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☞ Details: Public Hearing: Audit 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)

Record of Committee Proceedings

Joint Committee on Audit

Audit Report 07-9

Allocation of Prosecutor Positions, Department of Administration

October 18, 2007

PUBLIC HEARING HELD

- Present: (8) Senators Sullivan, Lassa, Decker, A. Lasee and Cowles; Representatives Jeskewitz, Kerkman and Cullen.
- Absent: (2) Representatives Rhoades and Parisi.

Appearances For

- David Wambach, Jefferson — District Attorney, Jefferson County
- Mark Schroeder, Appleton — Assistant District Attorney, Outagamie County District Attorney's Office
- Joe Dececco, Sheboygan — District Attorney, Sheboygan County
- James McNichol, Milwaukee — Police Officer, Milwaukee Police Department
- Patrick Hitt, Green Bay — Assistant District Attorney, Brown County District Attorney's Office
- Richard Dufour, Montello — District Attorney, Marquette County

Appearances Against

- None.

Appearances for Information Only

- Janice Mueller, Madison — State Auditor, Legislative Audit Bureau
- Kate Wade, Madison — Legislative Audit Bureau
- Sheila Conroy, Madison — Administrator, Division of Administrative Services, Department of Administration
- Phil Werner, Madison — Director, State's Prosecutor Office, Department of Administration
- Catharine White, Madison — President, Association of State Prosecutors
- Tim Baxter, Prairie du Chien — President, Wisconsin District Attorney's Association

- Jeff Greipp, Milwaukee — Assistant District Attorney, Milwaukee County District Attorney's Office
- Adam Gerol, Port Washington — Assistant District Attorney, Ozaukee County District Attorney's Office
- Winn Collins, Green Lake — Board Member, Wisconsin District Attorney's Association
- John Chisholm, Milwaukee — District Attorney, Milwaukee County
- James Harpole, Milwaukee — Commander, District 3, Milwaukee Police Department
- Llonda Thomas, Chilton — Wisconsin Victim/Witness Professionals Board

Registrations For


- Peter Tempelis, Jefferson — Jefferson County District Attorney's Office
- Judy Schwaemle, Madison — Deputy District Attorney, Dane County District Attorney's Office

Registrations Against

- None.

Registrations for Information Only

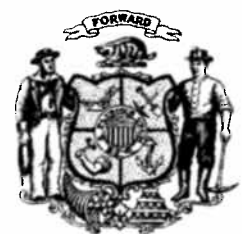
- Mike Murray, Madison — Wisconsin Coalition Against Sexual Assault

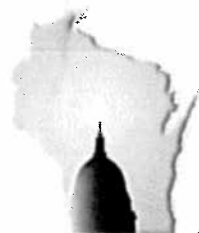


Pam Matthews
Committee Clerk



WISCONSIN STATE LEGISLATURE





**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

JIM DOYLE
GOVERNOR

MICHAEL L. MORGAN
SECRETARY

Division of Administrative Services
State Prosecutors Office
Post Office Box 7869
Madison, WI 53707-7869
Voice (608) 267-2700
Fax (608) 264-9500

October 3, 2007

Michael L. Morgan, Secretary
Department of Administration
101 E. Wilson Street
Madison, WI 53703

Dear Secretary Morgan:

The purpose of this letter is to call your attention to a critical issue relating to the current budget situation. As you know, until the 2007-09 state biennial budget is enacted, all state agencies are operating on fiscal year 2006-07 funding levels. Several reports have highlighted the impacts of this fiscal situation on different functions across state government, including operating correctional institutions, funding health care and maintaining roads. Similarly, the District Attorneys could soon see the ramifications of the current budget impasse.

The cost to continue to fund current staffing levels for DA offices across the state is estimated to be \$45,593,800. The 2006-07 operations budget for state prosecutors provides only \$39,919,100, leaving a shortfall of more than \$5.6 million without a 2007-09 state budget. Since the entire appropriation is allocated to salary and fringe benefit costs of District Attorneys, Deputy District Attorneys, and Assistant District Attorneys, there is not sufficient funding to support the current level of prosecutors located in counties across the state.

Under the current collective bargaining agreement for the Association of State Prosecutors, several steps must be followed before layoffs can occur, which include notice to the Association no less than thirty days before the layoff and notice to the affected employee no less than fourteen days before the layoff. Assuming an implementation date of December 1, 2007, an estimated 100 FTE prosecutor positions will need to be laid off for the remainder of the fiscal year. This represents approximately 30 percent of the authorized FTE level of non-elected prosecutors for the current fiscal year under the Governor's budget.

Such a significant reduction in the prosecutorial workforce will affect not only District Attorney offices, but also the Courts, the State Public Defender, and most importantly, victims of the crimes that may face delayed prosecution.

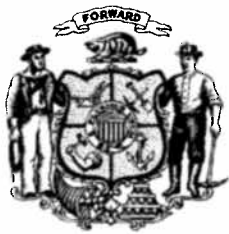
Sincerely,

Philip W. Werner
Director

cc: District Attorneys
Wisconsin District Attorneys Association
Association of State Prosecutors



WISCONSIN STATE LEGISLATURE



Association of State Prosecutors

W7140 Campfire Road, Shawano, WI 54166

www.wiasp.com

Catharine White, President, Shawano-Menominee Counties
Audrey Skwierawski, Vice President-Communications Director,
Milwaukee County
Gale Shelton, Treasurer, Milwaukee County
Lyn Opelt, Secretary, Dane County

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

TO: Governor Jim Doyle
Speaker Mike Huebsch
Majority Leader Judy Robson
CC: Secretary Michael Morgan & Members of the Wisconsin State Legislature
DATE: October 8, 2007
RE: Budget Impasse Impact on Criminal Justice System

Over the course of the last few days, Department of Administration officials have made it clear that a furlough of 100 State prosecutors (nearly one third of the current total) is one of the consequences of the Legislature's inability to pass a Budget. (Attached is the memorandum from DOA). This is a serious and devastating situation for prosecutors, for the judicial system, for the citizens we protect and for the victims we serve.

This potential furlough could not come at a worse time. As you know, a crisis already exists for district attorney's offices throughout the State. DA's offices in every county are understaffed, overworked and this comes at the expense of serving victims and protecting our citizens. In the past six years, we have lost 180 *experienced* prosecutors from service statewide due to the State's removal of our ability to progress through the customary pay range. That is a fifty percent turnover in just the last six years. The impact this is having on public safety is alarming. The risk to the justice system attributable to the lack of experience is aggravated by the caseload that each prosecutor is expected to carry.

