



WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
CRIMINAL JUSTICE FUNDING
AND STRATEGIES

February 18, 2011

PRL 2011-05

Special Committee on Criminal Justice Funding and Strategies

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February 18, 2011

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PART I

ADJOURNMENT WITHOUT RECOMMENDATION

The Special Committee on Criminal Justice Funding and Strategies has permanently adjourned. The Special Committee makes no recommendation and files this informational report.

In its discussions, the Special Committee made findings relating to the state's role in criminal justice and criminal justice statistics. The Special Committee found that ensuring a criminal justice system that is fair and equitable and preserves public safety is a core function of government and includes a responsibility to provide criminal justice in an efficient and cost-effective manner.

The Wisconsin Constitution provides rights for persons accused of crimes and their victims and, consequently, responsibilities for state and local governments in Wisconsin. Wisconsin Constitution, Article 1, Section 8 (1) provides, in part, that "No person may be held to answer for a criminal offense without the due process of law...." Also, section 7 sets forth rights of the accused:

In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment, or information, to a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed; which county or district shall have been previously ascertained by law.

For victims of crimes, Wisconsin Constitution, Article 1, Section 9m contains the following:

This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: timely disposition of the case; the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; reasonable protection from the accused throughout the criminal justice process; notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition; restitution; compensation; and information about the outcome of the case and the release of the accused. The legislature shall provide remedies for violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law.

During Special Committee meetings there was discussion as to whether the current criminal justice system is effective in reducing violent crime and recidivism. In 2008, Governor Doyle, Chief Justice Abrahamson, Senator Risser, and Representative Huebsch requested that the Council of State Governments (CSG) Justice Center ("Justice Center") provide technical assistance to Wisconsin. The goal of the technical assistance was to reduce spending on corrections and reinvest the savings in strategies to increase public safety. As part of its work in Wisconsin, the Justice Center gathered and analyzed data regarding Wisconsin's crime rate, prison population growth, and recidivism rates.

The Justice Center found that between 2000 and 2007, Wisconsin's prison population increased 14%. The Justice Center projects that the prison population will increase by 25% from 2008 to 2019. From 2000 to 2007, however, Wisconsin's violent crime rate increased 23%. During that time,

Milwaukee County's violent crime rate increased by 42% and Brown County's by 70%. Dane and Brown Counties bear a proportionate share of the violent crime in Wisconsin based upon population. Milwaukee County, however, with 16% of the state's population, bears 54% of the state's violent crime. In the same period, Minnesota's violent crime rate grew by 3% and Michigan's was reduced by 3%.

The Justice Center also considered recidivism rates and found that 40% of persons released from prison in 2005 were reincarcerated in prison within two years. In 2000, this rate in Wisconsin was 11% lower. [The Council of State Governments Justice Center, *Justice Reinvestment in Wisconsin, Analyses and Policy Options to Reduce Spending on Corrections and Increase Public Safety*, pp. 1-4 (May 2009).]

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Criminal Justice Funding and Strategies and appointed the chairperson by a May 7, 2010 mail ballot. The committee was directed to study funding of the criminal justice system and strategies to adequately and sustainably fund the criminal justice system. The committee was specifically directed to consider funding for prosecutors, defense attorneys, and courts and collection of fees and surcharges imposed on criminal defendants.

Membership of the Special Committee was appointed by June 30, 2010 and October 20, 2010, and January 6, 2011 mail ballots. The final committee membership consisted of one Senator, three Representatives, and 13 public members. A list of committee members is included as *Appendix 2* to this report.

Summary of Meetings

The Special Committee held three meetings on the following dates:

August 30, 2010
September 27, 2010
December 2, 2010

At the August 30, 2010 meeting, the Special Committee heard invited testimony from the heads of agencies and organizations involved in the criminal justice system. **Chief Justice Shirley Abrahamson** of the Wisconsin Supreme Court provided testimony regarding the funding sources for the state courts. She highlighted the use of surcharge revenue as a source of funding and the proliferation of court surcharges and fees in recent years. Chief Justice Abrahamson also discussed developments placing increased financial stress on courts, such as rising numbers of self-represented litigants, litigants with limited English proficiency, and individuals with substance abuse or mental health problems.

Winn Collins, President of the Wisconsin District Attorneys' Association, testified regarding the high rate of turnover in state prosecutor positions and the challenges resulting from the shortage of experienced prosecutors. He attributed the turnover to large caseload demands and a lack of pay progression.

