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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**
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- 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**



Wisconsin Coalition Against Sexual Assault, Inc.

600 Williamson St., Suite N2 • Madison, Wisconsin • 53703
Voice/TTY (608) 257-1516 • Fax (608) 257-2150 • www.wcasa.org



TO: Wisconsin Joint Legislative Audit Committee
FROM: Mike Murray, Policy Specialist, Wisconsin Coalition Against Sexual Assault, Inc.
608-257-1516 mikem@wcasa.org
RE: WCASA Concerns Regarding Wisconsin District Attorney Shortage
DATE: October 18, 2007

As the statewide advocacy organization for victims of sexual assault and for sexual assault service providers, the Wisconsin Coalition Against Sexual Assault, Inc. (WCASA) is concerned about how the current District Attorney (DA) shortage will affect victims of sexual assault and community safety.

Adequately staffed district attorney offices are essential for sexual assaults to be effectively and quickly prosecuted. Unfortunately, the LAB study of the state prosecution program clearly demonstrates that Wisconsin currently faces a drastic DA shortage. These shortages can lead to delayed justice for victims of crime. This is especially important for victims of sexual assault, for whom the rigors of the criminal justice system are often acutely difficult to bear. It takes an enormous amount of courage for victims of sexual assault to come forward and report an assault. Every bit of delay in the process is time during which the victim cannot begin to heal and find closure.

Anywhere from 70-80% of sexual assaults are never reported to police. This means that the vast majority of perpetrators are never held accountable and the vast majority of victims never receive a measure of justice from our legal system. One of the primary reasons why victims are reluctant to report is the fear that the perpetrator will not be held accountable. The current DA shortage reinforces this fear.

Sexual violence continues to be a pervasive problem in our communities, which leads to an enormous demand for sexual assault prosecutions. The most recent Wisconsin sexual assault statistics warrant mention. In 2004, there were 5,628 cases of sexual assault reported to law enforcement in Wisconsin—this amounts to a reported sexual assault approximately every hour-and-half.¹ Half of these cases were referred to criminal or juvenile court, which represents over 2,800 cases of sexual assault that crossed prosecutors' desks in 2004.² Over 70% of victims were under the age of 15.³

¹ See *Sexual Assaults in Wisconsin 2004, Revised*. Wisconsin Office of Justice Assistance at <http://oja.state.wi.us/docview.asp?docid=11165&locid=97>

² *Id.*

³ See *Sexual Assaults in Wisconsin 2004, Revised*

(OVER)

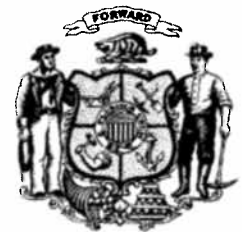
These numbers represent an enormous caseload for DA's that involve complicated, resource-intensive cases with a victim who is often experiencing the most traumatic event in her life. In order for such cases to be successfully prosecuted in a victim-sensitive manner, DA's need to have adequate time to devote to these cases and meet with victims; the current DA shortage undermines their ability to do so.

Wisconsin should do everything we can to help ensure that as many victims as possible come forward and that they are treated with dignity and compassion by our criminal justice system. Behind every sexual assault case that is delayed or not prosecuted due to DA shortages is a victim who has sacrificed privacy and personal control over her life in order to hold perpetrators accountable. Alleviating the DA shortage will help ensure that victims who do come forward have a chance at achieving justice and closure.

(OVER)



WISCONSIN STATE LEGISLATURE





Wisconsin Victim/Witness Professionals

October 18, 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:

Thank you for scheduling a hearing on the report related to the *Allocation of Prosecutor Positions* (Audit Report 07-9). I am a board member for the Wisconsin Victim/Witness Professionals (WVWP) and I have dedicated my professional career to serving victims and witnesses of crime.

I have worked with many prosecutors in my career and I have found them to be courteous and compassionate professionals. The current crisis described in audit report demonstrates that even the most competent professionals cannot completely fulfill their obligations in a system that leaves offices severely understaffed and that creates a high turnover rate in experienced prosecutors leaving the profession. This crisis has a direct impact on the victims and witnesses of crime because even the most courteous and compassionate prosecutor cannot fully serve a victim or witness under the current system.

In my experience, victims and witnesses receive the best services from prosecutors when the prosecutor has a reasonable caseload as well as familiarity with the community and local court system developed through years of experience in the office. Many victims and witnesses have regular and ongoing contact with prosecutors so the professional relationship required in criminal cases cannot develop when there are prosecutor shortages and high turnover.

I am confident that this committee will support solutions to this current crisis that include full GPR funding to staff prosecution offices at the level required under the workload formula and reinstatement of pay progression to retain experienced prosecutors. The reliance upon short-term

solutions, such as dependence on special and floating prosecutors, only perpetuates a system where victims and witnesses cannot receive the assurance that the prosecutor they meet with today will remain in the office tomorrow.

Sincerely,

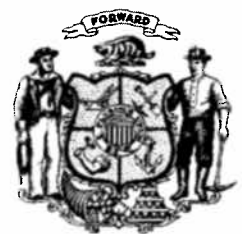
A handwritten signature in cursive script that reads "Londa Thomas".

Londa Thomas, Member – Wisconsin Victim Witness Professionals
Calumet County Victim/Witness Coordinator

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



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) - 10/18/07

Testimony of
Philip W. Werner, Director
State Prosecutors Office

Co-Chairs Senator Sullivan and Representative Jeskewitz, and members of the Joint Legislative Audit Committee, thank you for the opportunity to appear before you today.

My name is Phil Werner, and I am the Director of the State Prosecutors Office (SPO). The SPO, which is housed in the Department of Administration, is responsible for overall administration of the District Attorney program, including:

- budget development and management
- fiscal and program administration
- policy development, and
- collective bargaining.

Thank you for the opportunity to talk to you today about the Legislative Audit Bureau's (LAB's) study of the State Prosecutor Program. The LAB's Report on the *Allocation of Prosecutor Positions*, (Report 07-9) dated July, 2007, made several recommendations. I would like to address each recommendation in turn.

- (1) *The Department of Administration (DOA) should report to the Joint Legislative Audit Committee (JLAC) 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 conducted a study of the prosecutor program in 1995. In response to recommendations made in the LAB report, the SPO implemented changes to the weighted caseload formula in order to provide more accurate information on prosecutors' caseloads.

The SPO currently is in the process of collecting data for an updated caseload study. However, that study was initiated before the 2007 LAB

report was released; so, the SPO has not been able to incorporate any short-term improvements into the weighted caseload formula. Consequently, data will be based upon elements in the current caseload formula.

Going forward, the SPO is certainly open to working with prosecutors to implement short-term improvements to perceived shortcomings in the current caseload formula. This could include the development of voluntary guidelines for charging practices in order to improve consistency in caseload counts across counties. However, each District Attorney is an elected official and has the autonomy to prosecute cases in the manner he or she deems lawfully appropriate. It may be difficult to gain consensus among 71 DAs on the issue of establishing uniform guidelines for charging. Another alternative short-term improvement may include modifying the estimated time that prosecutors spend on referrals that are not filed. If prosecutors are amenable, the SPO could survey them on this issue to arrive at an estimate that more accurately reflects the time that prosecutors spend on this activity and utilize the new estimate in the caseload study.