Not two months ago, the State Legislative Audit Bureau Audit of Prosecutors (2007) revealed the State is over 132 prosecutors short. An additional furlough of 100 prosecutors equates to more than 232 positions down; leaving approximately 240 prosecutors to handle the workload of 475.

The current crisis, intensified by the potential furlough should frighten and shock the public. If the State does not allocate resources to adequately fund, and retain prosecutors, we will continue to lose experienced criminal prosecutors and our ability to convict defendants accused of serious crimes will be severely disadvantaged.

We strongly urge the Legislature to resolve the impasse and forward a responsible budget to the Governor and we encourage prosecutors, victims and citizens throughout the State to hold incumbents accountable if there is not satisfactory resolution. Furthermore, we urge the Administration and Legislature to address the existing crisis in the justice system by, first, retaining existing experienced prosecutors through reinstating pay progression for prosecutors and second, rebuilding the system by adequately staffing district attorney offices around the State. To do otherwise, is to continue to do nothing in the face of grave consequences.



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

JIM DOYLE
GOVERNOR

MICHAEL L. MORGAN
SECRETARY

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October 3, 2007

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Such a significant reduction in the prosecutorial workforce will affect not only District Attorney offices, but also the Courts, the State Public Defender, and most importantly, victims of the crimes that may face delayed prosecution.

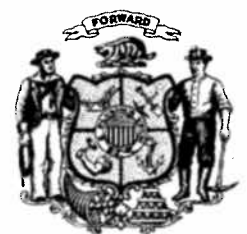
Sincerely,

Philip W. Werner
Director

cc: District Attorneys
Wisconsin District Attorneys Association
Association of State Prosecutors



WISCONSIN STATE LEGISLATURE



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Tim Baxter, President
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Wisconsin District Attorneys Association

Tim Baxter, President
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Dick Dufour, Treasurer/Secretary
Michael O'Rourke, Past President Designee
Richard Cole, At large member
Adam Gerol, At large member

Jeffrey Greipp, At large member
Winn Collins, At large member
Patrick Kenney, At large member
Jacalyn LaBre, At large member
Roy Korte, DOJ Rep
Laurel Steinmeyer, Executive Director

October 12, 2007

Sen. Jim Sullivan
Room 15 South
State Capitol
P.O. Box 7882
Madison, WI 53707

Rep. Suzanne Jeskewitz
Room 314 North
State Capitol
P.O. Box 8952
Madison, WI 53708

**RE: Legislative Audit Bureau (LAB) Report 07-9
An Evaluation: Allocation of Prosecutor Positions**

Dear Sen. Sullivan and Rep. Jeskewitz:

WDAA applauds the Legislative Audit Bureau (LAB) for providing an independent and objective report that confirmed the prosecution program in the State of Wisconsin is severely underfunded and dangerously understaffed.

WDAA asks this committee to support the observation from the LAB report to "consider whether current staffing levels and the consequences of understaffing justify adding new prosecutor positions." LAB 07-9 at 65. WDAA further recommends that the members of this committee support the reinstatement of a plan that permits assistant district attorneys to progress through their pay range to reduce the dramatic turnover rate of approximately fifty percent in only six years.

Enclosed with this letter are three documents for your review. The first two documents are resolutions passed unanimously by WDAA board on September 28, 2007. The final document is a letter sent by the WDAA to Secretary Michael Morgan at the Department of Administration.

Sincerely,



Tim Baxter, President
Wisconsin District Attorneys Association

cc: Senators Julie Lassa, Russell Decker, Alan Lasee, and Robert Cowles
Representatives Samantha Kerkman, Kitty Rhoades, David Cullen, Joe Parisi
Sec. Michael Morgan, DOA
Janice Mueller, State Auditor

Enclosure

Wisconsin District Attorneys Association

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Roy Korte, DOJ Rep
Laurel Steinmeyer, Executive Director

WDAA Resolution No. 07-01

Support for Reinstatement of Pay Progression

Whereas, the State of Wisconsin assumed responsibility for funding prosecutors largely as a means of reducing turnover in prosecutor positions; and

Whereas, the State of Wisconsin previously utilized a plan that permitted assistant district attorneys to progress through their pay range to retain experienced prosecutors; and

Whereas, the State of Wisconsin diluted the pay progression system in 2001 and removed the system entirely by 2003; and

Whereas, the State of Wisconsin employed 301 full-time and 55 part-time assistant district attorneys as of July 2006; and

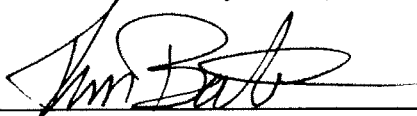
Whereas, the State of Wisconsin lost 180 experienced assistant district attorneys within the last six years based in large part upon a lack of pay progression; and

Whereas, the Wisconsin State Legislature recognized the importance of retaining experienced prosecutors when 31 legislators sent a letter of support on August 30, 2007.

Therefore, be it resolved that the Wisconsin District Attorneys Association (WDAA) does hereby support the Association of State Prosecutors (ASP) request to reinstate a plan that permits assistant district attorneys to progress through their pay range; and

Be it further resolved that the President of the WDAA be directed to disseminate this resolution to the Wisconsin Governor, members of the State Legislature, members of the Joint Committee on Employment Relations, and the Secretary of the Department of Administration.

Passed by a Unanimous Vote of the WDAA Board.
Dated this 28th day of September, 2007.



Tim Baxter, WDAA President

Wisconsin District Attorneys Association

P.O. Box 1702

Madison, WI 53701

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W D A A

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Laurel Steinmeyer, Executive Director

WDAA Resolution No. 07-02

Support for Full GPR Funding of Prosecutor Positions

Whereas, the Wisconsin Legislative Audit Bureau stated that, as of August 2006, the State of Wisconsin required a total of 552.98 prosecutors; and

Whereas, the State of Wisconsin only funded 376.40 (68.1 percent) prosecutor positions with GPR funding as of July 1, 2006; and

Whereas, the State of Wisconsin received Program Revenue funding for 48.25 positions in July 1, 2006, which decreased to 44.25 (8.0 percent) prosecutor positions by August 2006; and

Whereas, the State of Wisconsin provided no funding for 117.33 (21.2 percent) prosecutor positions required, as of August 2006, under the weighted caseload formula; and

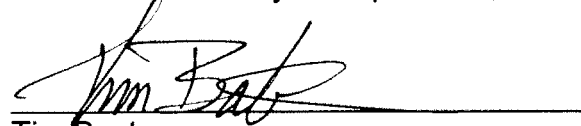
Whereas, the State of Wisconsin never created the 15.0 (2.7 percent) prosecutor positions needed upon passage of 2005 Wisconsin Act 60; and

Whereas, the Wisconsin Legislative Audit Bureau recommended that "the Legislature could consider whether current staffing levels and the consequences of understaffing justify adding new prosecutor positions."

