Administration

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee on Audit...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)



STATE OF WISCONSIN

Legislative Audit Bureau

22 E. Mifflin St., Ste. 500
Madison, Wisconsin 53703
(608) 266-2818
Fax (608) 267-0410
Leg.Audit.Info@legis.state.wi.us

Janice Mueller
State Auditor

DATE: July 23, 2007

TO: Lewis Rosser and Pamela Matthews
Committee Clerks to the Joint Legislative Audit Committee

FROM: Kate Wade *KW*
Program Evaluation Director

SUBJECT: Report 07-9: An Evaluation: Allocation of Prosecutor Positions

Enclosed is our evaluation of the Allocation of Prosecutor Positions. The State Prosecutors Office, which is in the Department of Administration, annually calculates prosecutorial staffing needs for county district attorney offices. As of July 1, 2006, there were 424.65 full-time equivalent (FTE) county-level prosecutors. State expenditures for these staff totaled \$44.4 million in fiscal year 2005-06.

Prosecutorial staff include the 71 elected district attorneys, as well as deputy district attorneys, and assistant district attorneys, of which 376.40 FTE positions are funded with general purpose revenues. Milwaukee County has the most prosecutorial positions funded with program revenue (PR), with 37.00 of the 48.25 FTE PR-funded positions in the state; these positions are typically funded for specific purposes. Federal grants, the primary source of funding for PR-funded prosecutors, are expected to continue to decline.

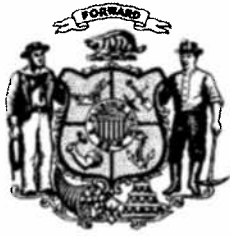
The weighted caseload formula administered by the State Prosecutors Office considers the types and number of cases handled by each office. The formula calculates an estimated need for an additional 117.33 FTE prosecutor positions to meet the existing workload. Although the formula's basic methodology is sound, some of the data it uses are out-of-date or inconsistent. For example, measurements of staff time spent on cases have not been updated to reflect changes in the law over the past 12 years, and the discretion prosecutors exercise in issuing charges when a referral is received from local law enforcement agencies leads to inconsistencies in caseload counts.

We include a number of recommendations, all of which require the support of the locally-elected district attorneys for successful implementation. We recommend DOA report to the Committee in March 2008 on plans to initiate a time study to more accurately reflect how prosecutors use their time, the development of guidelines to improve the consistency of charging practices, the implementation of a statewide case management system, and the feasibility of developing a pool of "floating" prosecutors to assign in high-need situations. We also recommend district attorneys work with local law enforcement and state prison officials within their jurisdictions to develop guidelines for case handling, and we recommend the State Prosecutors Office facilitate the sharing of best practices among counties in working with the courts to manage workloads.

The report will be released on Tuesday, July 24, at 9:00 a.m. Please contact us if you have any questions.

KW/bm

Enclosures

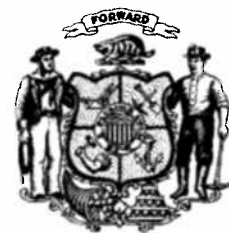


The following document was too large to scan into the committee record. The cover and table of contents, if available, have been scanned for your convenience.

Most large publications have been added to the Dr. H. Rupert Theobald Legislative Library collection. Search the LRB library catalog (LRBCat) (<http://lrbcatalog.legis.wisconsin.gov/>) for availability.

For further assistance, please contact the reference desk at (608) 266-0341 or email lrb.reference@legis.wisconsin.gov.

State of Wisconsin - Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703



**Report 07-9
July 2007**

An Evaluation

Allocation of Prosecutor Positions

Department of Administration

2007-2008 Joint Legislative Audit Committee Members

Senate Members:

Jim Sullivan, Co-chairperson
Julie Lassa
Russell Decker
Alan Lasee
Robert Cowles

Assembly Members:

Suzanne Jeskewitz, Co-chairperson
Samantha Kerkman
Kitty Rhoades
David Cullen
Joe Parisi

LEGISLATIVE AUDIT BUREAU

The Bureau is a nonpartisan legislative service agency responsible for conducting financial and program evaluation audits of state agencies. The Bureau's purpose is to provide assurance to the Legislature that financial transactions and management decisions are made effectively, efficiently, and in compliance with state law and that state agencies carry out the policies of the Legislature and the Governor. Audit Bureau reports typically contain reviews of financial transactions, analyses of agency performance or public policy issues, conclusions regarding the causes of problems found, and recommendations for improvement.

Reports are submitted to the Joint Legislative Audit Committee and made available to other committees of the Legislature and to the public. The Audit Committee may arrange public hearings on the issues identified in a report and may introduce legislation in response to the audit recommendations. However, the findings, conclusions, and recommendations in the report are those of the Legislative Audit Bureau. For more information, write the Bureau at 22 E. Mifflin Street, Suite 500, Madison, WI 53703, call (608) 266-2818, or send e-mail to leg.audit.info@legis.wisconsin.gov. Electronic copies of current reports are available on line at www.legis.wisconsin.gov/lab.