(2) *DOA should report to the JLAC by March 14, 2008, on its plans for using PROTECT referral data in the weighted caseload formula, including:*

- *Case entry and tracking guidelines for prosecutors, to ensure consistent caseload measurements across counties;*
- *Specific changes to the weighted caseload formula methodology;*
- *The cost of necessary expansion or modification of PROTECT; and*
- *A time line for implementation.*

PROTECT, which is an acronym for Prosecutor Technology for Case Tracking, is an electronic case management system utilized by DA offices. It interfaces with the Circuit Courts, the Department of Justice, and the State Patrol. SPO would welcome the opportunity to use PROTECT to secure referral data in the weighted caseload formula, and DOA has internal IT staff that is devoted to assisting DA offices across Wisconsin with implementation and maintenance of PROTECT. However, PROTECT is a voluntary program, and its use in a county is dependent upon the interest of the DA to implement and use it. Currently, PROTECT is implemented in 65 counties, which includes the implementation in La Crosse this past Monday. Implementation in Milwaukee is totally dependent upon budget initiatives, which authorize funding to implement PROTECT for Milwaukee adult court data. In anticipation of shifting toward the use of PROTECT data rather than data from the Courts' CCAP system, DOA's District Attorney IT staff and the Wisconsin District Attorneys Association's IT Committee already have begun to document best practices for entering data into the system in order to maximize

consistency of caseload measurements across counties. The cost of expansion or modification of PROTECT, as well as a time line for full implementation, will need to be determined.

Once PROTECT is closer to full implementation throughout Wisconsin, SPO would seek prosecutor involvement in determining what specific changes to the weighted caseload formula methodology would be needed.

- (3) *DOA should report to the JLAC by March 14, 2008, on its plans for initiating a new time study to more accurately measure prosecutors' work.*

Conducting a new time study may provide more accurate data than currently exists regarding the amount of time prosecutors spend on particular crimes. This could be especially beneficial to the DA Program because it could capture information about time spent on crimes that either didn't exist in 1995 when the last LAB study was completed, or that have become more time-intensive for prosecutors due to laws that have been enacted since 1995. In addition, a new time study could measure all time spent on work activities to more accurately reflect actual workload.

However, time studies are very time-consuming and labor-intensive, and their validity hinges on accurate data. SPO will need the support of DAs in order to develop and implement such a study. In addition, due to the sheer volume of data that would be collected, the time study would need to be automated. SPO is prepared to engage in a more detailed dialogue with prosecutors about a new time study.

- (4) *LAB recommended that District Attorneys in counties that house prisons work with prison officials to develop guidelines for handling crimes committed by inmates. These guidelines could consider:*

- *When criminal activity in prisons should be handled through the prison's internal disciplinary system;*
- *Whether the prison should conduct an internal investigation before referring cases to the District Attorney;*
- *How prison officials and District Attorneys will cooperate in conducting investigations.*

Although this recommendation is not directed specifically to SPO, SPO is more than willing to facilitate discussions between DAs and prison officials to develop guidelines for handling crimes committed by inmates. Some prosecutors have indicated that they already have developed good working relationships with the prison officials in their counties and together have determined the appropriate way to handle crimes committed by inmates. SPO could identify and perhaps even memorialize these guidelines where they currently exist and could encourage further discussion of these issues in counties where they do not. According to

LAB, however, the number of such cases is small so their impact on overall workload is minimal.

- (5) *The State Prosecutors Office should work with District Attorneys and the State Courts to facilitate sharing of best practices for managing workloads through the Court structures and policies.*

The SPO would be happy to coordinate discussions between DAs and the State Courts to facilitate the sharing of best practices. Because Courts may operate differently from county to county, it would be beneficial to gain insight from DAs and Courts in numerous counties. A number of DAs already work with the Courts to promote communication and cooperation between the two. The SPO could help identify and document these best practices and share them with other counties as appropriate.

- (6) *District Attorneys should 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.*

SPO would be more than happy to facilitate communication between DAs and local law enforcement agencies in the development of guidelines addressing which crimes should be referred for prosecution and which should be handled by law enforcement. Some DAs have indicated that they already have worked closely with local law enforcement to determine the best way to handle particular crimes. Again, SPO could help identify and memorialize these guidelines and encourage their adoption as best practices as appropriate.

- (7) *The Legislature should consider statutory changes to clarify the allowable use of special prosecutor appointments.*

SPO encourages legislative review of the statutory provisions authorizing the use of special prosecutors. Clarification of the conditions under which a special prosecutor may be appointed would be beneficial for the DA Program and for judges who make such appointments. Such clarification would help to establish more consistent appointment practices and greater predictability of results for those counties that request special prosecutors.

- (8) *DOA should report to the JLAC by March 14, 2008, on the feasibility of implementing floating Assistant District Attorney (ADA) positions or expanding the use of existing alternative resources to better assist counties facing short-term or unexpected workload increases.*

SPO has initiated some discussion with prosecutors about the idea of a pool of floating ADAs to assist them in meeting their workload demands, and is more than willing to explore this issue further. Initial feedback

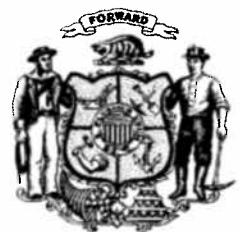
received from some prosecutors, however, revealed concerns about inefficiencies, inadequate supervision of the floating ADAs, and increased expenses associated with their temporary assignments. SPO will have to pursue more detailed discussion regarding these and other logistical concerns in order to fully assess the feasibility of this concept.

Existing alternative resources to help prosecutor offices with short-term or unexpected workload increases include court-appointed special prosecutors and assistance from the Department of Justice (DOJ). The use of special prosecutors may alleviate workload demands, but clarification of existing statutes may be necessary, as mentioned previously. DOJ assists DA offices when public officials or unusually complex crimes are involved, but generally does not have the staffing flexibility to assist DAs with heavy workloads.

Thank you for the opportunity to appear and testify before you today. If you have any questions, I would be happy to address them now.



WISCONSIN STATE LEGISLATURE





STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 18, 2007

TO: The Honorable Members of the Joint Committee on Audit

FR: Attorney General J.B. Van Hollen

RE: Audit Report 07-9, Allocation of Prosecutor Positions

Dear Senators & Representatives:

In its evaluation of the allocation of state prosecutor positions, the Wisconsin Legislative Audit Bureau indicates that the weighted caseload formula used to determine prosecutors' office staffing shows that district attorney offices across the state are significantly understaffed.

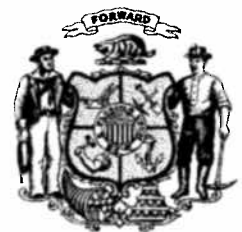
The effect of insufficient staffing results in slower processing of criminal caseloads, added burdens on prosecutors and, when combined with compensation issues, has an adverse effect on recruitment and retention of the public servants who are critical in ensuring public safety. The prosecutor shortage is among the most pressing public safety issues facing Wisconsin today.

The Wisconsin Department of Justice offers assistance to district attorney offices, not only with prosecutions and handling criminal appeals, but also by providing legal guidance and other informal assistance. We will continue to do so. Though additional prosecutorial resources at the Department of Justice to assist district attorneys with more complex or specialized criminal prosecutions in areas such as crimes against children, violent crime and homicide, and white collar crime is one possible mechanism to help relieve some of the burden currently facing state prosecutors, I urge the Committee to carefully consider the testimony and recommendations of the district attorneys and other state prosecutors. District attorneys and their assistants are on the front lines of the majority of criminal prosecutions in this state. As officials elected at the county level, district attorneys are in an ideal position to understand what reforms will alleviate the current burden on state prosecutors while simultaneously promoting the public safety needs of their communities. And they are in an ideal position to recommend how and in what form state aid would further our common goal of making Wisconsin communities safer.

I thank the committee for taking up this very important issue.