Therefore, be it resolved that the Wisconsin District Attorneys Association (WDAA) does hereby support full GPR funding for the number of prosecutors positions required under the weighted caseload formula and needed upon passage of 2005 Wisconsin Act 60; and

Be it further resolved that the President of the WDAA be directed to disseminate this resolution to the Wisconsin Governor and members of the State Legislature.

Passed by a Unanimous Vote of the WDAA Board.
Dated this 28th day of September, 2007.



Tim Baxter,
WDAA President

Wisconsin District Attorneys Association

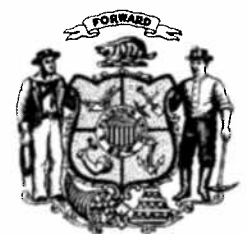
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WISCONSIN STATE LEGISLATURE



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Roy Korte, DOJ Rep
Laurel Steinmeyer, Executive Director

October 12, 2007

Sec. Michael Morgan
Office of the Secretary
Dept. of Administration
101 E. Wilson Street
Madison, Wisconsin 53702

**RE: Legislative Audit Bureau (LAB) Report 07-9
An Evaluation: Allocation of Prosecutor Positions**

Dear Sec. Morgan:

WDAA applauds the Legislative Audit Bureau (LAB) for providing an independent and objective report that confirmed the prosecution program in the State of Wisconsin is severely underfunded and dangerously understaffed. WDAA asks the Wisconsin Department of Administration (DOA) to support the observation from the LAB report that the "current staffing levels and the consequences of understaffing justify adding new prosecutor positions." LAB 07-9 at 65.

WDAA further recommends that DOA support the reinstatement of a plan that permits assistant district attorneys to progress through their pay range because, as the LAB report notes, "[p]rosecutors have been state employees since 1990 . . . largely as a means of . . . reducing turnover in prosecutor positions." LAB 07-9 at 10. In 2001, pay progression was diluted and by 2003 it was removed entirely resulting in 180 assistant district attorneys leaving the program, which amounted to a turnover rate of approximately 50 percent in only six years. WDAA also recommends that when senior assistant district attorney leaves employment, DOA reinvest the costs savings attributable to hiring a less experienced assistant district attorney at a lower salary into the existing salary pool, rather than simply diverting the savings to the general fund.

Wisconsin District Attorneys Association

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WDAA is confident that DOA recognizes the importance of public safety in Wisconsin which requires a fully funded and fully staffed prosecution program that rewards experience and encourages retention of prosecutors. Enclosed are WDAA Resolution Nos. 07-01 and 07-02. Please support these important resolutions to ensure the vitality of the prosecution program and, ultimately, ensure offender accountability and victim safety.

The remainder of this letter addresses WDAA's position of the eight recommendations presented in the LAB report as highlighted on page seven of the report. While the LAB report provided a wealth of valuable empirical information about the program, many of the recommendations failed to adequately address the severe plight of the program. WDAA trusts that DOA recognizes the importance of receiving feedback from those within the system which includes not only WDAA but also the Association of State Prosecutors (ASP). Below is WDAA's response to the eight LAB recommendations, which was provided to ASP in the interest of providing a broad perspective to the issue:

LAB Recommendation: The Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on its efforts to implement short-term improvements to the weighted caseload formula, including voluntary guidelines for case charging practices and modifications to reflect time needed for review of referrals that are not filed. LAB 07-9 at 40.

WDAA does not embrace the recommendation that the Department of Administration should focus on short-term improvements to the weighted caseload formula because such a short-term focus dilutes attention to the serious problems presently existing within the severely understaffed prosecution program. Simply altering the formula with a short-term fix would be illogical if not insincere because the change would do nothing to cure a underlying problem. The LAB report confirmed that the understaffing is a significant problem resulting in prosecution delays, inadequate time to meet with victims and witnesses, settling cases with lesser charges or lighter penalties, and many cases never being prosecuted at all. LAB 07-9 at 21-22.

WDAA certainly recognizes the need for improvements to the weighted caseload formula, such as modifications to reflect time needed for review of referrals that are not filed. This formula is more than ten years old, written in a time before the proliferation of computer and internet crimes as well as the increased complexity associated with new forensic science and DNA evidence. The LAB report properly notes that "DOA could develop plans for using PROTECT as the source of data for the weighted caseload formula" because "[t]his change would provide a more complete measure of prosecutors' caseloads that is more consistent across counties and less subject to variations in charging practices." LAB 07-9 at 40. However, the LAB report also recognizes that a transition to PROTECT is not a short-term solution because "DOA would need to first assess the feasibility and cost of such a change and identify any obstacles to its implementation" and "[p]lans for implementation will need to include a

time line for PROTECT implementation in the six counties not currently using the system." LAB 07-9 at 40.

The recommendation provides false promise that a short-term solution may provide meaningful relief to a systemic problem requiring a calculated and planned response by this state. Rather than diverting limited state resources in a patchwork system of short-term solutions, WDAA recommends creating a feasible and fully funded plan for the statewide implementation of PROTECT.

LAB Recommendation: The Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on its plans for using PROTECT referral data in the weighted caseload formula. LAB 07-9 at 41.

WDAA embraces the recommendation that the PROTECT referral data in the weighted caseload formula "would more accurately measure prosecutors' caseload . . . rather than CCAP data." LAB 07-9 at 32. Unfortunately, less than two-thirds of prosecutors presently use PROTECT so widespread use of PROTECT data is impractical at the present time.

The LAB report properly noted that "PROTECT is not currently used in six counties—Milwaukee, Racine, La Crosse, Vernon, Iron, and Portage" because budgetary constraints prevent full implementation statewide. LAB 07-9 at 32. The six counties account for a disproportionately high number of attorneys employed in prosecution. In 2006, these six counties accounted for 156.9 (36.9 percent) full-time equivalent prosecutor positions of the 424.65 positions statewide.