State Auditor – Janice Mueller

Audit Prepared by

Kate Wade, *Director and Contact Person*
Shelby McCulley
Zachary Ramirez
Mary Regan
Robert Sommerfeld
Kate Strom Hiorns

Director of Publications – Jeanne Thieme
Report Design and Production – Susan Skowronski

CONTENTS

Letter of Transmittal	1
Report Highlights	3
Introduction	9
Revenues and Expenditures	12
Staffing and Caseloads	15
Staffing Levels and Funding Sources	15
Salaries	19
Caseloads	20
Weighted Caseload Formula	23
Development of the Weighted Caseload Formula	23
Measuring Caseload	26
Options for Improving Caseload Measurement	31
Case Weights and Workload Measures	33
Differences in Time Available Among Prosecutors	33
Case Categories and Weights	34
Changes in Law Affecting Prosecutors' Workloads	36
Options for Improving Case Weights and Workload Measures	37
Improving the Weighted Caseload Formula	39
Other Criminal Justice System Issues Affecting Workload	43
Cases Involving Inmates	43
Reimbursements from the Department of Corrections	49
Court Structures and Policies	51
Law Enforcement Agencies and Practices	53
County-Funded Support Staff for District Attorneys	55
Special Prosecutors	57
Court-Appointed Special Prosecutors	57
Public Service Prosecutors	62
Assistance from Other State Prosecutors	62

Issues for Legislative Consideration	65
Options for Prosecutorial Staffing	65

Appendices

- Appendix 1—Full-Time Equivalent Prosecutor Positions
- Appendix 2—Prosecutor Positions by Funding Source
- Appendix 3—Caseload by County
- Appendix 4—Weighted Caseload Formula
- Appendix 5—Staffing Need under Current Weighted Caseload Formula
- Appendix 6—Positions Eliminated as a Result of 2003 Wisconsin Act 33
- Appendix 7—Felony Caseload by County
- Appendix 8—Inmate Population by County and Facility
- Appendix 9—State Funding for Special Prosecutors

Response

Response from the Department of Administration



STATE OF WISCONSIN

Legislative Audit Bureau

22 E. Mifflin St., Ste. 500
Madison, Wisconsin 53703
(608) 266-2818
Fax (608) 267-0410
Leg.Audit.Info@legis.wisconsin.gov

Janice Mueller
State Auditor

July 24, 2007

Senator Jim Sullivan and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Sullivan and Representative Jeskewitz:

We have completed an evaluation of the allocation of prosecutor positions, as requested by the Joint Legislative Audit Committee. The State has funded county-level prosecutors, including district attorneys, deputy district attorneys, and assistant district attorneys, since 1990. As of July 1, 2006, there were 424.65 full-time equivalent (FTE) county-level prosecutors statewide. Fiscal year 2005-06 expenditures totaled \$44.4 million, including \$40.8 million in general purpose revenue.

Each year, the State Prosecutors Office in the Department of Administration (DOA) calculates prosecutorial staffing needs in each county using a formula that considers current staffing levels and the number and types of cases prosecuted by each county. However, the formula has never been used to reallocate positions across counties. The current weighted caseload formula estimates that statewide, district attorneys' offices are understaffed by 117.33 FTE positions.

Prosecutors have expressed a number of concerns with the formula's calculation of staffing needs. We found that while the formula's basic methodology is sound, it uses incomplete data and out-of-date measures of the time required to prosecute cases. Updating the formula will require use of a more accurate data source and a new time study to measure prosecutors' work.

We also examined the extent to which prosecutors' workloads are affected by other agencies, including prisons and the courts. We found that cases involving prison inmates are relatively rare but can be time-consuming, and that better coordination between district attorneys and prison officials could assist in mitigating the workload impact of crimes committed by inmates.

We identify several issues for the Legislature to consider in allocating prosecutor positions. For example, creating a pool of "floating" assistant district attorneys could help counties manage unexpected or short-term workload increases.

We appreciate the courtesy extended to us by DOA, district attorneys and their staffs, and other state and local officials we contacted during our evaluation. DOA's response follows the appendices.

Respectfully submitted,

Janice Mueller
State Auditor

JM/KW/ss

Report Highlights ■

In recent years, staffing levels have declined while caseloads have increased.

While the weighted caseload formula's methodology is sound, the formula should be updated.

Coordination between prosecutors and other agencies could help manage prosecutorial workloads.

District attorneys have used special prosecutors to supplement staffing resources.

Responsibility for funding county-level prosecutor positions, including 71 elected district attorneys and their subordinates, was transferred to the State by 1989 Wisconsin Act 31. As of July 1, 2006, there were 424.65 full-time equivalent (FTE) county-level prosecutors statewide. Fiscal year (FY) 2005-06 expenditures totaled \$44.4 million, including \$40.8 million in general purpose revenue (GPR) and \$3.6 million in program revenue.