WISCONSIN STATE LEGISLATURE

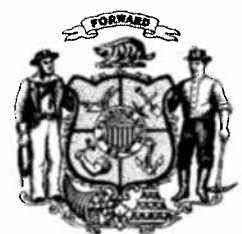


DAVID WAMBACH
Jefferson Co. District Attorney

- Background
 - WDAA
 - 22 years 12 ADA 10DA
- Report's Conclusions
 - Sound methodology
 - Over 100 pros needed stwd
 - Jeff 1.7 33.35%=38th in need
 - % need unchanged since 2004 and deficit 98
- Critical mass and long overdue
- Matter of Priorities
 - State, community safety should not continue to suffer
 - Arrests and referrals ineffective w/o proper pros. Resources
 - Constit. Rights of Def. cannot be adeq. Protected
 - Mowris
 - Current Bar Pres.
 - Constit rights of victims
 - Rights of defs and victims illusory w/o proper resources
- Merit increases and progression through the pay scale nec to stop "Brain Drain"
- Report's rec.
 - Using PROTECT data to input for calculating need
 - More accurate than CCAP filing data used now
 - Capture referrals not just charges
 - PROTECT ST. database designed for this purpose
 - CCAP is designed for Ct functions
- WHY
 - Not help prosecutors
 - Help those we all have a duty and an obligation to provide for
 - Public cannot do it-Gov't must-they are counting on us
 - LAB report conclusively , independently and objectively shows we have let them down
 - We can change that starting with today



WISCONSIN STATE LEGISLATURE



W D A A

Tim Baxter, President
220 North Beaumont Road
Crawford County Courthouse
Prairie du Chien, WI 53821

Wisconsin District Attorneys Association

Tim Baxter, President
Ralph Uttke, President-Elect
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, 22, 2007

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

Rep. Suzanne Jeskewitz
Room 414 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Sen. Sullivan and Rep. Jeskewitz:

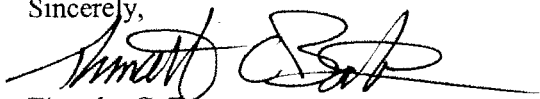
On behalf of the Wisconsin District Attorneys Association (WDAA), I would like to take this opportunity to thank you and the other members of the Committee for allowing us the venue to address the concerns of the Wisconsin District Attorneys and to comment on the audit.

The Legislative Audit Bureau conducted the evaluation of the Wisconsin District Attorneys with professionalism and objectivity, which ultimately showed that Wisconsin is in need of no less than 132 additional prosecutors simply to meet current caseload. The creation of these new positions, coupled with retention of existing, experienced, prosecutors via a pay progression system, will remain our primary goal. It appeared clear that members of the Committee recognized the critical nature of our situation. We feel the recognition of this crisis in the audit and by this Committee is just the first step in rectifying this dire situation.

You have all shown a strong commitment to assisting law enforcement and the protection of victims - and the public in general - as evidenced by the legislation proposals which have been authored or co-authored by members of your Committee in the past. I simply ask that you demonstrate this same level of commitment to the prosecutors who are charged with the duty of protecting our victims and our public.

In the coming weeks, it is my hope that you will be amenable to meet and work with members of the WDAA as we strive to find a meaningful, long-term solution to this crisis.

Sincerely,



Timothy C. Baxter
President, Wisconsin District Attorneys Association
District Attorney, Crawford County, WI

Wisconsin District Attorneys Association

P.O. Box 1702

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(608) 513-1161

cc: Sen. Julie Lassa Rep. Samantha Kerkman
 Sen. Russell Decker Rep. Kitty Rhoades
 Sen. Alan Lasee Rep. David Cullen
 Sen. Robert Cowles Rep. Joe Parisi
 Sen. Carol Roessler



W D A A

TIM BAXTER, PRESIDENT
220 NORTH BEAUMONT ROAD
CRAWFORD COUNTY COURTHOUSE
PRAIRIE DU CHIEN, WI 53821

WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

Tim Baxter, President
Ralph Uttke, President-Elect
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 22, 2007

Sen. Jim Sullivan
Room 15 South
State Capitol
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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:

This is a follow up to the testimony that I presented at last week's committee hearing before the Joint Legislative Audit Committee. As I stated at the hearing, I commend State Auditor Janice Mueller and Kate Wade of the Legislative Audit Bureau. I also wish to thank both of you for being receptive throughout the audit hearing. This letter attempts to memorialize the highlights of my testimony at the hearing.

The Legislative Audit Bureau (LAB) properly recognized that the current situation in prosecution is untenable and requires an appropriate response from the legislature. The audit report, on page sixty-five, noted that the solution to the prosecution crisis must begin with legislature considering the creation of new prosecutor positions which was a point reiterated as the first point on slide eighteen of the presentation by Ms. Wade. The report, on page ten, explained that the reduction of turnover in prosecutors is a necessity to ensure that the prosecution program achieves its longstanding goal of providing the victims of our state with qualified and competent prosecutors.

The focus of my testimony centered upon only two of the eight recommendations provided in the audit report because other speakers addressed the remaining six recommendations as well as broader issues associated with the prosecution crisis. I examined the recommendation that began on page sixty-one and continued onto page sixty-two as well as the recommendation on page sixty-seven.

The first of these recommendations contains three subparts with the last subpart involving many of the same policy considerations as the other recommendation so I rephrased the recommendations and WDAA's position essentially as follows:

WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

P.O. Box 1702

MADISON, WI 53701

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- 1) **WDAA embraces the recommendation that technical changes to the special prosecutor appointment statute would better align the law with current practice as it pertains to expanding the appointment criteria to include all prosecutors and to eliminating requirements that prosecutors or courts pursue appointments in certain arenas before requesting paid appointments.**

This recommendation provides essentially a technical remedy to align the law with current practice and ensures that the law does not continue to create unintended consequences. Members of WDAA have worked with legislators on a variety of statutory proposals in order to provide technical assistance to criminal law changes and modifications. WDAA would be happy to continue in this cooperative practice and work to ensure that the special prosecutor appointment statute serves its intended result. Please note that any technical change or modification provides no relieve to the prosecution shortage and high turnover.

- 2) **WDAA does not embrace the recommendation that the current prosecution crisis of severe understaffing and high turnover would be remedied through the increased reliance on special prosecutors or the creation of floating prosecutors.**

The WDAA opposes this recommendation because the recommendation is fiscally inefficient, it provides inadequate service to police as well as crime victims, and it lacks sufficient opportunity for oversight.

The recommendation is fiscally inefficient based upon the obvious costs associated with paying for mileage reimbursement as well as possible hotel and food reimbursement for special and floating prosecutors. The cost of travel also involves paying the prosecutor an hourly fee or salary to drive from one jurisdiction to another. The inefficiencies of this recommendation were highlighted by the LAB in an earlier report:

“ . . . the long-term use of special prosecutors could be more expensive than using permanent assistant district attorney positions . . . ”
LAB 95-24 at 39.

A point raised by Catharine White, president of the Association of State Prosecutors (ASP), earlier in the hearing demonstrated that the fee paid to special prosecutors often surpasses the equivalent hourly fee paid to newly hired assistant district attorneys, even after accounting for salary and fringe benefits. Taken together, the evidence demonstrates that special and floating prosecutors is a fiscally inefficient solution to the crisis.

The recommendation also provides inadequate relief to police and crime victims. I explained at the hearing that some government departments, such as the Department of Motor Vehicles (DMV), have contact with nearly every adult citizen in a county, but the contact is relatively short-lived or brief. In contrast, prosecutors have in-depth and regular contact with a small segment of the population, specifically police officers and people susceptible to ongoing victimization such as a small business owner who may be the victim of numerous worthless checks, employee theft, and customer theft offenses. Therefore, to effectively prosecute crime as well as undertake broader crime prevention or diversion initiatives, a

prosecutor generally must work in the community where they prosecute over an extended period of time. The reliance on special or floating prosecutors provides a great disservice to officers and victims because it provides no opportunity for developing ongoing professional relationships with these key individuals in the criminal justice system. This point was stated by the Wisconsin Victim/Witness Professionals (WVWP) in the written letter WVWP provided during the hearing.

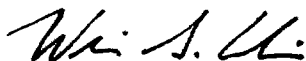
The final problem associated with special and floating prosecutors deals with the lack of sufficient oversight to these attorneys. These prosecutors presumably would be hired by an official at the Department of Administration (DOA) who has no actual prosecution experience, yet the prosecutors then would travel to a county and then be required to report both to the DOA administrator and the elected district attorney with problems arising when each has different demands on the prosecutor. Moreover, the work of these prosecutors in a specific county would be attributed to that county's future weighted caseload formula even though no prosecutor permanently assigned to the county completed the work, which caused the LAB to criticize the reliance on such an unstable prosecutor workforce in an earlier report. See LAB 95-24 at 39.