In a prior evaluation related to the allocation of prosecutor positions, the Legislative Audit Bureau properly recognized comparability problems occur when counties file data in different programs. LAB 95-24 at 25. At the time, the state was transitioning to the CCAP case management system when, in December 1995, the Legislative Audit Bureau noted that the full implementation of the program was scheduled for completion in 1997, but there had "been implementation delays in the past." LAB 95-24 at 26. The report essentially concluded that comparability problems would continue without a standardized system. LAB 95-24 at 25.

WDAA embraces full funding of information technology staff to ensure statewide implementation of the PROTECT case management system. The Legislative Audit Bureau recognized the value to the PROTECT system and even noted that this system "would more accurately measure prosecutors' caseloads." LAB 07-9 at 32. The full implementation of the system requires adequate funding from the state and a sufficient number of years to ensure that the program is completely implemented with all offices familiar with how to properly use the system.

LAB Recommendation: The Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on its plans for initiating a new time study to more accurately measure prosecutors' work. LAB 07-9 at 41.

WDAA does not embrace the recommendation that initiating a new time study would more accurately measure prosecutors' work because "it would measure the amount of time prosecutors currently spend on various activities, which in some cases may be less than optimal." LAB 07-9 at 39. The Legislative Audit Bureau explained that the understaffing of prosecutor positions at a time of "increasing caseloads have resulted in less-timely prosecutions, more decisions not to prosecute cases, and settling cases out of court with lighter penalties." LAB 07-9 at 4.

The LAB report focused on the allocation of prosecutor positions without attention toward the extremely high rate of turnover that occurred over the last several years. WDAA agrees that the lack of a stable pay progression plan since 2001 resulted in approximately 50 percent of assistant district attorneys leaving employment as a prosecutor during the last six years. The high understaffing of district attorney offices further worsens the work environment where approximately ten percent of criminal cases are never charged because of staffing shortages. LAB 07-9 at 21.

The recommendation builds mediocrity into the system by validating a system of high turnover, severe understaffing, and victims losing opportunities to receive justice because some cases cannot be charged due to the preceding problems. Certainly, a "well-designed and executed time studies generally provide more accurate and reliable information upon which to develop relative weights to be assigned to each case type." LAB 95-24, 17. Equally important, the time study must work in concert with the goals of the program, such as "reducing turnover in prosecutor positions" which has been a primary goal of the prosecution program since the inception of state employment for prosecutor positions. LAB 95-24, 9. A new time study under the present system of high turnover and severe understaffing simply operates as a reset button, measuring the state's inadequate funding without regard to the concerns of victims, law enforcement, the courts and public safety.

LAB Recommendation: District attorneys in counties that house prisons work with prison officials to develop guidelines for handling crimes committed by inmates. LAB 07-9 at 49.

WDAA embrace the recommendation for prosecutors in counties that house prisons to work with prison officials to develop guidelines for handling crimes committed by inmates. However, the LAB report properly noted that any change in this area "would be unlikely to have much effect, particularly given the relatively small number of such cases." LAB 07-9 at 49.

The LAB report stated that from 2002 through 2005, inmate crimes prosecuted by the district attorney's office accounted for only 0.1 percent of all felony and misdemeanor

prosecutions. LAB 07-9 at 48. In 2006, the state had 424.65 full-time equivalent prosecutor positions so inmate prosecutors would account only for approximately 0.42 positions; that is to say, a single prosecutor working less than halftime could handle all inmate crimes committed in the state. LAB 07-9 at App. 1, 1-2.

The recommendation proposed does not state that inmate prosecutions would be eliminated because the recommendation only suggests that guidelines would provide some reduced impact on prosecutors. If one assumes that this recommendation would result in a decrease in workload to prosecutors any savings would be limited to the 0.42 position noted in the previous paragraph and have no impact on the remaining 424.23 full-time equivalent prosecutors.

The recommendation essentially provides no relief to the severe understaffing of prosecution positions because inmate prosecutions account for such a small percentage of total prosecutions. The LAB report recognized that changes in this area "would be unlikely to have much effect" so this recommendation offers no significant solution to the severe understaffing of prosecutor positions. LAB 07-9 at 49.

LAB Recommendation: The State Prosecutors Office work with district attorneys and the state courts to facilitate sharing of best practices for managing workloads through court structures and policies. LAB 07-9 at 53.

WDAA embraces the recommendation that district attorneys work with the state courts to facilitate sharing of best practices for managing workloads through court structures and policies. The recommendation, however, fails to consider that prosecutors already engage in this worthwhile practice. The recommendation further fails to consider that there is no recourse for a district attorney when a circuit court rejects an efficiency strategy, such as "arranging rotation schedules or court specialization." LAB 07-9 at 53.

The LAB report properly recognized that many district attorneys' office already work with the courts on strategies to "promot[e] cooperation and communication between district attorneys and judges." The recommendation fails to articulate how the present system of cooperation fails to achieve the desired level of efficiency; that is to say, the recommendations implies that the present method of cooperation is inadequate. To the contrary, district attorneys' offices always have had a vested interest in fostering relationships with circuit courts to maximize the efficient administration of justice because such a practice provides the dual benefit of "reduc[ing] the amount of time prosecutors spend traveling between courtrooms" and ensuring a "speedy disposition of the case . . . [for] a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter." LAB 07-9 at 53, Wis. Stat. § 950.04(1v)(k).

The recommendation further fails to recognize that the Rules of Judicial Administration already contemplate that "[t]he chief judge of each judicial administrative district shall design a plan for the rotation of judicial assignments in multijudge circuits within the

district." SCR 70.23(3). The Subcommittee on Court Efficiencies for the Planning and Policy Advisory Committee (PPAC) of the Wisconsin Supreme Court also recognized that "organization of the large courts by case-type divisions provides efficiencies for management of caseloads, staff and facilities." Final Report and Recommendations at 22 (August 2006). Therefore, individual circuit courts already have directives from their own supervisory entity to engage in essentially what the LAB report recommends.

The recommendation essentially provides no relief to lessen the burden to prosecutors because district attorneys' offices already employ this recommendation into their practice and the circuit courts have no requirement to follow a best practices model. Prosecutors always have recognized the value of the efficient administration of justice, but the district attorneys' offices have no authority to force a circuit court to follow directives as demonstrated in the preceding paragraph highlighting that some court systems do not follow the recommendations from their own supervisory entity.

LAB Recommendation: District attorneys work with local law enforcement agencies to develop guidelines addressing which crimes will be referred for prosecution and which will be handled by law enforcement. LAB 07-9 at 55.

WDAA embraces the recommendation that prosecutors work with local law enforcement agencies to develop guidelines addressing which crimes will be referred for prosecution and which will be handled by law enforcement. The recommendation, however, fails to consider that the prosecutors already engage in this worthwhile practice.

