



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON DISTRICT ATTORNEY FUNDING
AND ADMINISTRATION

FROM: Don Dyke, Chief of Legal Services, and Larry Konopacki, Staff Attorney

RE: Previous Proposals on State District Attorney Administration and Current Administrative
Structure of Office of State Public Defender

DATE: December 8, 2006

This Memo provides background information in connection with the Special Committee's consideration of possible revisions to the current structure for the administration of the state's functions in relation to district attorneys. The Memo summarizes previous proposals to provide a different state administrative structure and summarizes the current administration of the Office of State Public Defender. Representatives of the Office of State Public Defender will be providing additional information on that office at the committee's December 15, 2006 meeting.

I. PREVIOUS PROPOSALS ON ADMINISTRATION OF STATE DISTRICT ATTORNEY FUNCTIONS

A. Prosecutor's Council (1989 Budget Bill)

District attorneys and assistant district attorneys became state employees under 1989 Wisconsin Act 31, which was the budget act for that legislative session. As part of that conversion to state employee status, the 1989 session budget bill, 1989 Senate Bill 31, proposed the creation of a Prosecutors Council to provide specified functions regarding the prosecutor system. That budget bill provision was deleted from the proposed budget by the Joint Committee on Finance which, instead, proposed to have the Department of Justice (DOJ) administer the prosecution system. The full Legislature substituted the Department of Administration (DOA) for DOJ as the administering agency.

(Note, also, that 1989 Senate Bill 31 proposed the establishment of 10 prosecution districts in the state, identical to existing judicial administrative districts. Under that proposal, the district attorneys of each prosecution district were to elect from their ranks a chief district prosecutor for a two-year term to perform administrative duties for the district. The duties generally related to temporary assignment of

prosecutors within the district to account for uneven workload, conflicts of interests, or other reasons. This proposal, which was alluded to at the Special Committee's November 10 meeting, was deleted from the proposed budget by the Joint Committee on Finance.)

1. Council Composition

The Prosecutors Council proposed in 1989 Senate Bill 31 consisted of seven members, appointed by the Governor for staggered three-year terms: five district attorneys (no more than three from the same political party) and two nondistrict attorney members. [SEC. 95 of 1989 Senate Bill 31.]

2. Functions

Senate Bill 31 directed the Prosecutors Council to:

- Appoint an unclassified executive secretary and support staff for the council;
- Meet as necessary to carry out its duties;
- Prepare the budget of the prosecution system;
- Recommend additional legislation necessary to improve the efficiency and effectiveness of the prosecution system; and
- Promulgate rules necessary for the performance of council duties and responsibilities. [s. 978.11, Stats., as created by SEC. 2900 of Senate Bill 31.]

In addition, the council was directed to perform several transition duties to assist in the implementation of the reorganized prosecution system. [SEC. 3058 (1) (b) of Senate Bill 31.]

B. State Prosecutors Board (2003 Budget Bill)

2003 Senate Bill 44, the 2003-04 session budget bill, proposed creation of a State Prosecutors Board to provide guidance to district attorney offices and to administer prosecutorial resources statewide. The proposed prosecutors board was deleted from the budget bill by the Joint Committee on Finance.

1. Composition

The proposed State Prosecutors Board consisted of eight district attorneys appointed by the Governor for staggered four-year terms. The Governor was directed to annually designate the board chair. [SECTION 83, Senate Bill 44.] Members of the board were prohibited from continuing to serve if they ceased to hold the office of district attorney, but board membership would not disqualify an individual from holding any other public office or employment.

Under the bill, the State Prosecutors Board was attached, for limited administrative purposes, to DOA.

2. Functions

Senate Bill 44 directed the State Prosecutors Board to “supervise the office within the Department of Administration that is responsible for providing personnel, budget, and other types of management assistance to district attorney offices.” [SECTION 22805, 2003 Senate Bill 44.] In other words, the board was directed to supervise the then and current State Prosecutors Office in DOA.

Other functions assigned by Senate Bill 44 to the Prosecutors Board included:

- Adopt advisory guidelines or standards for district attorneys to use in determining when criminal cases should be prosecuted or diverted to nonprosecutorial programs;
- Promulgate and administer rules regarding the temporary assignment of district attorneys, deputy district attorneys, and assistant district attorneys from one prosecutorial unit to another; and
- Hire and assign “assignable prosecutors” [as provided for in Senate Bill 44] to prosecutorial units for the period determined by the Board.