Each of these three problems with reliance on special or floating prosecutors is independent from one another; that is to say, each problem alone demonstrates that this recommendation would worsen the crisis and the three problems taken together certainly should prove that this recommendation should not be considered as a solution to the crisis.

Please note that the above comments to these recommendations is offered simply to articulate the reason for WDDA's position on each of these recommendations based upon the expertise that WDAA's members have on account of being experienced district attorneys, deputy district attorneys, and assistant district attorneys. Although WDAA finds reliance on special and floating prosecutors untenable, the WDAA agrees with the broader issues raised in the audit report including LAB properly noting that increased prosecutor positions should be the first recommendation for consideration.

WDAA asks this committee to recommend to the Joint Committee on Finance that the state provide sufficient general purpose revenue to fully fund the necessary number of prosecutors and provide sufficient progression through the pay scale to ensure that the state retains experienced prosecutors.

Sincerely,

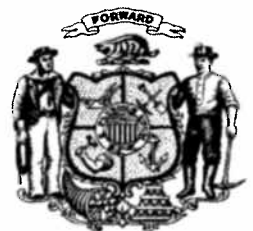


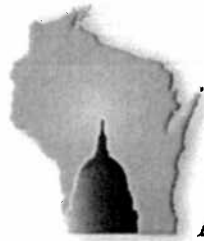
Winn S. Collins,
WDAA Board Member

cc: Senators Julie Lassa, Russell Decker, Alan Lasee, and Robert Cowles
Representatives Samantha Kerkman, Kitty Rhoades, David Cullen, Joe Parisi



WISCONSIN STATE LEGISLATURE





**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

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GOVERNOR

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March 10, 2008

Senator Jim Sullivan, Co-chairperson
Representative Suzanne Jeskewitz, Co-chairperson
Joint Legislative Audit Committee
State Capitol
Madison, WI 53702

Dear Senator Sullivan and Representative Jeskewitz:

As you know, the Legislative Audit Bureau (LAB) completed a report on the allocation of prosecutor positions in July 2007. On October 18, 2007, the Committee held a hearing on the LAB report. Mr. Phil Werner, Director of the State Prosecutors Office, who is solely responsible for overall administration of the District Attorney program, presented substantive testimony on behalf of the Department of Administration (DOA) during that hearing.

As part of its report, the Legislative Audit Bureau recommended that DOA report back to the Joint Legislative Audit Committee by March 14, 2008 regarding:

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

The purpose of this letter is to request a brief extension of time to submit DOA's follow-up report due to unfortunate and unforeseen circumstances. Mr. Werner is the sole employee in the State Prosecutors Office. He oversaw DOA's response to the LAB's initial audit and is responsible for preparing DOA's follow-up report. On March 2, 2008, Mr. Werner was injured in an accident at his home. Although we expect a full recovery, his work status over the next several weeks remains uncertain. Therefore, he will be unable to complete the follow-up report by this Friday, March 14, 2008.

March 10, 2008

Page 2 of 2

Under these circumstances, DOA respectfully requests an additional three weeks, or until April 4, 2008, to submit its follow-up report to the LAB's report on the allocation of prosecutor positions. We appreciate your consideration of this request. If you have any questions or concerns, please contact me directly.

Respectfully submitted,

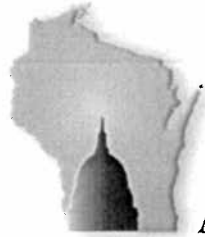
A handwritten signature in black ink, appearing to read "Sheila M. Conroy". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Sheila M. Conroy

Administrator, Division of Administrative Services

cc: Dan Schooff, Deputy Secretary





**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

April 7, 2008

Senator Jim Sullivan, Co-chairperson
Representative Suzanne Jeskewitz, Co-chairperson
Joint Legislative Audit Committee
State Capitol
Madison, WI 53702

Dear Senator Sullivan and Representative Jeskewitz:

In July 2007, the Legislative Audit Bureau (LAB) completed a report on the allocation of prosecutor positions in Wisconsin. On October 18, 2007, the Joint Legislative Audit Committee (JLAC) conducted a public hearing on the LAB report. I participated in the public hearing and testified for the Department of Administration (DOA) and the State Prosecutors Office (SPO).

In its report, the LAB recommended that the DOA report back to the JLAC by March 14, 2008, regarding:

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

As you recall, Sheila Conroy, Administrator of the Division of Administrative Services, recently asked for an additional three weeks in which to submit DOA's report to the JLAC. This extension was due to an injury I suffered at home, and delayed the completion of the report in time for the March 14th deadline. Both of you graciously agreed to the extension, and I extend my appreciation to you for your consideration.

In the testimony I presented at the October 18th JLAC hearing, I explained that DOA and the SPO are most willing to work closely with Wisconsin prosecutors in an effort to assist the prosecution system to work as efficiently as possible. In preparation for drafting this report, the SPO reviewed information from the Wisconsin District Attorneys Association (WDAA), the Association of State Prosecutors (ASP), and others who appeared at the JLAC hearing in October, 2007. In addition, the SPO surveyed prosecutors regarding the specific LAB recommendations. I provide the following information in response to those recommendations.

Recommendation #1: DOA report to the JLAC 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.

With respect to establishing voluntary guidelines for charging practices throughout the State, several prosecutors have proposed that all charges against an individual be joined in one complaint whenever practicable. However, prosecutors are hesitant to limit the discretion of other prosecutors to decide whether or not to issue a charge based on specific circumstances of the crime, criminal history of the accused, etc. The current weighted caseload formula could be improved by implementing a guideline under which all charges would be joined in a single complaint whenever practicable. This would ensure greater consistency of data among the various DA offices.

Other modifications to the weighted caseload formula are also being considered. Prosecutors have identified several crimes for which they believe the time estimates to be too low, including homicides, felonies, misdemeanors, criminal traffic, juvenile delinquency, and CHIPS cases. The SPO is also considering whether DAs and Deputy DAs should be assumed to carry a full caseload due to their involvement in managerial and public issues, and whether time spent on community prosecution, diversion programs, and meeting with victims should be given weight in the formula. A second improvement to the weighted caseload formula would require gaining further consensus on these issues and integrating any appropriate adjustments into the formula.

An adjustment could also be made to the estimated number of annual hours spent on referrals. Based upon information from prosecutors, the current figure of 35 hours is likely too low. Thus, a third potential improvement to the weighted caseload formula is to establish agreement on a new annual figure to use for referrals.

Recommendation #2: DOA report to the JLAC on its plans for using PROTECT referral data in the weighted caseload formula, including:

- *case entry and tracking guidelines for prosecutors, to ensure consistent caseload measurements across counties;*
- *specific changes to the weighted caseload formula methodology;*
- *the cost of any necessary expansion or modification of PROTECT; and*
- *a time line for implementation.*

PROTECT, an acronym for Prosecutor Technology for Case Tracking, is an electronic case management system utilized by DA offices. It interfaces with the Circuit Courts, the Department of Justice, and the State Patrol. PROTECT is a voluntary program, and its use in a prosecutorial unit is dependent upon the interest of the DA to implement and use it.

The WDAA's IT committee, which includes a representative from DOA, has developed best practices for entering data into PROTECT in order to accurately represent the workload in that office. Best practices recommendations include:

- Focusing on referrals rather than the number of cases;

- Identifying what information is considered a referral;
- Documenting counts or charges by class and severity;
- Reducing data entry for the referral information by implementing the electronic referral interface; and
- Establishing agreed-upon race and ethnicity designations to be used by CCAP, PROTECT, DOJ, and DOT so that evaluation of this information will be consistent and meaningful.