The present weighted caseload formula estimates that each prosecutor spends 124 hours per year on investigative work with and training law enforcement. LAB 07-9 at App. 4, 4-1. The formula properly identifies the ongoing professional relationship that already exists between prosecution and law enforcement agencies because both agencies understand that open communication ensures better cooperation and the efficient administration of justice. Part of these hours include the time a district attorney spends working with local law enforcement agencies to develop guidelines addressing which crimes should be referred for prosecution.

The recommendation provides no relief to lessen the number of cases referred by law enforcement for prosecution because prosecutors already employ this recommendation into their practice. The weighted caseload formula confirms such collaboration and highlights that prosecutors spend more time working with law enforcement than the entire amount of time prosecutors spend prosecuting all traffic and forfeiture cases combined. LAB 07-9 at App. 4, 4-1.

LAB Recommendation: The Legislature consider statutory changes to clarify the allowable use of special prosecutor appointments. LAB 07-9 at 61.

WDAA embrace the recommendation that the Legislature consider statutory changes to clarify the allowable use of special prosecutor appointments. The suggested focus to the statutory changes “would better align the law with current practice.” LAB 07-9 at 62.

The recommendation, however, demonstrates that the present system is woefully inadequate at providing adequate staffing to district attorney offices and the solution cannot rely upon an increase in special prosecutor appointments. In an earlier LAB report, the bureau cautioned against too much reliance on special prosecutors because such positions tend to “be more expensive than using permanent assistant district attorney positions.” LAB 95-24 at 39. Moreover, “it can undermine the Legislature’s efforts to allocate resources because the . . . weighted caseload comparison credits district attorneys with the cases prosecuted by special prosecutors; that is, the special prosecutor’s caseload is included in the workload measure, but the special prosecutor position is not included when the average weighted caseload per prosecutor is determined.” LAB 95-24 at 39.

The recommendation provides a statutory change to better align the law with current practices, but this recommendation does not provide relief to the severe understaffing of prosecution positions because increased reliance on special prosecutors is more expensive and inefficient, as noted by the earlier LAB report. Certainly, counties need access to special prosecutors for the reasons provided in the statutes but the reliance on such prosecutors to solve understaffing issues undermines the overall vitality of the statewide program.

LAB Recommendation: The Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on the feasibility of implementing floating assistant district attorney positions or expanding the use of existing alternative resources to better assist counties facing short-term or unexpected workload increases. LAB 07-9 at 67.

WDAA does not embrace the recommendation for implementing floating assistant district attorney positions because the use of such positions provides an inefficient alternative to simply increasing the staffing levels for the “63 counties [that] are understaffed.” LAB 07-9 at 5. Moreover, the recommendation provides no recommendation as to who has the authority to hire, allocate and supervise these floating prosecutors.

The recommendation does not articulate the number of floating positions envisioned, but one may infer a recommendation of 15 to 30 positions based upon the examples cited in the report. LAB 07-9 at 67. Once created, these assistant district attorneys “could be regional or statewide,” such as being “based in Madison, Milwaukee, and Eau Claire but travell[ing] statewide to conduct hearings.” LAB 07-9 at 67. Essentially,

assistant district attorneys in these positions would function similar to "court-appointed special prosecutors." LAB 07-9 at 67.

An earlier LAB report recognized the inefficiency of such a system when the report noted that "the long-term use of special prosecutors could be more expensive than using permanent assistant district attorney positions." LAB 95-24 at 39. The expense becomes evident when considering that assignment of a floating attorney requires expenses related to travel and lodging, such as mileage reimbursement and lodging expenses. The positions also contain an loss of productivity because a portion of this attorney's work hours would include traveling from one locale to another.

The recommendation builds an inherent inefficiency into the system without providing an explanation how the creation of a few positions solves the understaffing of prosecution positions that exists in nearly every county in this state. Certainly, WDAA welcomes a recommendation that provides meaningful relief to small counties "disrupted by a small number of unusually serious or complex crimes or an unexpected spike in cases." This recommendation simply does not provide such relief when considered against the backdrop of the severely understaffed present system.

Thank you for taking the time to read this letter in its entirety. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

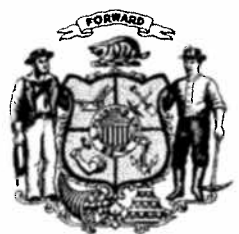


Tim Baxter, President
Wisconsin District Attorneys Association

cc: Sen. Jim Sullivan
Sen. Julie Lassa
Sen. Russell Decker
Sen. Alan Lasee
Sen. Robert Cowles
Rep. Suzanne Jeskewitz
Rep. Samantha Kerkman
Rep. Kitty Rhoades
Rep. David Cullen
Rep. Joe Parisi
Janice Mueller, State Auditor



WISCONSIN STATE LEGISLATURE



Matthews, Pam

From: Collins, Winn S - DAIT
Sent: Wednesday, October 17, 2007 3:39 PM
To: Rep.Jeskewitz; Matthews, Pam; Sen.Sullivan; Rosser, Lewis
Cc: Baxter, Tim - DAIT; White, Catharine - DAIT; Collins, Winn S - DAIT; Greipp, Jeffrey - DAIT
Subject: Tentative Lineup for Tomorrow's Audit Hearing (LAB 07-9)

Testimony by WDAA/ASP

Tim Baxter, WDAA
Catherine White, ASP

Testimony (or Letter) by WWWP

Llonda Thomas, Victim/Witness Coordinator

Testimony from Prosecutors

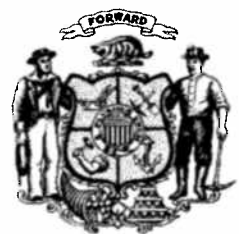
John Chisholm, DA (Milwaukee)
Judy Schwaemle, DDA (Dane)
Dick DuFour, DA (Marquette) (If Needed)
John Zakowski, DA (Brown) (or Designee)

Testimony Specific to Recommendations

Jeff Greipp, ASP
Adam Gerol, WDAA
Winn Collins, WDAA



WISCONSIN STATE LEGISLATURE



Matthews, Pam

From: Michelle Mettner [mmettner@broydrick.com]
Sent: Thursday, October 18, 2007 8:36 AM
To: Matthews, Pam
Subject: Re: Testimony Today - Prosecutor Audit

Thanks, Pam. We will be there early and have slips filled out.