Each year, the State Prosecutors Office in the Department of Administration (DOA) calculates prosecutorial staffing needs in each county using a formula that considers current staffing levels and the number and types of cases prosecuted by each county. Concerns have been raised about the accuracy with which this methodology, known as a weighted caseload formula, currently measures staffing needs. At the request of the Joint Legislative Audit Committee, we analyzed the current weighted caseload formula, including:

- variation in prosecutors' duties that can change the amount of time they have available for prosecuting cases;
- the extent to which management differences among district attorneys' offices affect the formula's results;
- whether the data and time estimates used by the formula are current and accurate;

- the effect that cases involving inmates in state correctional facilities, changes in law enforcement, and court structures and policies have on prosecutorial workload; and
- the use of State-funded special prosecutors to supplement district attorneys' office staffing.

Staffing and Caseloads

*PR funded
GPR funded
work?*

As shown in Table 1, the number of FTE prosecutor positions decreased from 444.35 FTE positions in July 2002 to 424.65 FTE positions in July 2006, or by 4.4 percent. As of July 2006, 376.40 positions were funded with GPR, while 48.25 positions were funded with program revenue. Program revenue is derived primarily from federal grants that target specific types of crimes or crime prevention activities. Federal grant funds have declined in recent years and are expected to continue to decline, which will have the effect of reducing the number of prosecutor positions. Milwaukee County relies most heavily on program revenue-funded positions, which account for 29.8 percent of its prosecutorial staff.

Table 1

FTE Prosecutor Positions As of July 1

Year	FTE Positions
2002	444.35
2003	447.40
2004	431.50
2005	427.15
2006	424.65

From 2001 through 2005, the number of criminal cases prosecuted by district attorneys' offices increased by 11.5 percent statewide, and the number of felony cases increased by 16.2 percent. Prosecutors with whom we spoke reported that increasing caseloads have resulted in less-timely prosecutions, more decisions not to prosecute cases, and settling cases out of court with lighter penalties.

Weighted Caseload Formula

The weighted caseload formula measures the number of prosecutors that each District Attorney's office needs, based on the number and type of court cases for which that office is responsible. The formula has never been used to reallocate positions across counties. Using the current formula, the State Prosecutors Office calculated in August 2006 that 63 counties are understaffed by a total of 119.16 FTE positions, while 8 are slightly overstaffed by a total of 1.83 FTE positions, for a net statewide need of an additional 117.33 FTE positions.

The weighted caseload methodology is generally consistent with nationally accepted practices for measuring prosecutorial workloads, and most of the prosecutors with whom we spoke believed it was generally an appropriate method for measuring staffing needs. However, prosecutors expressed a number of concerns with how the formula measures caseload and how it weights different factors.

We found that most of these concerns arise from the fact that the formula uses incomplete data and out-of-date measures of the time required to prosecute cases. In the short term, limited changes to the formula could improve consistency and accuracy. However, effectively updating the formula would require a new time study to measure prosecutors' work, and statewide implementation of PROTECT, a data system that can provide more accurate information.

Other Factors Affecting Workload

Some prosecutors reported that cases involving prison inmates take longer to prosecute than other cases because some inmates may intentionally try to prolong the criminal justice process. However, inmate cases are rare. Approximately 10.1 percent of assaults committed by inmates from 2002 through 2005 were referred for prosecution, and inmate crimes accounted for less than 1.0 percent of criminal caseloads in the counties we visited that house prisons. Improved coordination between district attorneys and prison officials could assist in mitigating the workload effect of crimes committed by inmates.

The number of judges in state circuit courts, as well as the courts' structures and policies, also affect prosecutors' workloads. As of winter 2006, the ratio of prosecutors to judges ranged from 2.75 in Pierce County to 0.75 in Oconto County. Prosecutors reported that when there are more judges relative to prosecutors, prosecutors must spend more time in court and may not have adequate time for research, preparation, and other activities.

In some counties, prosecutors and courts have worked together to identify structures and policies to improve efficiency, such as implementing rotation schedules or court specialization, initiating regular meetings between prosecutors and judges, and reducing the number of hearings held on each case. While the effectiveness of specific methods may vary across counties, the State Prosecutors Office could work with district attorneys and the state courts to facilitate sharing of best practices.

Special Prosecutors

District attorneys may be aided by special prosecutors, who are not regular employees but who are temporarily given the powers and duties of the District Attorney to prosecute cases. Court-appointed special prosecutors are a type of special prosecutor paid by DOA on an hourly basis. As shown in Table 2, between 32 and 42 special prosecutors were appointed in each year from FY 2001-02 through FY 2005-06. In FY 2005-06, DOA spent \$237,000 in GPR to reimburse 42 special prosecutors in 27 counties. Statutes define the permissible uses of special prosecutors and the procedures for their appointment. We found that current practice is not always consistent with these requirements.

Table 2

Special Prosecutor Appointments

Fiscal Year	Appointments
2001-02	42
2002-03	38
2003-04	32
2004-05	42
2005-06	42

Matters for Legislative Consideration

There are several issues for the Legislature to consider as it allocates staffing resources to district attorneys' offices. For example, the Legislature could consider whether current staffing levels justify adding new positions. Alternatively, given current limits to the

State's resources and its other funding priorities, the Legislature could consider ways to lessen prosecutors' workloads.