The WDAA IT committee intends to educate prosecutors about the benefits of the best practices and work to institutionalize them over time. To communicate the best practices to prosecutors, the WDAA IT committee plans to:

- Incorporate best practices discussions into existing regional prosecutor training classes, as well as Milwaukee's PROTECT implementation training classes;
- Distribute recommendations to prosecutors via e-mail;
- Develop a webcast "Implementing Best Practices" recommendations; and
- Post documentation regarding best practices on the DAIT website.

At this time, PROTECT has been implemented in 67 of the 71 DA offices. It could take until the end of fiscal year 2011 to be fully implemented in the remaining counties, including Milwaukee. Currently it is anticipated that implementation of PROTECT could occur according to the following timetable:

- Milwaukee County Adult – planned implementation in FY09 with the current budget providing funding
- Iron County – planned implementation in FY09 with costs accommodated within the current base budget
- Portage County – currently Portage has an integrated system with their courts. However, the criminal courts may move to the CCAP system. If so, the DA's office probably would be interested in moving forward with PROTECT. Likely implementation would be in FY10 and could be accommodated within the current base budget.
- Vernon County – has not expressed an interest in PROTECT, but may do so if the State begins using PROTECT data as the source of the weighted caseload statistics. Implementation could be accommodated within the current base budget.
- Shawano/Menominee Counties – PROTECT is installed, but the office has not used it. The current DA is moving forward to begin using PROTECT.
- Milwaukee Children's Court (Juvenile) – the systems and processes used at Children's Court are entirely different than those in the Adult cases. Projected timeline is the 2009-11 biennium.

The implementation timeline above anticipates continued full funding within the State's current budget, continued federal funding (or equivalent State funds), and sufficient funding in the next biennium to cover the implementation cost for Milwaukee Children's Court (approximately \$298,000). After the implementation timetable is achieved, each DA office will need to use the PROTECT system for a period of time before the data can be utilized in the weighted caseload formula. As soon as there is sufficient reliable data, the SPO will begin using PROTECT referral data in the weighted caseload formula.

Recommendation #3: *DOA report to the JLAC on its plans for initiating a new time study to more accurately measure prosecutors' work.*

The SPO has considered the initiation of a new time study to measure prosecutors' work. However, there is no consensus among stakeholder groups on this issue. More specifically, there is no agreement as to how long the study should last, which activities should be included, how the study should consider all time worked by prosecutors, and how the data could be verified. In addition, there are concerns among prosecutors that a new time study conducted under current staffing levels will not accurately measure their workloads under optimal conditions. Based upon the status of discussions on this issue, the SPO has not developed a specific plan to initiate a new time study.

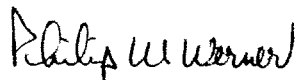
Recommendation #4: *DOA report to the JLAC on the feasibility of implementing floating assistant district attorney positions or expanding the use of existing alternative resources to better assist counties facing short-term or unexpected workload increases.*

The SPO has considered the feasibility of implementing a pool of floating ADAs to assist counties experiencing a heavy caseload and needing additional resources. However, there are potential challenges with this concept. There are questions as to who would hire, supervise, evaluate, schedule, and train this pool of floating ADAs. In addition, there could be a lack of continuity in handling cases as the ADAs move from county to county. Notwithstanding these practical issues, the feasibility of such a program would almost certainly depend upon additional funding.

An increase in the use of special prosecutors would likewise require additional funding. As for the DOJ, it generally does not have the staffing flexibility to assist DAs with heavy workloads. However, prosecutors did provide some suggestions for more effective use of DOJ's assistance. For example, DOJ's specialized prosecutors for cases such as Chapter 980 (Sexually Violent Person Commitments) have proved successful. Perhaps additional specialized prosecutors could be designated to help with homicide cases. Prosecutors also suggested that it would be helpful if DOJ could participate in criminal prosecution rather than as an advisor on appeals. SPO will contact the appropriate representative at DOJ to discuss these options.

Thank you for the opportunity to provide additional information to you. If you have any questions, I will be happy to respond to them.

Sincerely,



Philip W. Werner, Director
State Prosecutors Office

April 7, 2008

Page 5 of 5

cc: Sen. Julie Lassa
Sen. Mark Miller
Sen. Alan Lasee
Sen. Robert Cowles
Rep. Samantha Kerkman
Rep. Kitty Rhoades
Rep. David Cullen
Rep. Joe Parisi
Janice Mueller, State Auditor



Matthews, Pam

From: Matthews, Pam
Sent: Tuesday, April 22, 2008 12:43 PM
To: Hudzinski, Nicole
Subject: Audit Rpt. 07-9 - Allocation of Prosecutor Positions

Hi Nicole,

Sue and I were discussing the follow-up we received from DOA on this audit and we wanted to know if you and Jim have read and discussed it yet? There are areas were they could have been clearer or did not give a complete answer and I was wondering if Jim is okay with their response.

Typically, we would have this discussion in a co-chair meeting and determine if a letter should be sent asking for additional information, but since we have no idea when we will get one scheduled I figured I'd just ask you now about this. Please let me know what you guys are thinking.

Thanks,

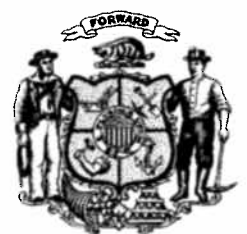
Pam

*Pamela B. Matthews
Research Assistant
Office of Representative Sue Jeskewitz*

*Madison: 608.266.3796
Toll free (in Wisconsin only): 888.529.0024
pam.matthews@legis.wi.gov*



WISCONSIN STATE LEGISLATURE



Questions regarding DOA follow-up on Audit Rpt. 07-9

Recommendation #1

DOA explained their “efforts to implement short-term improvements to the weighted caseload formula” by saying:

- how they “could improve” it by implementing a guideline under which all charges would be joined in a single complaint when practicable;
- things are “also being considered”
 - time estimates too low
 - whether DAs and DDAs s/b assumed to carry a full caseload due to administrative duties
 - whether time spent on community prosecution, diversion programs, and meeting w/victims s/b given weight in the formula; and
- an adjustment “could also be made” to estimate number of hours spent on referrals.

While they provide the above examples of how they have considered making changes, **it is still unclear as to what their plans are or timeframe for moving forward from this point in the discussion.**

Are you okay with this response or do you want them to report back on this?

Recommendation #2

DOA did a thorough job of explaining its plans for how they plan to utilize PROTECT for consistency in case entry, the cost of necessary expansion of PROTECT and the timeline for doing so.

DOA expressed that as soon as there was sufficient reliable data, the SPO will begin using PROTECT referral data in the weighted caseload formula. **However, they gave no estimated timeframe for when this might occur.**

Are you okay with this response or do you want them to report back on this?

Recommendation #3

DOA reports that the SPO considered initiating a new time study, but that “there is no consensus among stakeholder groups on this issue.” Therefore, **SPO has not developed a specific plan to initiate a new time study.**

Are you okay with this response or do you want them to report back on this?

Recommendation #4

In response to the feasibility of implementing floating DAs, SPO believes there would be challenges with this concept:

- who would hire, supervise, evaluate and train
- lack of continuity in handling cases
- funding

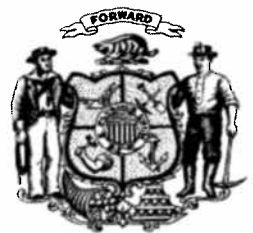
In regard to the feasibility of expanding the use special prosecutors would also require additional funding and DOJ generally does not have the flexibility to help Das with heavy workloads. However, prosecutors provided the following suggestions for DOJ's assistance:

- DOJ's specialized prosecutors for cases such as Chapter 980
- Perhaps same could be done for homicide cases
- DOJ could participate in criminal prosecutions rather than as an advisor on appeals.

Are you okay with this response or do you want them to report back on this?