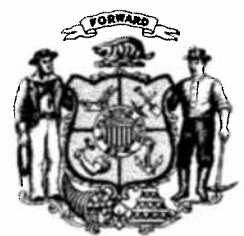
I also take your point about keeping to the topic. While we will be making the point that the State should adequately staff offices and put resources to add prosecutors, our focus will be the allocation and recommendations of the audit itself. I have reminded our people that this is the audit committee addressing the audit, not the joint finance committee addressing the budget. (I can't account for everyone coming to testify and what they will say but I have gotten word out.)

See you later this morning,
Michelle

Michelle I. Mettner
Broydrick & Associates
44 E. Mifflin, Suite 404
Madison, WI 53703
(608) 255-0566 (office)
(608) 255-4612 (fax)
(608) 692-8541 (cell)

> From: "Matthews, Pam" <Pam.Matthews@legis.wisconsin.gov>
> Date: Thu, 18 Oct 2007 08:22:10 -0500
> To: Michelle Mettner <mmettner@broydrick.com>, "Rosser, Lewis"
> <Lewis.Rosser@legis.wisconsin.gov>
> Conversation: Testimony Today - Prosecutor Audit
> Subject: RE: Testimony Today - Prosecutor Audit
>
> Michelle,
>
> I will let Sue know of your request regarding the order of testimony.
> However, it has been Sue's practice to only guarantee order of
> testimony to agency heads and staff with public testimony on a first
> come, first serve basis. I suggest that these people are present and
> fill out hearing slips as soon as they arrive and get them to the page.
>
> Also, I want to remind you that this audit focuses on process by which
> resources are allocated and not on how much should be allocated. Sue
> plans to keep people on task as to the focus of the audit.
>
> Pam
>
>
> -----Original Message-----
> From: Michelle Mettner [mailto:mmettner@broydrick.com]
> Sent: Thursday, October 18, 2007 6:16 AM
> To: Rosser, Lewis; Matthews, Pam
> Subject: Testimony Today - Prosecutor Audit
> Importance: High
>
> Lewis & Pam,
>
> Today there will be several prosecutors and elected DA's testifying on
> the audit. I represent the Association of State Prosecutors (ASP)

- > (all assistant district attorneys) and we have been working with the
- > Wisconsin District Attorneys Association (WDAA). We have also been
- > working with DA Jon Chisholm and Brown County DA Zakowski's office on
- > the testimony.
- >
- > It is all of our preference to have two groups appear before the
- > Committee today before other DA's are called to testify. The two
- > groups will lay out the issues as the two organizations see it. The
- > elected DA's that are also coming prefer that we address these issues
- > before they come up to testify.
- >
- > I will submit hearing slips, but wanted you to know in advance of the
- > two groups.
- >
- > (1) GROUP 1: Tim Baxter (Crawford County DA and President of WDAA) and
- > Catharine White (Shawano Co ADA and President of ASP)
- >
- > (2) GROUP 2: Jeff Greipp (ADA Milw County), Winn Collins (DA Green
- > Lake), Adam Gerol (ADA Ozaukee County)
- >
- > (3) Jon Chisholm, DA Milwaukee County
- >
- > Please let me know if this is a problem. THANK YOU so much, Michelle
- >
- > Michelle I. Mettner
- > Broydrick & Associates
- > 44 E. Mifflin, Suite 404
- > Madison, WI 53703
- > (608) 255-0566 (office)
- > (608) 255-4612 (fax)
- > (608) 692-8541 (cell)
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Allocation of Prosecutor Positions

Department of Administration

Legislative Audit Bureau
October 2007

State Courts and Prosecutors

- ◆ 1989 Wisconsin Act 31 made county prosecutors state employees
- ◆ Criminal cases in circuit court are their primary focus
- ◆ State Prosecutors Office in DOA is responsible for administrative duties

State Expenditures for District Attorneys' Offices

Expenditures	FY 2005-06
Prosecutor Salaries	\$31,652,900
Prosecutor Fringe Benefits	12,156,600
Supplies and Services	317,900
Milwaukee County District Attorney's Office Clerks	284,700
Total	\$44,412,100

Program Revenue-Funded Prosecutor Positions, July 2006

County	Program Revenue-Funded Positions	Total Positions	Program Revenue-Funded Positions as a Percentage of Total Positions
Milwaukee	37.00	124.00	29.8%
St. Croix	1.00	5.70	17.5
Marathon	1.50	10.00	15.0
Outagamie	1.50	10.50	14.3
Dane	4.25	31.10	13.7
Kenosha	2.00	15.00	13.3
Waukesha	1.00	15.50	6.5

Changes in Staffing Levels and Caseloads

- ◆ Authorized positions have declined 4.4 percent since 2002
- ◆ Population has increased 3.7 percent
- ◆ Arrests have declined 5.9 percent
- ◆ Criminal caseload has increased 11.5 percent

Criminal Caseloads 2001 through 2005

Type of Case	2001	2005	Percentage Change
Felony	30,455	35,399	16.2%
Misdemeanor	68,223	71,518	4.8
Criminal Traffic	36,925	46,696	26.5
Juvenile Delinquency	14,204	13,365	-5.9
Total	149,807	166,978	11.5

Weighted Caseload Formula

- ◆ 1,227 hours per year per available prosecutor
- ◆ Case weights range from 100 hours for Class A homicides to 1.68 hours for criminal traffic cases
- ◆ Three years of caseload data generate average annual prosecutor need in each county

Current Estimated Positions Needed

County	Current Staffing	Additional Positions Needed
Dane	31.10	8.21
Racine	18.00	7.90
Brown	12.00	7.31
Rock	13.50	6.74
Waukesha	15.50	5.71
Sheboygan	7.50	4.52
Kenosha	15.00	4.45
Eau Claire	8.00	4.14
Outagamie	10.50	3.92
Milwaukee	121.00	3.84

Current Staffing as a Percentage of Estimated Need

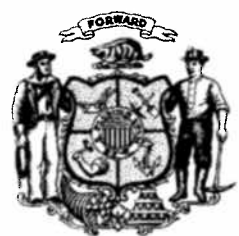
County	Current Staffing	Current Staffing Level as a Percentage of Estimated Total Staffing Need
Burnett	1.25	44.8%
Monroe	3.00	53.7
Wood	4.00	56.7
Fond du Lac	5.00	57.7
Forest	1.00	60.6
Adams	1.20	60.9
Shawano/Menominee	3.00	61.3
Marquette	1.00	61.7
Grant	2.00	61.9
Brown	12.00	62.1