David Feiss, President of the Association of State Prosecutors, testified about the demographics of Wisconsin prosecutors. He noted that the current pool of assistant district attorneys primarily consists of newly hired attorneys and older attorneys and that individuals in the middle ranges are leaving the profession at high rates because of salary compression. Mr. Feiss also explained the ways in which a lack of experienced prosecutors negatively impacts the criminal justice system.

State Public Defender Nicholas Chiarkas urged the Special Committee to take a holistic approach to funding the criminal justice system and to consider long-term efficiencies, such as reducing recidivism. He also testified about recent reforms to the eligibility requirements for state public defender representation.

Attorney General J.B. Van Hollen testified about the importance of funding the criminal justice system with general purpose revenue and discouraged reliance upon fees and surcharges. He noted that, in certain cases, revenues raised by court-imposed surcharges are not funding the criminal justice programs or purposes for which the surcharges were originally created. Attorney General Van

Hollen also described the divisions and offices within the Wisconsin Department of Justice and their involvement in providing criminal investigation services, law enforcement services, legal services, and victim services.

David Steingraber, Executive Director of the Office of Justice Assistance (OJA), testified about the role of federal funding in the criminal justice system and outlined various federal justice-related funds and grants administered by OJA. He also described state criminal justice grants and the programs they fund. Mr. Steingraber explained the drawbacks of relying upon federal funding, including the limited duration of grants and the requirements which accompany them.

Following the testimony, Chair Taylor divided the committee members into three subcommittees: (1) Funding Components; (2) Courts and Effective Justice Strategies; and (3) Justice System Funding, Organization, and Strategies. The subcommittees met and discussed their respective goals and charges.

At the September 27, 2010 meeting, the Special Committee heard invited testimony from victims' organizations, the National Center for State Courts, and the Office of State Courts. **John Keckhaver**, Wisconsin Coalition Against Sexual Assault, and **Patti Seger and Tony Gibart**, Wisconsin Coalition Against Domestic Violence, testified about the role of victim groups and victim advocates in the criminal justice system. They described the victim services provided by their organizations and explained that services are primarily funded by federal and state grants.

Daniel Hall, Vice President, Court Consulting Services, National Center for State Courts, provided testimony via teleconference and described methods used by states to fund their court systems, including program revenue and court fees, fines, and surcharges. Mr. Hall suggested that state justice systems employ a comprehensive workload model to evaluate funding for the system as a whole.

John Voelker, Director of State Courts, testified about the work of the Wisconsin Supreme Court's Planning and Policy Advisory Committee's Subcommittee on Court Financing and its recommendation that funding of the court system remain a partnership between counties and the state, with the long-term goal of increasing the state's responsibility for funding court services. He also testified regarding the audit of county courts performed by the Director of State Courts Office and its impact on uniform reporting and the funding of core court services and staffing.

Following the testimony, the subcommittees met and the members discussed preliminary recommendations to propose to the full committee.

At the December 2, 2010 meeting, the Special Committee heard invited testimony from **Michael Thompson and Marc Pelka** of the Council of State Governments Justice Center. Mr. Thompson and Mr. Pelka presented data-driven approaches to increase criminal justice system effectiveness. They proposed four specific approaches to reduce costs by reducing recidivism: (1) focus resources on individuals most likely to reoffend; (2) invest in programs that work by evaluating the effectiveness of programs after implementation; (3) strengthen supervision of offenders and employ swift and certain sanctions for parole violations; and (4) use place-based strategies to target certain areas or neighborhoods. They stated that the growth in prison population is not fiscally sustainable and that policymakers do not have current, independent information to assess policy options.

Mr. Thompson and Mr. Pelka also provided specific recommendations for Wisconsin. The recommendations were formulated as the result of a 2008 Justice Center analysis of the state's corrections environment and spending. The recommendations included focusing supervision resources, reallocating revocation expenditures to community strategies, creating incentives for inmates to reduce risk prior to release, and setting a recidivism reduction goal.

Following the testimony, the committee members discussed recommendations to be included in a final committee report. They also requested that Legislative Council generate a bill draft creating a state-level criminal justice coordinating council.

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Co-Chairs
MARY LAZICH
Senator

JOAN BALLWEG
Representative



LEGISLATIVE COUNCIL STAFF
Terry C. Anderson
Director
Laura D. Rose
Deputy Director

February 7, 2011

Members of the Special Committee on
Criminal Justice Funding and Strategies

Dear Members,

I am writing to inform you that I have decided not to report any recommendations of the Special Committee on Criminal Justice Funding and Strategies to the Joint Legislative Council. Therefore, there will be no further meetings of the committee. I anticipate that the Joint Legislative Council will meet in early March, and I will report on the work of the committee to the council at that meeting.