WISCONSIN STATE LEGISLATURE



W D A A

TIM BAXTER, PRESIDENT
220 NORTH BEAUMONT ROAD
CRAWFORD COUNTY COURTHOUSE
PRAIRIE DU CHIEN, WI 53821

WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

Tim Baxter, President
Ralph Utke, President-Elect
Dick Dufour, Treasurer/Secretary
Michael O'Rourke, Past President Designee
Benoit Letendre, Executive Director
Roy Korte, DOJ Rep

Winn Collins, At large member
Adam Gerol, At large member
Jeff Greipp, At large member
Jacalyn LaBre, At large member
Karl Kelz, At Large Member
Patrick Kenney, At large member

April 28th, 2008

Senator Jim Sullivan, Co-chairperson
Representative Suzanne Jeskewitz, Co-chairperson
Joint Legislative Audit Committee
State Capitol
Madison, WI 53702

Dear Senator Sullivan and Representative Jeskewitz:

On behalf of the Wisconsin District Attorney's Association we offer this response to a recent submission by the State Office of Prosecution (SPO) and the Department of Administration to the legislative audit of the District Attorney Program. Thank you for the leadership and attention you have given to the state of crisis which has developed in Wisconsin's criminal prosecution program. We are fully confident that through your leadership this crisis will soon be eliminated and our system of criminal prosecution restored to competency.

The Legislative Audit Bureau reported that the State Prosecution Program, with approximately 424 positions, is at least 132.33 prosecutors short of "competent" prosecution levels.¹ Even more troubling, the report highlighted that "...staffing levels have declined while caseloads have increased."² Although the State's prosecutors were pleased that the DOA and SPO's invited response did not advocate for certain harmful suggestions made in the LAB Report,³ we are

¹ State of Wisconsin Legislative Audit Bureau *Letter of Transmittal* (LAB Report Page 1) and *An Evaluation of Allocation of Prosecutor Positions*, Department of Administration, State of Wisconsin Legislative Audit Bureau Report 07-9 July 2007 Page 37 (Hereinafter LAB Report).

² LAB Report, Page 3.

³ Unanimously the Wisconsin District Attorney's Association and the Association of State Prosecutors agree that Implementing floating assistant district attorney positions or expanding the use of existing alternative resources and implementing a new time study would lead to greater inefficiencies in this program rather than save us from the current crisis in state prosecution we are currently facing.

troubled that their submission failed to advocate for anything at all that could offer any meaningful improvement to the crisis that triggered the need for the audit in the first place.

The auditors found that most states use workload formulae to measure and assess the staffing of their prosecution programs. The SPO response to your audit appears to embrace the relevance of a workload formula to statewide prosecution needs but then, paradoxically, fails to argue that the State actually adhere to the conclusions derived from it. This represents a lack of action, if not sheer duplicity. The conclusions of the current workload formula plainly and factually underscore the present emergency, and Wisconsin's workload measurement -- by everyone's unanimous agreement -- is severely outdated. The current formula was created nearly 15 years ago. A competent staffing level would be dramatically higher as the formula was created to deal with the 1990's, not the myriad of criminal laws and procedural requirements which have since been added to our jurisprudence and confront today's prosecutors. This problem is compounded by each passing year when new laws are created. DA staffing levels are forced to remain stagnant. Attrition has driven away experienced lawyers who leave because their salaries do not meet expenses and are simply dwarfed by those available in the private sector.

The LAB Report plainly and succinctly stated that the single most important item for 'legislative concern' is the legislature's prompt consideration of "*whether current staffing levels justify adding new positions*".⁴ Although SPO's response affirmed the need to implement short-term improvements to the weighted caseload formula⁵ and improve referral data,⁶ these efforts were actually underway before the audit began. As such the SPO in its April 7th 2008 report to this committee, failed to advocate for, or suggest anything new to improve or solve this crisis. Accordingly, Wisconsin's prosecutors must turn directly to you to deal with this emergency which implicates community safety statewide.

The audit conducted by this committee reflects that our prosecution program has suffered severe neglect in funding and management. This neglect must be immediately rectified by a legislative commitment to fund state prosecution to "competent" levels.⁷ This crisis has also been compounded by the State's over dependence on federal grants to prop up the consequences of underfunding the prosecution program. Now these federal dollars are being eliminated, which will force the termination of more than 20 more prosecutors statewide, the

⁴ LAB Report Pages 6 and 65.

⁵ Recommendation that DOA report to the JLAC 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.

⁶ Recommendation that DOA report to the JLAC on its plans for using PROTECT referral data in the weighted caseload formula, including: case entry and tracking guidelines for prosecutors, to ensure consistent caseload measurements across counties; specific changes to the weighted caseload formula methodology; the cost of any necessary expansion or modification of PROTECT; and a time line for implementation.

⁷ LAB Report's First Item of Legislative Action/Consideration Page 6 and 65.

'Emergency in State prosecution' declared by this organization and the Association of State Prosecutors in January 2008 during a press conference with Attorney General Van Hollen, Sen. Sullivan, Sen. Darling, Waukesha District Attorney Brad Schimel, Milwaukee District Attorney John Chisholm, heads of law enforcement agencies, and numerous victims rights groups. Through your leadership Senate Bill 497 was introduced last session and could have provided a patch to this unanticipated, dramatic assault on Wisconsin's prosecution resources. However, despite your dedication and leadership, the bill failed. As such, more than 20 more prosecutors will be terminated within the next year.

According to the Audit, the State assumed responsibility for criminal prosecution in 1989 for one primary reason, to "reduce turnover in prosecutor positions"⁸ and thus retain experience in criminal prosecution. The State concluded that it was a public safety imperative to create a corps of experienced prosecutors to handle the increasingly complex crimes of sexual assault, abuse, homicide and the rising gang and gun violence across this state. Now the retreat from this commitment is plainly obvious. Since 2001 over 50% of the State's prosecutors have left service. The reasons are equally obvious, salaries frozen at or below cost of living inflation, the imposition of rolling layoffs to meet budgeting lapses and workload obligations beyond those any competent lawyer would ever choose to assume.

On behalf of the prosecutors in this state we urge this committee to hold a hearing into this crisis. We urge this committee and legislature to take the only appropriate step to end this mismanagement and restore justice. This can only come to pass if we provide sufficient funds to retain an experienced corps of prosecutors and then sufficiently staff our District Attorney's offices at competent levels.

Sincerely,



District Attorney Tim Baxter

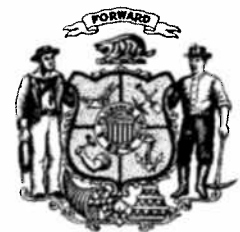
President Wisconsin District Attorney's Association

cc: Sen. Julie Lassa
Sen. Mark Miller
Sen. Alan Lasee
Sen. Robert Cowles
Rep. Samantha Kerkman
Rep. Kitty Rhoades
Rep. David Cullen
Rep. Joe Parisi
Janice Mueller, State Auditor

⁸ LAB Report Page 10.



WISCONSIN STATE LEGISLATURE



Matthews, Pam

From: Matthews, Pam
Sent: Tuesday, May 13, 2008 9:02 AM
To: Rep.Albers; Sen.Schultz
Subject: Allocation of Prosecutor Positions, Audit Report 07-9

Attachments: DOA follow-up 4-7-08.pdf

Dear Legislators,

The JLAC Co-chairs met last week and one of the items discussed was a piece of follow-up they had received from the DOA regarding Audit Rpt. 07-9. At their request I am forwarding you a copy of the follow-up they received last month. The Co-chairs are interested in knowing how satisfied you are with the Department's response.



DOA follow-up
4-7-08.pdf (358 ...)

If you haven't already had the opportunity to review the attached follow-up, the Co-chairs would like it if you would do so and then contact one or both of them to discuss your level of satisfaction at addressing your concerns and/or the audit recommendations.