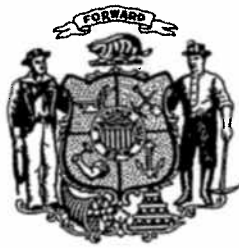
Caseload Formula Data Concerns

- ◆ Cases with no initial appearance are not included in the formula
- ◆ Hours allocated to review of referrals are inadequate
- ◆ Charging practices vary among the counties
- ◆ Cases charged as felonies may be amended to misdemeanor status



WISCONSIN STATE LEGISLATURE





**OFFICE OF THE DISTRICT ATTORNEY
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Joe DeCecco
District Attorney

Deputy District Attorney
James P. Van Akkeren

October 18, 2007

Assistant District Attorneys

•James A. Haasch •Ryan T. O'Rourke
•Christopher W. Stock •Ronald J. Storaker
•Joel Urmanski •Mary T. Wagner

Joint Legislative Audit Committee

RE: Allocation of Prosecutor Positions

Dear Members of the Committee:

I am the District Attorney for Sheboygan County. Our prosecutor staff currently consists of a total of seven (7) full-time and one half-time prosecutors. We have been at this level for approximately eight (8) years. The most recent prosecutor work load study placed us as needing an additional 4.5 fulltime prosecutors. Over the last decade, that need has steadily increased from a needed 3.75 additional prosecutors.

During that same period of time, our case load has substantially increased. In 2000, our office prosecuted 1,527 misdemeanor cases, 880 criminal traffic cases and 618 felony cases. In 2006, we prosecuted 1,888 misdemeanors, 1,161 criminal traffic and 751 felonies. Our total case load for 2006 was 6,391 cases which included all criminal, juvenile and non-criminal cases.

While we have been able to keep our heads above the case load water in past years, we are at the point where the tide is beginning to slosh over our heads. Quite frankly, we have reached a breaking point both in our ability to cope with this rising case load and our mental ability to deal with the tremendous stress generated by that effort.

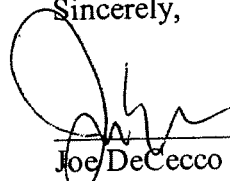
We've taken a number of steps in recent years to streamline our operations and to cut costs to comply with County budgetary requirements as our office infrastructure and support staff are all County employees. Cutting our County operating budgets by some 40% and instituting innovative programs to keep cases out of the court system are two examples. Our Check Diversion Program not only keeps some 150 to 200 criminal "worthless check" complaints out of the court system each year, it has resulted in a record reimbursement to area merchants of more than \$65,000 in 2006, and generated some \$18,000 of revenue for the County in that year as well.

We haven't been sitting on our hands and simply bemoaning our fate. We have been active in instituting cost and court saving measures, but these only take us so far. We simply cannot continue to deal effectively with this work load any longer, and our cases will soon begin to suffer which means we will be less prepared and, ultimately, the community in general will suffer.

Members of the Committee: I don't need an additional 4.5 full time prosecutors. Just one additional full time prosecutor would be an immense help. With another prosecutor, I could assign two prosecutors to a single court assignment instead of the current one prosecutor-one court situation. The work load would be substantially eased with just one more prosecutor to assist with the several hundred cases we have pending at any one time.

Thank you for your time and attention.

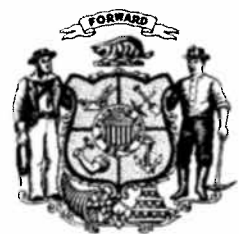
Sincerely,

A handwritten signature in black ink, appearing to read "Joe DeCecco", written over a horizontal line.

Joe DeCecco
District Attorney
Sheboygan County



WISCONSIN STATE LEGISLATURE



JOINT LEGISLATIVE AUDIT COMMITTEE
PUBLIC HEARING ON THE LEGISLATIVE AUDIT BUREAU'S
REVIEW OF THE ALLOCATION OF PROSECUTOR POSITIONS
(REPORT 07-9)
October 18, 2007

Testimony of Adam Gerol, Assistant District Attorney, Ozaukee County,
Wisconsin District Attorney's Association Executive Board Member

I wish to thank the Committee for commissioning this report and for holding this hearing. No prosecutor in Wisconsin approached this study with trepidation. Living and working in this environment we, as well as our partners in the justice system, knew that Wisconsin's District Attorneys are in dire need of help.

I have been practicing law in Wisconsin for over 19 years and have been an Assistant District Attorney in Ozaukee County for the last 15. I am a member of the Executive Board of the Wisconsin District Attorney's Association as well as the current District Attorney's representative to the Planning and Policy Advisory Committee of the Wisconsin State Court system. Last year it was my pleasure to serve as a public member of the Joint Legislative Council's Special Committee on District Attorney Funding and Administration.

My intent is to limit my remarks to only three aspects of the LAB Report. This is done with great caution. Fully addressing these three topics would take far more time than I have been allotted. With that in mind I will be discussing, First, developing best practices for case management with the circuit courts, Second, developing guidelines for case referral with law enforcement, and, Third, working with the unique caseloads confronted by those counties which are home to prisons and unique institutions.

- 1. LAB Recommendation: The State Prosecutors Office work with district attorneys and the state courts to facilitate sharing of best practices for managing workloads through court structures and policies. LAB 07-9 at 53.**

In practice this may likely be an impossible task for the State Prosecutors Office. The SPO has a single employee with very limited authority – certainly not the power to regulate individual, elected District Attorneys. The SPO Director has never been a former prosecutor or attorney, although the current Secretary of the Department of Administration is.

Ozaukee County was one of the counties visited by your auditors. I recognized this particular topic from our discussions, probably because in our county not coordinating caseload simply isn't an option. Ozaukee County is one of only five counties where there is a one to one relationship between judges and prosecutors.

Ozaukee County has been a leader statewide at incorporating technology to enhance efficient practices in court. We were one of the first counties to participate in the Protect/CCAP interface. We have a designated secretary for each court to prescreen mutually available court dates for calendaring simplification. All 3 Ozaukee County judges have worked in the DA's office and certainly appreciate the unique pressures presented by a grotesquely high caseload. Ozaukee County has had exactly the same number of prosecutors since 1978. Over the last 15 years our felony caseload has tripled and our misdemeanors have more than doubled.