Thank you for the time and expertise you devoted to the committee. I appreciate your commitment to the criminal justice system in Wisconsin, and I hope that the committee's work will be useful to the Legislature as it continues to address the challenges that Wisconsin's criminal justice system faces.

Sincerely,
Edward Brooks

Representative Ed Brooks, Chair
Special Committee on Criminal
Justice Funding and Strategies

EB:ty

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

*Terry C. Anderson, Director, Legislative Council Staff
1 East Main Street, Suite 401, P.O. Box 2536, Madison, Wisconsin 53701-2536*

Appendix 3

Criminal Justice Funding and Strategies

Representative Ed Brooks, Chair
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STUDY ASSIGNMENT: The Special Committee is directed to study funding of the criminal justice system and strategies to adequately and sustainably fund the criminal justice system. The study shall include consideration of funding for prosecutors, defense attorneys, and courts and collection of fees and surcharges imposed on criminal defendants.

17 MEMBERS: 1 Senator; 3 Representatives; and 13 Public Members.

LEGISLATIVE COUNCIL STAFF: Anne Sappenfield, Senior Staff Attorney; Katie Bender-Olson, Staff Attorney; and Tracey Young, Support Staff

Appendix 4

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

January 10, 2011 - Subcommittee on Justice System Funding, Organization, and Strategies- CANCELLED
January 3, 2011 - Subcommittee on Courts and Effective Justice Strategies
December 17, 2010 - Subcommittee on Funding Components
December 2, 2010
<ul style="list-style-type: none">• Memo No. 3, <i>Draft Final Report</i> (December 1, 2010).• Letter, from Winn Collins, President, Wisconsin District Attorneys Association (November 12, 2010).• Draft Letter, to Representative Jeff Fitzgerald, Assembly Speaker-Elect and Senator Michael Ellis, Senate President-Elect (November 23, 2010).• PowerPoint Presentation, by Mike Thompson, Executive Director, and Marc Pelka, Policy Analyst, Council of State Governments Justice Center.• Memo No. 4, <i>Potential Committee Recommendations</i> (December 16, 2010).
November 17, 2010 -- CANCELLED
<ul style="list-style-type: none">• Memo No. 2, <i>Fees and Surcharges Collected by the Courts</i> (November 11, 2010).<ul style="list-style-type: none">○ Enclosure A, Table 4: Surcharges Summary, Wisconsin Circuit Courts.○ Enclosure B, Revenue Summary Report.
November 8, 2010 - Subcommittee on Courts and Effective Justice Strategies
<ul style="list-style-type: none">• Concept Paper, <i>Setting the Framework for a Wisconsin Community Justice Act</i>, prepared by the Committee on Effective Strategies for Community Justice (June 2008).• Report, <i>WSIPP's Benefit-Cost Tool for States: Examining Policy Options in Sentencing and Corrections</i>, prepared by the Washington State Institute for Public Policy.• Summary, Effective Justice Strategies Research Project conducted by the Planning and Policy Advisory Committee.• Speech, State of the Judiciary Address, given by Chief Justice Shirley Abrahamson (October 20, 2010).• Memorandum, prepared by Committee Member Ben Kempinen, on Discussion Topics.
October 25, 2010 - Subcommittee on Justice System Funding, Organization, and Strategies
<ul style="list-style-type: none">• Tables, Wisconsin Circuit Court Fee, Fine, and Surcharge.• Wisconsin State Journal Article, <i>Group Proposes Sales Tax Increase to Fund Schools</i>.• Table, Office of Justice Assistance Table, <i>Sales and Use Tax Exemption Devices Summary</i>.• Report, <i>Agency Budget Request 2011-2013 Biennium</i>, prepared by the State of Wisconsin, Supreme Court (October 1, 2010).• Summary Report, 2009 Surcharge Revenue Summary Report (January 2009 through December 2009).• Spreadsheet Regarding Arrests in Wisconsin from 1990-2009.
October 22, 2010 - Subcommittee on Funding Components
<ul style="list-style-type: none">• Letter, Wisconsin District Attorneys Association Response to 2007 Audit on Allocation of Prosecutor Positions.• Letter, State Prosecutors Office Letter Response to 2007 Audit on Allocation of Prosecutor Positions.• Report, American Council of Chief Defenders Best Practices Committee Report: <i>Implementation of the ABA's Ten Principles in Assigned-Counsel Systems</i>.• Report, <i>Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview</i> (June 2007).• Report, Bureau of Justice Statistics, <i>State Public Defender Programs, 2007</i>.• Article, Oshkosh Northwestern Article, <i>Report Overstates Lack of Public Defenders</i>.