Thank you,

Pamela B. Matthews
JLAC Committee Clerk, Assembly
Office of Representative Sue Jeskewitz

Madison: 608.266.3796
Toll free (in Wisconsin only): 888.529.0024
pam.matthews@legis.wi.gov



WISCONSIN STATE LEGISLATURE





WISCONSIN STATE LEGISLATURE

Joint Legislative Audit Committee

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

May 27, 2008

Mr. Michael Morgan, Secretary
Department of Administration
101 East Wilson Street, 10th Floor
Madison, Wisconsin 53701

Dear Mr. Morgan:

Michael

Thank you for the April 2008 follow-up report, which was submitted by the Director of the State Prosecutors Office in response to the recommendations offered by the nonpartisan Legislative Audit Bureau in its evaluation of the allocation of prosecutor positions (report 07-9).

In your report, we note development of a potential implementation timeline for use of data from PROTECT in the weighted caseload formula and plans to explore the feasibility of changing the role of Department of Justice attorneys in criminal prosecutions. We ask that, as these efforts continue, you keep us apprised of progress in these two areas.

While your report outlines a number of options for short-term improvements to the weighted caseload formula, it does not specify which changes, if any, will be implemented and when. Similarly, the report notes a lack of consensus about plans for conducting a new time study to measure prosecutors' work. We will continue to monitor this issue as debate continues in the Legislature about the need and funding options for additional prosecutor positions statewide.

Thank you for your cooperation.

Sincerely,

Jim Sullivan

Senator Jim Sullivan, Co-chair
Joint Legislative Audit Committee

Suzanne Jeskewitz

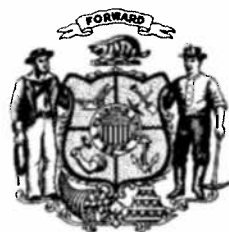
Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

cc: Philip W. Werner, Director
State Prosecutors Office

Janice Mueller
State Auditor



WISCONSIN STATE LEGISLATURE



Empty Pockets and Overfilled Dockets: Prosecutors Leaving the Profession

A Wisconsin Legislative Audit Bureau report shows that the state cut prosecutor positions at a time of increased crime statewide. Increased caseloads and a lack of pay progression caused more than half the assistant district attorneys to leave the profession within the last six years. The high turnover and prosecutor shortage have now developed into an unmanageable crisis in our criminal justice system as crime victims and law enforcement officers are underserved.

by *Winn S. Collins*

When Julie graduated from Marquette University Law School, she eagerly awaited the start of her prosecuting attorney career, which she began in June 2001.¹ Over the next several years, Julie impressed the district attorneys she worked under, resulting in her quick advancement from handling misdemeanors to handling felonies. By 2007, she handled more felony sexual assault cases than any other prosecutor in the county. During this same period, the number of prosecutors in the county decreased and Julie's salary hovered only slightly above the minimum paid to an attorney with no experience. In August 2007, Julie joined a growing number of attorneys who are leaving prosecution instead of remaining in a profession marred by frozen salaries and evaporating positions. Julie found work as a public sector attorney in another practice area and received a more manageable caseload and a 35 percent pay raise above her prosecutor salary.

Prosecution Program in Crisis

The Wisconsin criminal justice system experienced a dramatic rise in the number of criminal cases filed from 2001 to 2005 with felony cases increasing by 16.2 percent and the overall criminal caseload increasing by 11.5 percent, as shown in Figure 1.²

Figure 1
Number of Prosecutor Positions Relative to Criminal Caseloads

Number of Prosecutors	2001	2002	2003	2004	2005	2006	Percentage Change
GPR-funded Positions	...	390.40	390.40	375.40	375.40	376.40	-3.6%
PR-funded Positions	...	53.95	57.00	56.10	51.75	48.25	-10.6
Total	...	444.35	447.40	431.50	427.15	424.65	-4.4

Type of Case	2001	2002	2003	2004	2005	2006	Percentage Change
Felony	30,455	32,453	32,641	33,582	35,399	...	16.2%
Misdemeanor	68,223	69,527	71,157	70,039	71,518	...	4.8
Criminal Traffic	36,925	46,420	53,776	52,040	46,696	...	26.5
Juvenile Delinquency	14,204	13,949	13,950	13,265	13,365	...	-5.9
Total	149,807	162,349	171,524	168,926	166,978	...	11.5

In contrast, from 2002 to 2006, the state of Wisconsin (the state) decreased the number of prosecutors by 4.4 percent. Reducing state prosecutors at a time of rising crime increased the caseload for each prosecutor. The current burdens faced by prosecutors and others led an appellate judge in an unpublished decision to plead with the Wisconsin Supreme Court to "determine whether the caseload burdens on prosecutors and defense lawyers prevent or interfere with the lawyers' ability to fully represent their clients."³ The judge cited a decision in which a court intervened to install air conditioners in a courthouse when stating that "[t]he ability of lawyers to fully represent ... the State of Wisconsin, is *at least* as critical to the functioning [of] our system of justice as is the availability of air conditioning."⁴

In July 2007, the state received a report published by the nonpartisan Legislative Audit Bureau (LAB) that confirmed prior suspicions that a widespread shortage of prosecutors existed in nearly every county.⁵ The study concluded that, as of mid-summer 2006, the state funded only 76.2 percent of the needed prosecutor positions.⁶ Most of the funded positions received general purpose revenue (GPR) and the remaining funded positions received program revenue (PR), as shown in Figure 2. Positions funded by PR commonly rely on grants and other unstable sources for funding, thereby making PR positions unstable and subject to future cuts versus positions funded by the more stable GPR funds.

Figure 2
Number of Prosecutor Positions Needed for Full Staffing

Prosecutor Positions	2006	Percentage of Total
GPR (Funded)	376.40	67.6%
PR (Funded)	48.25	8.6
WCF (Unfunded)	117.33	21.1
WM (Unfunded)	15.00	2.7
Total	556.98	100.0

The LAB report showed that the state failed to fund 23.8 percent of the prosecutor positions needed in 2006. The shortfall occurred because the state did not create positions needed according to a weighted caseload formula (WCF), and the state did not adjust workload measures (WM) when law changes increased demands on prosecutors.

Following the release of the LAB report, the Association of State Prosecutors (ASP) released data showing that more than 180 assistant district attorneys left employment as prosecutors within the previous six years, a turnover rate of more than 50 percent.⁷ The ASP explained that the state weakened a previous pay progression system in 2001 and removed the system entirely in 2003, which essentially froze prosecutor salaries and provided no increase in salary for experience and merit. Before the turnover data was released, the Milwaukee Journal Sentinel documented the stories of several prosecutors forced to work part-time, evening jobs because of the lack of pay progression.⁸

Public Safety Suffers Under the Crisis

The current prosecution crisis threatens public safety by decreasing the amount of time a prosecutor can spend working with law enforcement officers. The LAB report explained that a typical prosecutor spends 24.0 percent more time investigating cases with and training law enforcement officers than he or she spends on all traffic and forfeiture cases combined. The cut in prosecutors decreased not only the amount of time a prosecutor may spend on a given case, but also the amount of time available for a prosecutor to work with officers. In October 2007, Milwaukee Police Department captain James Harpole and officer Jim McNichol testified before a legislative committee about how the prosecutor shortage undermined crime prevention programs.⁹ Similarly, Wisconsin Attorney General J.B. Van Hollen recently explained that the prosecutor shortage, when combined with compensation issues, slowed the processing of criminal caseloads and threatened public safety within communities.¹⁰



Winn S. Collins, U.W. 2003, is the Green Lake County district attorney and serves on the boards of the Wisconsin District Attorneys Association (WDAA) and the Wisconsin Law Enforcement Officers Association (WLEOA). He previously served as a worksite contact for the Association of State Prosecutors (ASP) when he worked as an Outagamie County assistant district attorney. The author's views do not necessarily reflect the views or policies of the WDAA, the WLEOA, and the ASP, or their members.