One method for addressing staffing needs, particularly in smaller counties, would be to create a pool of short-term, "floating" assistant district attorneys in a central or regional office who could be assigned to counties experiencing unexpected increases in workload.

Recommendations

Our report includes recommendations for DOA to report to the Joint Legislative Audit Committee by March 14, 2008, regarding:

- ☑ its efforts to implement short-term improvements to the weighted caseload formula (*p. 40*);
- ☑ its plans for using improved referral data in the weighted caseload formula (*p. 41*);
- ☑ its plans for initiating a new time study to more accurately measure prosecutors' work (*p. 41*); and
- ☑ the feasibility of implementing floating assistant district attorney positions or expanding the use of existing alternative resources (*p. 67*).

We also include recommendations that district attorneys:

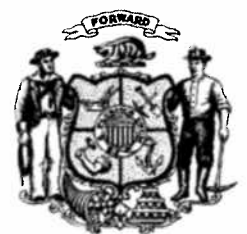
- ☑ work with prison officials to develop guidelines for investigating and prosecuting crimes committed by inmates (*p. 49*); and
- ☑ work with local law enforcement agencies to develop guidelines for referring crimes to district attorneys' offices (*p. 55*).

In addition, we include recommendations for:

- ☑ the State Prosecutors Office to work with district attorneys and the state courts to facilitate sharing of best practices for managing workloads through court structures and policies (*p. 53*); and
- ☑ the Legislature to consider statutory changes to clarify the allowable use of special prosecutor appointments (*p. 61*).



WISCONSIN STATE LEGISLATURE





WISCONSIN STATE LEGISLATURE

Joint Legislative Audit Committee

Committee Co-Chairs:
State Senator Jim Sullivan
State Representative Suzanne Jeskewitz

For Immediate Release

July 24, 2007

Audit Examines the Allocation of Prosecutor Positions

(Madison) Today, the nonpartisan Legislative Audit Bureau (LAB) released its evaluation of the process used to allocate prosecutor positions. The state is responsible for funding county-level prosecutor positions, including 71 elected district attorneys and their subordinates. In fiscal year 2005-06, expenditures for district attorney offices totaled \$44.4 million. The State Prosecutors Office in the Department of Administration (DOA) calculates prosecutorial staffing needs in each county through the use of a weighted caseload formula. In its comprehensive report, LAB analyzed the current formula and considered other factors that affect prosecutorial workloads.

The number of full-time equivalent (FTE) prosecutor positions decreased from 444.35 FTE positions in July 2002 to 424.65 positions in July 2006, or by 4.4 percent. However, LAB found that from 2001 through 2005, the number of criminal cases prosecuted increased by 11.5 percent statewide. Using the current weighted caseload formula, the State Prosecutors Office calculated in August 2006 that 63 counties were understaffed by a total of 119.16 FTE positions, while 8 were slightly overstaffed by a total of 1.83 FTE positions, for a net statewide need of an additional 117.33 FTE positions.

"We have a good system in place to determine where prosecutors are needed, and we should use the caseload formula when determining the allocation of Wisconsin's limited resources," said Senator Jim Sullivan (D-Wauwatosa). "Unfortunately, a system where there are a decreasing number of prosecutors and an increasing number of criminal cases is unsustainable for our communities."

LAB found that the weighted caseload formula's methodology is generally consistent with nationally accepted practices for measuring prosecutorial workloads. However, the formula uses incomplete data and out-of-date measures of the time required to prosecute cases. LAB recommends that DOA review the current formula and develop plans to initiate a new time study to more accurately measure workloads.

"I was pleased to learn that the formula's methodology is sound," said Co-chair Suzanne Jeskewitz (R-Menomonee Falls). "Now we know that we need to focus our efforts on ensuring that the data used in the formula is more reliable and I look forward to working with the State Prosecutors Office towards that end."

In its report, LAB also considered other factors that affect prosecutorial workload, including cases involving inmates, the number of judges in state circuit courts, and the courts' structure and policies. LAB recommends that the State Prosecutors Office work with district attorney offices and state courts to facilitate the sharing of best practices for managing workloads.

Finally, LAB identified 42 special prosecutors that were appointed in 27 counties in fiscal year 2005-06 at a cost of \$237,000. LAB found that current practices are not consistent with statutory requirements governing the permissible uses of special prosecutors and the procedures for their appointment.

Co-chairs Sullivan and Jeskewitz intend to hold a hearing on LAB's findings and recommendations this fall. Interested members of the public are invited to testify before the Joint Legislative Audit Committee at that time. Copies of the audit report may be obtained from LAB's Web site at www.legis.wisconsin.gov/lab or by calling (608) 266-2818.