A local county survey last year placed public safety and the treatment of victims as the most important concern for our constituents. I'm confident that a statewide survey would also rank safety and criminal justice the greatest concern for all people in the State of Wisconsin. This is evident in one simple statistic. The decision to hire law enforcement is made at municipal and county level and some say that the decisions made at the very grass roots reflect the dearest sensibilities of the constituents because they are made closest to them. From 1993 through 2003 Wisconsin's population increased 10.2 percent while the number of law enforcement officers grew 14.5 percent. Over that same time frame the number of GPR DAs grew by only 4.28 percent.¹ Over this same time frame the number of arrests in Wisconsin grew by 21.7 percent. Please note that this was before recorded interrogations and a variety of other complex matters we now face.

Our statistics tell us that approximately two thirds of all court filings in Ozaukee County run through the DA's Office. I believe this same number translates statewide – in other words 420 lawyers are responsible for managing the majority of all the case filings in the entire state.

While working closely with our courts may have improved the regularity of our court system, I can't say it has improved our delivery of justice. No level of case management can make criminal cases go better or faster. The only tool at a judge's disposal to bring an end to a pending criminal case, or 'move it along,' is to set it for trial. But this is an awkward device at best. No DA Office can try every case. Ozaukee County had approximately 1800 criminal filings last year.

Judges are also struggling to do their jobs. A recent workload assessment demonstrated their staffing shortage. If there is a DA shortage, as well as a judge shortage, caseload management as a panacea is a nonstarter.

While other presenters have touched upon the numerous statutory changes that have added to our caseload other legal obligations have also come from the decisions and pronouncement of our Supreme Court. Relatively small things have had a cumulative effect on the time we must spend on each case. Judges must spend longer with defendant's explaining how important it is for them to get attorneys, going through necessary information before they can take responsibility for their behavior, and actually explaining their rationale for the sentences imposed. Even matters as simple as waiving the right to counsel for a *pro se* litigant has become more complicated and the extra time burden, taken cumulatively, is significant.

The very best planning and coordination is easily destroyed by a defendant who may exercise his right to strict obedience to time limits. Speedy trials and other hearings must be calendared regardless of prior commitments or otherwise available time.

In private practice there's a saying that no lawyer makes money by being in court. The truth behind this aphorism is that the most important work is done at a lawyers desk. For prosecutors this means really understanding your cases before they're filed and seeing the legal issues before they're raised in court. In common parlance this is called 'moving the work instead

of letting the work move you.’ Prosecution in Wisconsin has devolved into getting the cases filed because you can no longer see your desk, running into court with a giant stack of cases – or for a motion hearing which you have never seen before, and studying a case file at night after ‘story time’ because at the end of the day it was the one in the stack that was selected to be tried the next day.

In the end case coordination and management is more about making sure there’s a person sitting in the prosecutor’s chair at a mutually available court date than it is about actually having someone in court who is knowledgeable about a case. We all deal with stacked calendars or “Cattle Calls.” In Ozaukee County these occur 4 times a day on a calendar call date, with as many as thirty or more cases in any one sitting. I may only be personally assigned to a third of the files but I may still be obligated to make important decisions on others because the assigned lawyer is not available. Despite how much these massive calendars may look like it, they are not assembly lines. For the Defendants and Victims they may be among the most important days in their lives. We prosecutors are keenly aware of this, our obligation to do justice and that our actions at these hearings may have a profound effect on the liberty interests of the defendants as well as the safety and protection of victims and our communities. Prosecutors simply cannot accomplish these goals with existing staff.

2. LAB Recommendation: District attorneys work with local law enforcement agencies to develop guidelines addressing which crimes will be referred for prosecution and which will be handled by law enforcement. LAB 07-9 at 55.

“Handled by law enforcement” refers to processing the matter as an ordinance violation in lieu of a criminal charge. While it is true that ordinance prosecutions are procedurally much simpler, the reality is that they also demand prosecutor’s time. Often the only time saved in an ordinance prosecution is the time it takes to dictate the criminal complaint. Then again even these time savings are often lost because the brevity with which ordinance police reports are written too often makes it necessary to personally interview the witnesses where otherwise corners might be cut.

Also simply by paying the jury fee, as little as \$36, these defendants can also have jury trials.

Police work has also become so complex that it would be very difficult to promulgate useful guidelines for the ordinary officer. Every day I speak with officers who are doing their own legal research, asking questions about the application of particular statutes and how their cases are affected by appellate court decisions. It is our role to assist law enforcement and give them advice.

Across Wisconsin most DA offices already have diversion systems for minor crimes. With increasing workload pressures the types of cases worthy of diversion increases as well.

What is being suggested is that we reduce the prosecutorial decision making process to a set of guidelines to apply to mundane criminal matters. In real life it can't be done because the range of factors upon which we exercise our discretion is so diverse and never entirely fact specific. Rather, greater DA involvement at the beginning of a case would likely lead to better application of justice system resources.

DAs must always exercise discretion but when that exercise of discretion is reduced to a mechanical set of rules and guidelines it begins to look like a prosecutorial directive of which laws aren't worth following. Justice Prosser recently dissented stating:

¶ 204. "Our form of government provides for one legislature, not two." *Flynn v. DOA*, 216 Wis.2d 521, 529, 576 N.W.2d 245 (1998). This court is not meant to function as a "super-legislature," constantly second-guessing the policy choices made by the legislature and governor.

Ferdon v. Wisconsin Patients Compensation Fund, 2005 WI 125
284 Wis.2d 573,682, 701 N.W.2d 440.

District Attorneys must avoid the appearance of engaging in the same practice as it is against our function and our oath.

3. LAB Recommendation: District attorneys in counties that house prisons work with prison officials to develop guidelines for handling crimes committed by inmates. LAB 07-9 at 49.

Two other concepts make development of these types of guidelines more difficult than those which might apply to police practice in general. As a practical matter the threat of further criminal sanctions to an inmate already in the system is often of limited value. Most prosecutors already defer everything but the most violent offenses to the administrative disciplinary system in the institution. Lock downs and loss of family visits are far more effective at curbing negative behavior in prisons than the prospect of more litigation.

Creating a set of guidelines to reduce the number of referrals to DA Offices at the source would require the input of the Department of Corrections. As such it would have statewide effect and possibly create jurisdictional questions. Statewide policies can already be found in the Administrative Code but where they address the viability of criminal charges such policies could arguably be impinging on the authority of individually elected DAs and Sheriffs, constitutional officers, to administer justice in their counties.

¹ Other prosecutors were also added to individual counties through program revenues and grants. Many, if not most of these positions are not funded indefinitely and in fact these types of positions lose their funding every year. Most grants are only available for specialized prosecutors and all but very few counties are simply too small to dedicate a prosecutor to only one type of crime and be capable of managing the paperwork and reporting requirements that grant funded positions are conditioned upon.