- [Summary](#), Activities of the Joint Review Committee on Criminal Penalties, prepared by Senator Taylor's office.
- [Testimony](#), prepared by Public Member John Birdsall.
- [Presentation](#), by District Attorney, Winn S. Collins.

October 21, 2010 - Subcommittee on Courts and Effective Justice Strategies

- [Missouri](#) Sentencing Advisory Commission Report, *Smart Sentencing*.
- [Report](#), PPAC Effective Justice Strategies Subcommittee, Phase 1.
- [Report](#), Council of State Governments Justice Center, *Repaying Debts*.

September 27, 2010

- [Report](#), *Analyses & Policy Options to Reduce Spending on Corrections and Increase Public Safety*, submitted by the Council of State Governments, Justice Center (May 2009).
- [Memo No. 1](#), *Joint Review Committee on Criminal Penalties* (September 20, 2010).
 - [Enclosure](#), Section 13.525, Stats.
- [Remarks](#), John Keckhaver, Wisconsin Coalition Against Sexual Assault.
- [Remarks](#), by Patti Seger, Executive Director, Wisconsin Coalition Against Domestic Violence.
 - [Handout](#), *The State of Domestic Violence Victim Services in Wisconsin*, submitted by Patti Seger.
- [PowerPoint Presentation](#), by Daniel Hall, Vice President, Court Consulting Services, National Center for State Courts.
- [Remarks](#), by John Voelker, Director of State Courts.

August 30, 2010

- [Staff Brief 10-02](#), *Funding of State Criminal Justice Functions* (August 19, 2010).
- [Informational Paper 81](#), *Wisconsin Court System*, Legislative Fiscal Bureau (January, 2009). (Members only.)
- [Informational Paper 82](#), *State Criminal Justice Functions*, Legislative Fiscal Bureau (January, 2009). (Committee members only.)
- [Report 07-9](#), *An Evaluation: Allocation of Prosecutor Positions, Department of Administration*, Legislative Audit Bureau (July 2007). (Committee members only.)
- [Letter Report](#), Settlement and Judgment Awards, Legislative Audit Bureau (April 2010.) (Committee members only.)
- [Memorandum](#), to the members of the Joint Committee on Finance, from Senator Mark Miller and Representative Mark Pocan, *State Public Defender Quarterly Report* (August 11, 2010).
- [Paper #122](#), *Justice Information System Surcharge – Civil Legal Services for the Indigent (DOA – Office of Justice Assistance)* (May 26, 2009).
- [Paper #310](#), *Prosecutorial Staffing (District Attorneys)* (May 19, 2009).
- [Paper #515](#), *Increase Crime Laboratories and Drug Law Enforcement Surcharge (Justice)* (May 26, 2009).
- [Paper #516](#), *Penalty Surcharge and Drug Offender Diversion Surcharge (DOA – Office of Justice Assistance, Corrections – Adult Corrections, Justice, Public Defender, and Public Instruction)* (May 26, 2009).
- [Flow](#), *Challenge of Crime in a Free Society*, President's Commission on Law Enforcement and the Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.
- [Final Report](#), Subcommittee on Court Financing, Planning and Policy Advisory Committee of the Wisconsin Supreme Court (February 2004), submitted at the request of Senator Lena Taylor, Chair of the Special Committee.
- [Memo](#), *Department of Justice Organization and Operations*, submitted by Mark Rinehart, Department of Justice Legislative Liaison (August 30, 2010).
- [Memo](#), *Crisis in the State Prosecution Program*, from David Feiss, President, Association of State Prosecutors.
- [Presentation](#) by Chief Justice Shirley S. Abrahamson, State of Wisconsin Supreme Court.
- [Remarks](#), prepared by Attorney General J.B. Van Hollen, Department of Justice.
- [PowerPoint](#) presentation by Attorney General J.B. Van Hollen.
- [PowerPoint](#) presentation by David Steingraber, OJA Executive Director, Office of Justice Assistance.
- [Article](#) from *Wisconsin Lawyer*, submitted by District Attorney Winn Collins.