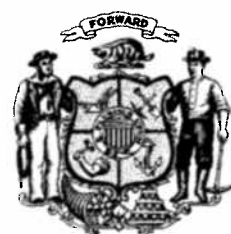
###

SENATOR SULLIVAN
P.O. Box 7882 • Madison, WI 53707-7882
(608) 266-2512 • Fax (608) 267-0367

REPRESENTATIVE JESKEWITZ
P.O. Box 8952 • Madison, WI 53708-8952
(608) 266-3796 • Fax (608) 282-3624



WISCONSIN STATE LEGISLATURE



Matthews, Pam

From: Handrick, Diane
Sent: Tuesday, August 07, 2007 12:02 PM
To: Matthews, Pam; Chrisman, James; Mueller, Janice
Subject: Blog entry on the prosecutor audit

Attachments: Picture (Metafile); Picture (Metafile)

http://www.foxpolitics.net/politics.iml?mdl=issues.mdl&issue_id=7458&Category=1

[http://rss.foxpolitics.net/
8/7/2007](http://rss.foxpolitics.net/8/7/2007)

<http://rss.foxpolitics.net/>

Do we need 117 new prosecutors?

So the state does an audit and says we have a shortage of 117 Assistant D.A.'s in counties throughout the state. Then lots of counties whine about how the state cut prosecutor positions, while at the same time, case numbers have skyrocketed. My oh my oh my.

117 new prosecutors? I'm not sure I buy it. And here's why.

The Wisconsin Taxpayers Alliance (WISTAX) a few years ago, attempted to compare Wisconsin's corrections situation with comparable activity and spending nationwide.

Along the way, WISTAX looked at crime rates and arrest rates as well. Here's how Wisconsin stacked up.

Violent Crime

In 2002, Wisconsin ranked *45th in the country*, with a violent crime rate *less than half* the national average (225 crimes per 100,000 population vs. 415).

Property Crime

Wisconsin property crime rates ranked *36th nationally*, with a rate of 3,028 per 100,000 population vs. 3,624 nationwide.

Arrest Rates. Now this is important.

Quoting the September, 2004 issue of The Wisconsin Taxpayer: "Although Wisconsin has a *lower crime rate* than the nation and all of its neighbors, it has the *highest overall arrest rate* in the nation. In 2002, Wisconsin law enforcement made 3,286 arrests per 100,000 residents, 71.2% higher than the national norm (4,839)." [Emphasis is mine.]

Low crime rates. Highest (by far) arrest rate. Would you say something is amok here?

WISTAX noted that "Wisconsin's large numbers of police likely play a role" in its high arrest rate. Relative to population, Wisconsin ranked 11th nationally, at 2.8 officers per 1,000 residents. Among surrounding states, only Illinois had more (3.2/1,000).

So, ok. Many will argue we need all those police to keep us safe. (I won't, but won't debate that now.)

So why do we have to arrest twice as many people as the rest of the planet?

We don't. Criminal scientists and experienced law enforcers alike know how to handle unsafe and unwise situations without necessarily making arrests. And does Wisconsin have to mandate arrests in as many specific instances as it does?

No. So does it follow that fewer arrests means fewer prosecutors needed? I'm sure somewhere in there, the story is more complex – but not too much more. Our state, its police and its communities simply must find alternative ways to handle some of the everyday problems of life, troublemakers and lawbreakers.

(By the way – did you see this [article](#) linked via [FoxPolitics News](#) that offers hope that once in the system, cases can be moved through efficiently? Imagine that. Great.)

-Jo Egelhoff, FoxPolitics.net.

COMMENTS

Let's see. Today was a light day, relatively speaking. I only had six jury trials scheduled for the same time. Sometimes it's double that...often as high as 20-30 cases and one time it was 64.

Now, those were what was left of a larger number of files which was whittled down by (gasp) plea bargaining. Of course, only one case can be tried, but it's hard to predict which one. Seems witnesses these days often blow off their subpoenas,

The #1 case, though, was an indecent exposure with two young children as victims. Of course, there were five other cases that needed attention as well. Unfortunately these kids and their moms got only a few minutes of preparation today (luckily I met with them a couple of months ago when the case was originally scheduled but got bumped because of an even more repulsive case). The net result is that the public suffers and it becomes harder to convict criminals, especially in the CSI-effect age when people expect real world cases to play out like on TV.

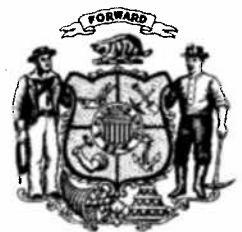
By contrast, defense attorneys need only prepare for one trial at a time.

Bear in mind that the 117 positions the state says we're short is on the low end. That's what the state admits to. The actual shortage is even higher.