C. Transfer to DOJ (2005 Budget Bill)

2005 Assembly Bill 100, the 2005-06 session budget bill, proposed to transfer the responsibilities of the State Prosecutors Office in DOA to DOJ. Thus, among other things, DOJ, rather than DOA, would be responsible for:

- Preparing and submitting the state funded budget of the district attorney offices;
- Requesting assistant district attorney positions;
- Subject to relevant statutes, compensation plans, and collective bargaining agreements, setting salaries for deputy district attorneys and assistant district attorneys.

The proposal to transfer state administrative functions over the prosecution system from DOA to DOJ was deleted by the Joint Committee on Finance.

II. ADMINISTRATIVE STRUCTURE OF THE OFFICE OF THE STATE PUBLIC DEFENDER

The Office of the State Public Defender (“SPD”) generally provides criminal representation for indigent persons at trial and on appeal. [ss. 967.06 and 974.06 (3) (b), Stats.] The SPD also represents children in certain circumstances¹ and may provide representation for persons whose parental rights are subject to termination² and persons subject to commitment, confinement, or sentence modification

¹ ss. 48.23 (4) and 938.23 (4), Stats.

² s. 48.42 (4) (c) 2., Stats.

proceedings.³ The Public Defender Board (“Board”) generally oversees the SPD, which is headed by the State Public Defender.

The State Public Defender position was created under the Wisconsin Supreme Court by Chapter 479, Laws of 1965. The duties of the office at that time were limited to post-conviction appeals for indigent defendants. The SPD was transferred to the Executive Branch and became an independent agency under the Public Defender Board under Chapter 29, Laws of 1977.⁴

State Public Defender Board Structure

The Board consists of nine members, of which five must be members of the State Bar of Wisconsin. Members are appointed by the Governor with the advice and consent of the Senate for staggered three-year terms. No judicial officer, law enforcement officer, district attorney, or corporation counsel, or the staff of these officials, may serve on the Board. The State Public Defender and his or her staff are also prohibited from serving on the Board. [s. 15.78, Stats.]

Duties of the Public Defender Board

The powers and duties of the Board include the following:

- Appoint the State Public Defender and set his or her salary. The Board may also remove the State Public Defender. [ss. 977.02 (1) and 977.03 (1), Stats.]
- Submit the budget of the State Public Defender to the Governor after it is approved by the Board. [s. 977.02 (2), Stats.]
- Review and affirm, modify, or reject decisions of the State Public Defender regarding bill payments. [s. 977.02 (7), Stats.]
- Establish agreements with the state bar association and others to encourage pro-bono representation. [s. 977.02 (7m), Stats.]
- Enter into certain contracts for the provision of legal services. [s. 977.03 (1), Stats.]
- Provide quarterly reports to the Joint Committee on Finance and DOA. [s. 977.085, Stats.]

The Board is also required to promulgate rules related to determining indigency, eligibility for legal services, requiring and collecting payments, ensuring appropriate representation of indigent clients by the private bar, and managing conflicts of interest, among other purposes. [s. 977.02 (2m) to (6) and (7r), Stats.] The Board may also promulgate rules creating exceptions to witness and investigator fee limits, to collect certain ordered payments from prisoners’ prison financial accounts, and for other

³ ss. 51.20 (3), 51.45 (12) (c) 2. and (13) (b) 2., 252.07 (9) (d), and 302.113 (9g) (j), Stats.

⁴ Legislative Fiscal Bureau Informational Paper 77, *State Criminal Justice Functions*, ch. 5: Office of the State Public Defender.

purposes. [s. 977.03, Stats.] The Board is prohibited from interfering with individual case management and other professional duties of the State Public Defender or SPD staff. [s. 977.04, Stats.]

The State Public Defender

The State Public Defender is required to be a member of the State Bar of Wisconsin and serves at the pleasure of the Board. [s. 977.05 (1), Stats.] This officer supervises the operation, activities, policies, and procedures of the SPD; establishes a case management system for the SPD attorneys; serves as the chief legal officer of the SPD; prepares the SPD biennial budget; appoints the SPD staff attorneys and other employees; reports to the Board on the activities of the SPD; sets up SPD offices around the state; manages indigency referrals; appoints counsel to represent defendants and children; represents SPD staff who are defendants in cases related to their official duties; and performs other duties which include negotiation of contracts and sponsoring attorney training. [ss. 977.05 (4) to (5) and 977.06, Stats.]

The State Public Defender also serves on certain committees and other bodies, including the Judicial Council and the Sentencing Commission, or appoints another person to these bodies. [ss. 15.105 (27) (a) 2. and 758.13 (1) (a) 9., Stats.] The duties of this office also include consulting with other agencies and units of government on certain matters. For instance, the State Public Defender collaborates in the development and implementation of county programs that provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs, and is a member of committees set up to oversee such programs. [s. 16.964 (12) (c) 10. and (e) 1.]

DD:LK:ksm