The prosecutor understaffing and turnover also worsened the services provided to crime victims. A state statute declares "that the state has a moral responsibility to aid innocent victims of violent crime," but the prosecutor shortage clearly inhibits the state from fulfilling this responsibility.¹¹ A member of the Wisconsin Victim/Witness Professionals Association recently confirmed that the prosecutor "crisis has a direct impact on the victims and witnesses of crime because even the most courteous and compassionate prosecutor cannot fully serve a victim or witness under the current system."¹² The executive director for the Wisconsin Coalition Against Sexual Assault made a similar statement: "A shortage of prosecutors means fewer prosecutions of sex offenders, a decrease in community safety, and a loss of trust in the justice system by victims."¹³ The LAB report confirmed that the prosecutor shortage could result "in cases not being prosecuted because of an inability to contact the involved parties or conduct necessary follow-up investigation." The state's resistance to fully fund prosecution has eroded crime victims' confidence in the Wisconsin criminal justice system.

Additional Funding Needed to Resolve the Crisis

To rectify the crisis, the state needs to fund all unfunded positions and fund a pay progression system to retain experienced prosecutors. A recent estimate predicted that resolving the prosecution crisis requires less than \$15 million in annual funding, which equates to less than \$3 annually from each person in the state.¹⁴ Despite the modest cost, the state budget passed in October 2007 failed to make any significant change; the budget only funded 5.75 new positions with no funding set aside to reinstate pay progression.¹⁵ The state's continued reliance on PR funding likely will negate the modest increase in positions at the start of this biennium because the LAB report predicted a reduction in five such positions by the end of 2007, based on anticipated PR funding cuts. In 2008, additional prosecutor positions will lose funding, which likely will result in further reductions in the number of prosecutor positions statewide.¹⁶

Despite future cuts looming, the crisis may improve within the coming year if the Joint Legislative Audit Committee takes action.¹⁷ At a hearing on Oct. 18, 2007, 18 speakers, including law enforcement officers and a victim service provider, joined with prosecutors to explain the firsthand consequences of the crisis.¹⁸ After the hearing, Sen. Jim Sullivan (D-Wauwatosa) introduced Senate Bill 497, which transfers approximately one half of the PR prosecutor positions to GPR positions, but the legislation does not fund any presently unfunded positions. According to the Wisconsin State Journal, Rep. Suzanne Jeskewitz (R-Menomonee Falls) recently stated that lawmakers should consider increasing resources and funding for the prosecution program.¹⁹ Sen. Sullivan and Rep. Jeskewitz cochair the committee, which now awaits a March 14, 2008 deadline it imposed on the Department of Administration to report on recommendations to improve the plight of the prosecution program. Following that report, the committee has the opportunity to recommend statutory and budgetary changes needed to rectify the prosecution crisis by funding the presently unfunded positions and reinstating pay progression.

Conclusion

The Joint Legislative Audit Committee has the opportunity to solve one of the greatest crises to confront the Wisconsin criminal justice system this decade. The committee members should recommend the reinstatement of pay progression and full funding for all needed prosecutor positions. The state budget perpetuated the current prosecution crisis by essentially freezing positions at current levels with additional cuts likely during this year. Without statewide action, Wisconsin will continue to experience the rampant turnover that worsens services to law enforcement and crime victims. Wisconsin already has lost too many skilled prosecutors like Julie who possessed the experience needed to serve in a professional and competent manner. In the coming months, lawmakers must decide whether to uphold the promise it codified in our statutes that "the state should provide sufficient assistance to victims of crime."²⁰ Failure to act will perpetuate a system marred by prosecutors leaving the profession because they cannot endure empty pockets and overfilled court dockets.

Endnotes

¹See generally email from Phil Werner, State Prosecutors Office, Wis. Dep't of Admin., to Winn Collins, District Attorney, Green Lake County (Nov. 9, 2007) (on file with author). (The author supplemented the material in the email with telephone and electronic communications in November 2007 with the named individual to ensure the accuracy of the information.)

²Legislative Audit Bureau (LAB), *An Evaluation: Allocation of Prosecutor Positions*, Report 07-9, at 16, 21 (July 2007), available at www.legis.wisconsin.gov/lab/reports/07-9Full.pdf (hereinafter LAB Report 07-9).

³*In re Commitment of Stokes*, No. 2004AP1555, 2007 WL 521243, ¶ 102 (Wis. Ct. App. Feb. 21, 2007) (Fine, J., concurring) (review denied) (unpublished).

⁴*Id.* ¶ 103 (citing *Barland v. Eau Claire County*, 216 Wis. 2d 560, 575 N.W.2d 691, ¶ 37 (1998)).

⁵LAB Report 07-9, *supra* note 2.

⁶*Id.* at 4-5, 37.

⁷Press Release, Association of State Prosecutors, *Association of State Prosecutors Urge Audit Committee and Legislature to Address Crisis in Justice System* (Oct. 18, 2007) (on file with author).

⁸Derrick Nunnally, *Prosecutors' Pay Raises Objections: Stagnant Salaries Push Some to Take Second Jobs*, Milw. J. Sentinel, Dec. 25, 2005, available at www.jsonline.com/story/index.aspx?id=380436.

⁹Press Release, Wisconsin District Attorneys Association, *Audit Hearing Confirms Victims Suffer Under Prosecutor Shortage: District Attorneys Short by Over 132 Prosecutors* (Oct. 22, 2007) (on file with author) (hereinafter WDAA Press Release).

¹⁰Letter from J.B. Van Hollen, Attorney General, Wis. Dep't of Justice, to members of the Joint Committee on Audit (Oct. 18, 2007) (on file with author).

¹¹Wis. Stat. § 949.001.

¹²Letter from Llonnda Thomas, member, Wisconsin Victim Witness Professionals, to Sen. Jim Sullivan & Rep. Suzanne Jeskewitz, Wis. Legislature (Oct. 18, 2007) (on file with author).

¹³Press Release, Wisconsin Coalition Against Sexual Assault, Inc., *WCASA Calls for More Prosecutors* (Oct. 19, 2007) (on file with author).

¹⁴Email from Tim Baxter, president, WDAA, to Phil Werner, State Prosecutors Office, Wis. Dep't of Admin. (Nov. 13, 2007) (dividing the \$12,323,935.30 cost for 132.33 new positions along with converting 54 program revenue to

general purpose revenue by a 2006 population estimate of 5,617,744) (on file with author); *see also* email from Michelle Mettner, attorney, Broydrick & Associates, to Winn Collins, district attorney, Green Lake County, Wis. (Nov. 15, 2007) (estimating that reinstatement of pay progression would, in the first year, cost \$1 million, which then could be divided among all state residents for purpose of calculating average cost) (on file with author).

¹⁵Wisconsin Legislative Fiscal Bureau, *2007-09 Wisconsin State Budget: Committee of Conference Summary of Budget Provisions*, at 240-42 (Oct. 2007), available at www.legis.state.wi.us/lfb/2007-09budget/Conference%20Committee/das.pdf; *see also* email from Phil Werner, State Prosecutors Office, Wis. Dept. of Admin., to Winn Collins, district attorney, Green Lake County, Wis. (Nov. 14, 2007).

¹⁶Jason Stein, *Prosecutor Cuts May Strain System*, Wis. St. J., Jan. 8, 2008, available at www.madison.com/wsj/mad/top/index.php?ntid=266020; *see also* Editorial, *Don't Rely on the Feds: The State Must Pick Up the Slack so District Attorneys Can Continue to Pursue Community-Based Solutions to Crime*, Milw. J. Sentinel, Jan. 9, 2008, available at www.jsonline.com/story/index.aspx?id=705432.

¹⁷For a broadcast of the audit hearing, see WisconsinEye Public Affairs Network, Inc., available at www.wisconsineye.com/wisEye_programming/ARCHIVES-committees.html.

¹⁸WDAA press release, *supra* note 9.

¹⁹Stein, *supra* note 16.

²⁰Wis. Stat. § 949.001.