RAG (Tue Aug 07 00:20:47 2007)



WISCONSIN STATE LEGISLATURE





DISTRICT ATTORNEY DANE COUNTY



BRIAN W. BLANCHARD
District Attorney

JUDY SCHWAEMLE
Deputy District Attorney
Felony Unit

MICHAEL S. WALSH
Deputy District Attorney
Juvenile Unit

TIMOTHY R. VERHOFF
Deputy District Attorney
Criminal Traffic
& Misdemeanor Unit

SUZANNE C. BEAUDOIN
Manager,
Victim/Witness Unit

NANCY S. GUSTAF
Manager,
Deferred Prosecution Unit

MARLYS K. HOWE
Manager,
Domestic Violence Unit

NANCY L. MAVES
Office Services Supervisor

August 7, 2007

Ms. Kate Wade, Director
Legislative Audit Bureau
22 E. Mifflin St. #500
Madison, WI 53703

**RE: Legislative Audit Bureau 2007 Report:
Allocation of Prosecutor Positions**

Dear Ms. Wade,

Thank you for the work of your agency in creating the above referenced evaluation of allocation of prosecutor positions. I hope your work will be instrumental in convincing state legislators and the Governor that courts, victims, and the public deserve adequate District Attorney office staffing and that current staffing levels are undermining the ability of District Attorneys across the state to enforce the law effectively and promptly. I write briefly just so that all are clear that the numbers in the report are actually out of date to a degree, at least in Dane County. The following is the status quo on GPR and grant funded prosecutor positions in Dane County:

26.85 GPR FTE positions*
1.00 Grant Funded position (drug prosecutions)
27.85 TOTAL

** As of 9-30-07, with loss of Violence Against Women Act grant.*

This is the same number of GPR positions as this office had in 1987.

Sincerely,

Brian W. Blanchard

cc: State Senator Jim Sullivan
State Representative Suzanne Jeskewitz
Phil Werner, Director, State Prosecutors Program
Ralph M. Uttke, WDAA President, Langlade County District Attorney
John T. Chisholm, Milwaukee County District Attorney
Judy Schwaemle, Deputy District Attorney
Michael S. Walsh, Deputy District Attorney
Timothy R. Verhoff, Deputy District Attorney

Association of State Prosecutors

W7140 Campfire Road, Shawano, WI 54166

www.wiasp.com

Catharine White, President, Shawano-Menominee Counties
Audrey Skwierawski, VP. and Communications Director, Milw. Co.
Gale Shelton, Treasurer, Milwaukee County
Lyn Opelt, Secretary, Dane County
Jeff Greipp, Legislative Liaison, Milwaukee County

Lawrence Lasee, At-Large, Brown County
James Newlun, At-Large, Racine County
William Thorle, At-Large, Pierce County
Jeffrey Altenburg, At-Large, Milwaukee County
Richard Cole, At-Large, Kenosha County
Karine O'Byrne, At-Large, Milwaukee County
Ismael Ozanne, At-Large, Dane County
Thomas White, At-Large, Rock County

For Immediate Release:
Tuesday, July 24, 2007
Contact: Jeff Greipp 414-467-5050

ASSOCIATION OF STATE PROSECUTORS RESPONDS TO LEGISLATIVE AUDIT *CRISIS CONFIRMED IN AUDIT REPORT*

Madison. --- Today the Wisconsin Legislative Audit Bureau (LAB) released a new study of the Wisconsin state prosecutors' program. It revealed more troubling data and confirmed concerns that the District Attorney offices are seriously under funded. The Bureau reported that Wisconsin has 117 fewer assistant district attorneys than the minimal number it needs to competently prosecute criminals. Further the Study noted that while the number of prosecutor positions decreased by 4.4 percent from 2002 to 2006, the number of criminal cases prosecuted rose by 11.5 percent statewide. Catharine White, President of the Association of State Prosecutors (ASP), an organization representing all assistant district attorneys, reacted:

"We thank the Legislative Audit Committee, and its Co-Chairs Senator Jim Sullivan and Representative Suzanne Jeskewitz for recognizing the critical state of the present district attorney program and urge the Administration and Legislature to take action immediately to ensure at least an adequate level of prosecutorial resources."

In addition, what the Audit did not detail is the significant hit to the system caused by the high turnover of seasoned prosecutors. ASP and others are concerned with the high turnover rate and dramatic loss of career prosecutors and what that means for victims. White reported:

"Experienced prosecutors are essential to our justice system. During the last six years more than 180 Assistant District Attorney's quit their jobs. That is nearly 50% of the total statewide. We are left with a shortage of experienced prosecutors and a dramatic, unworkable increase in number of cases handled by each prosecutor,"

ASP has identified the loss of pay progression as the number one cause of the turnover/retention problem for District Attorney offices statewide. "There is no question we are losing experienced prosecutors because of the removal of pay progression. Without a stable pay progression plan since 2001, prosecutors' salaries have effectively been cut by 14%. Predictably, we are losing experienced prosecutors." White said. "The Legislative Audit Bureau Report once again confirms that the program is in crisis."

In the past, Wisconsin produced among the most experienced and well respected criminal prosecutors in the country and never experienced such problems. **"We urge the Administration and the Legislature to review these findings and strongly encourage them to take action. This report confirms the serious concerns many have voiced regarding Wisconsin's inability to retain experienced prosecutors. If we continue to neglect this problem, Wisconsin will weaken rather than strengthen its criminal justice system"**, said ASP Legislative Liaison Jeff Greipp

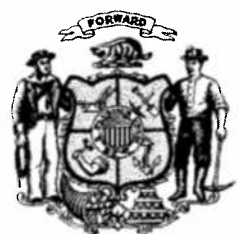
ASP President Catharine White while responding to the LAB Study, further expressed hope for the future: **"We have communicated these concerns to the Administration and the Legislature. We hope that they will take the steps necessary to get the system back on track. The problem is two-fold: First we must retain experienced prosecutors and, second adequately staff the offices. We expect that state government will act immediately so that each victim of a crime is met by a prosecutor who has the experience and time required to insure that justice is done in their case."**

The Bureau also suggests the Legislature consider a pool of prosecutors to address some of the shortage issues. ASP points out the flaws in this approach. **"Prosecutors don't have enough time now; the time lost to travel between counties is an additional waste of the taxpayers' chief resource—their employees' time. In addition, each county handles cases differently and substituting the uninitiated for a County tips the scale of justice against the victims,"** Greipp responded. The State's responsibility is to adequately staff each County office—the justice system and its victims should demand as such. **"Sending attorneys from one county with too few staff, to another with too few staff is just shifting chairs on the Titanic,"** explained White.

ASP fully supports State efforts to add positions consistent with the updated LAB methodology. **"To attempt to fix the problem merely by shuffling bodies around would be a detriment to the justice system and place further burden on counties that are already suffering due to understaffing,"** said White.



WISCONSIN STATE LEGISLATURE





www.jsonline.com | [Return to regular view](#)

Original Story URL:

<http://www.jsonline.com/story/index.aspx?id=637651>

State short 117 prosecutors, audit finds

Legislators trimmed posts as criminal caseloads were rising

By **PATRICK MARLEY**
pmarley@journalsentinel.com

Posted: July 24, 2007

Madison - State lawmakers cut prosecutor positions in recent years even as criminal cases rose, leading to a statewide shortage of 117 assistant district attorneys, an audit released Tuesday says.

Between July 2002 and July 2006, the state cut the number of prosecutors by 4.4%, from 444.35 to 424.65 positions, the non-partisan Legislative Audit Bureau reported. Those cuts came as the number of criminal prosecutions jumped 11.5% from 2001 to 2005.

"I think it's sad that we've had more cases and the number of (assistant) district attorneys has gone down," said Rep. Sue Jeskewitz (R-Menomonee Falls), co-chairwoman of the Joint Audit Committee. "That's something we have to look at."

In total, the state is short 117 prosecutor positions, or 27.5% of the current number. Sixty-three counties were understaffed, and eight counties were slightly overstaffed, the audit bureau found.

It would cost taxpayers about \$12 million a year to fund those additional jobs, according to Journal Sentinel calculations based on audit bureau numbers.

"It confirms that there is a crisis in DA funding," Milwaukee County District Attorney John Chisholm said of the audit. "This is something that prosecutors have been calling attention to for years."

As a percentage of caseloads, rural counties faced the stiffest challenges. For instance, Burnett County is operating at less than half of what it should because it needs nearly three prosecutor positions but has just over one position now, auditors found. Many counties have some part-time prosecutors.

In sheer numbers, large urban counties faced the biggest shortfall. Dane and Racine counties were in need of about eight positions each. Waukesha County is in need of six prosecutors, giving it the fifth-largest shortage.

Because of the shortage, hundreds of cases in Waukesha County are not prosecuted as aggressively as they should be, said District Attorney Brad Schimel. In some instances, prosecutions don't happen at all; in others, cases are treated as misdemeanors or municipal ordinance violations, he said.

Schimel said he is most troubled by domestic violence cases that do not get the level of scrutiny they should. The office has not had dedicated domestic violence prosecutors since it lost three positions in late 2003, Schimel said. The office now has 15.5 positions.

Lawmakers should try to address the situation as they put together the state budget, he said.

"We're off by enormous numbers, and we've got to do something about it," Schimel said.

Legislative leaders are now trying to iron out differences between Republicans and Democrats in the state budget. Neither side has proposed significant increases in prosecutors.

Milwaukee County has 121 positions, just under the 125 it needs, according to the analysis. Milwaukee County is helped by federal grants that fund nearly 30% of its prosecutorial staff, but auditors noted that the county is expected to lose three positions in the fall because of dwindling federal help.

Chisholm said he was concerned about losing the federal grants because they help fund prosecutors who specialize in gangs, drugs and juvenile issues.

Auditors said the formula used to allocate prosecutors around the state is sound, but that officials should update it after studying how much time it takes to handle various types of cases.

State prosecutor jobs combined cost \$44.4 million in fiscal year 2005. Of that, \$40.8 million came from state taxpayers, auditors found.

Derrick Nunnally of the Journal Sentinel staff contributed to this report from Milwaukee.

[Buy a link here](#)

From the July 25, 2007 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

Subscribe today and receive 4 weeks free! [Sign up now](#).

© 2006, Journal Sentinel Inc. All rights reserved. | Produced by [Journal Interactive](#) | [Privacy Policy](#)
Journal Sentinel Inc. is a subsidiary of [Journal Communications](#).

This is a printer friendly version of an article from the **Appleton Post-Crescent**

[Back](#)

Advertisement

DAs say caseload analysis is flawed

Study used by state to set staffing levels

By Dan Wilson

Post-Crescent staff writer September 24, 2007

There is a famous "I Love Lucy" episode in which Lucy and her friend Ethel get a job wrapping candy in a candy factory.

As the candy comes down the fast-moving conveyor belt, they end up eating candies and sabotaging the machine in a failed attempt to keep up.

District attorneys in northeastern Wisconsin can relate. They find they are unable to keep up as more criminal cases keep coming down the criminal justice conveyor belt.

And, they complain, a recent study of district attorneys' workloads failed to take into account the number of referrals prosecutors are receiving from police agencies. The report, issued in July, analyzed a weighted formula that depended, for the most part, on the numbers of cases charged out.

"With the methodology they used, they are looking at what goes out, not what comes in," said Winnebago County Dist. Atty. Christian Gossett.

It is the equivalent of counting Lucy and Ethel's workload by the candies they successfully wrapped.


The Legislative Audit Bureau, a nonpartisan service agency, conducted the analysis at the behest of the Joint Legislative Audit Committee, which oversees state expenditures. The audit bureau made a number of recommendations in its analysis that would help it gather more consistent and thorough data.

"Counting referrals, rather than cases filed in court, would be a more complete measure of prosecutorial work and would be less subject to variation in prosecutors' case filing practices," the report said.

The "case filing practices" the report refers to is the habit of some counties to game the system by issuing separate case files for every charge, thereby upping their totals.

However, according to the study, there is no system in place to accurately measure referrals from

Multimedia

 Read a PDF report from the Legislative Audit Bureau on the allocation of prosecutor positions

State study of DA caseloads

The Legislative Audit Bureau analyzed the current weighted formula used to evaluate caseloads handled by district attorneys across the state. Although district attorneys are based in county courthouses and mostly handle cases at the circuit court level, they are state employees.

According to the weighted formula:

- Prosecutors need nearly 120 additional staffers to handle increasing caseloads.
- Under the formula, Outagamie and Winnebago counties are short about four positions (staffing levels now are at 3.92 and 3.61, respectively). Outagamie County is ninth on the list of the statewide staffing shortages.
- Calumet County is short by one-fifth of a position (.21) and Waupaca County is short by .44.
- Criminal caseloads grew about 11.5 percent between 2001 and 2005, with felony cases increasing 16.2 percent, the audit said. The number of prosecutors, meanwhile, fell 4.4 percent between 2002 and 2006.

county to county.

Kate Wade, program evaluation director for the audit bureau, said the agency would like standardization of the method of counting referrals to prosecutors and the adoption of a proposed automated case management system. Additionally, a time study should be conducted to determine exactly how much time prosecutors are spending on specific tasks, the bureau recommends.

"If you want to improve the quality of the data, you have to improve how data are collected and measured," Wade said.

The audit bureau, however, cannot make those changes unilaterally. It takes district attorneys to agree on some standards, and the executive branch to order changes in the parameters of the analysis, Wade said.

That study said Winnebago and Outagamie counties each are short four prosecutor positions and Calumet and Waupaca counties each are short about one-half of one position.

Gossett and Outagamie County Dist. Atty. Carrie Schneider agree the figures do not reflect their true shortages. Schneider said roughly 600 cases in her office are waiting to be charged out.

"That is probably less than normal because we had summer help with a couple of internship programs," she said.

Schneider said the time demands on the new genre of Internet and identity theft crimes require much more follow-up.

Then, there are prosecutions that are problematic.

"We have a case with a group of five kids over a period of three weeks that did damage to a lot of homes," she said. "So we have to be able to prove that Bob and Ben were present on this one night and Ben and John on another night and no one necessarily remembers who was along at a given location."

Waupaca County Dist. Atty. John Snider concurs. "You might have to revisit a particular referral three or four times before it is charged out," he said.

Snider used a recent weekend getaway to Eagle River to work on his backlog. In his office there are 262 referrals in the category of "under review."

"I took along two banker's boxes of files and I managed to get through about 40 or 50 of them," he said.

Gossett said at the beginning of the year his office had 832 referrals awaiting a decision.

"The state gave us a half-timer from February to the end of July and we had an intern so we have done a good job of getting caught up," he said.

That number has been trimmed to 150 cases.

No numbers were available for Calumet County, and Dist. Atty. Ken Kratz could not be reached for comment.

Gossett said the number of cases an office can charge out is self-limiting. Instead of hiring more prosecutors, an alternative is to slow the number of referrals.

Gossett said he has met with the law enforcement agencies in his county and encouraged them to issue ordinance citations wherever possible instead of making criminal misdemeanor referrals.