



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #261

### **Multijurisdictional Enforcement Group Assistant District Attorney Positions (District Attorneys)**

#### *Base Agency*

[LFB 2007-09 Budget Summary: Page 125, #3]

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#### **CURRENT LAW**

The Department of Justice (DOJ) and the Department of Administration's (DOA) Office of Justice Assistance (OJA) jointly administer a program to provide grant funding to multijurisdictional enforcement groups (MEGs). Multijurisdictional enforcement groups are cooperative multi-agency law enforcement efforts to prosecute criminal drug violations of Chapter 961 (the Uniform Controlled Substances Act). OJA provides funding under the federal Byrne Justice Assistance Grant program, while DOJ provides state penalty surcharge funding. The penalty surcharge is assessed whenever a court imposes a fine or forfeiture for most violations of state law or municipal or county ordinance. The penalty surcharge is equal to 26% of the total fine or forfeiture. For calendar year 2007, OJA has budgeted \$1,033,000 FED in grant funding for local MEGs, while DOJ has budgeted \$725,100 PR in grant funding for local MEGs (apart from funds earmarked for MEG prosecutors).

In providing funding for MEGs, the first priority under the program is to support task forces with a significant multijurisdictional component. Priority under the program is also given to those MEGs rated high under a threat assessment of drug trafficking.

The provisions of 2005 Wisconsin Act 25 (the 2005-07 biennial budget act), specify the Byrne and penalty surcharge funding to be provided assistant district attorneys (ADAs) serving local MEGs in Dane, Milwaukee, and St. Croix Counties. In 2006-07, the positions are budgeted the following funding: (a) 0.75 ADA in Dane County (\$37,600 Byrne and \$12,500 penalty

surcharge); (b) 2.0 ADAs in Milwaukee County (\$115,500 Byrne and \$38,500 penalty surcharge); and (c) 1.0 ADA in St. Croix County (\$72,500 penalty surcharge).

## **GOVERNOR**

Direct OJA to provide federal Byrne funding in each year of the biennium, in an amount to be determined by DOA, to support the following MEG prosecutor positions: (a) 2.0 prosecutor positions in Milwaukee County; and (b) 0.75 prosecutor position in Dane County. Further, direct DOJ to provide state penalty surcharge funding in each year of the biennium, in an amount to be determined by DOA, to provide funding for these MEG prosecutor positions in Milwaukee and Dane Counties. Finally, direct DOJ to provide state penalty surcharge funding in each year of the biennium, in an amount to be determined by DOA, to fund a 1.0 MEG prosecutor position in St. Croix County.

## **DISCUSSION POINTS**

1. Historically, the Legislature has approved the biennial budget for the utilization of federal Byrne funding. As in prior biennia, under 2005 Wisconsin Act 25, the Legislature identified the highest priority for Byrne funding to be the support of local MEGs. Under Act 25, the Legislature approved utilizing 44% of the projected available Byrne funding for the support of MEGs.

2. Under SB 40, OJA did not submit a Byrne budget. OJA indicated that it did not develop a Byrne budget as it was still awaiting information from the federal government on anticipated Byrne funding levels for the 2007-09 biennium. However, in prior biennia, OJA has submitted a Byrne budget even if there was uncertainty about federal funding levels by utilizing available information to develop an estimate of Byrne funding for the upcoming biennium.

3. It may be worth noting that under federal law, the Byrne program no longer requires the state to provide matching funds as it did before the current biennium. As a result, it could be argued that there is no longer the same need to submit the Byrne budget to the Legislature to determine appropriate state match funding levels for the 2007-09 biennium.

4. It may also be worth noting that large amounts of federal funding (not just federal Byrne funding) are appropriated and expended by state agencies without legislative approval or oversight, as these funds are received and expended from federal continuing appropriations. While the utilization of these funds may not be approved or overseen by the Legislature, the state agencies must still expend these funds consistent with federal grant provisions.

5. On the other hand, given the past and ongoing significance of federal Byrne funding for state criminal justice initiatives, the Legislature may wish to continue its involvement in the shaping of the biennial Byrne budget, in particular the use of Byrne funding to support local MEGs.

6. DOA staff indicates that the Governor's recommendation to delegate to DOA the authority to determine the level of federal Byrne funding provided by DOA's OJA (and the level of state penalty surcharge funding provided by DOJ) for these MEG prosecutors was proposed in order to address uncertainty in the level of Byrne funding that will be received by OJA during 2007-09. The Committee could permit DOA to retain this discretion, but direct that 44% of the federal fiscal year (FFY) 2007 and 2008 Byrne awards be allocated to local MEGs. The FFY 2007 and FFY 2008 Byrne awards will be utilized during the upcoming 2007-09 biennium to make awards under the program. This alternative would permit the state to fully fund these MEG prosecutors regardless of the level of Byrne funding provided in FFY 2007 and FFY 2008, but still ensure that available Byrne funding be utilized in like proportion as in 2005-07 to support local MEGs.

7. Alternatively, the Committee could conclude that the executive branch should be given discretion to administer the Byrne program consistent with criminal justice priorities as determined by the executive branch.

8. Concerns could also be raised that, as drafted, DOA would have the discretion under the bill to provide no funding for these MEG prosecutors for 2007-09. The positions require the following funding amounts in order to be fully funded: (a) 0.75 MEG prosecutor in Dane County (\$60,000 in 2007-08, and \$65,900 in 2008-09); (b) 2.0 MEG prosecutors in Milwaukee County (\$143,000 in 2007-08, and \$157,600 in 2008-09); and (c) 1.0 MEG prosecutor in St. Croix County (\$84,500 in 2007-08, and \$94,600 in 2008-09). Language could be added to SB 40 requiring DOA to provide full funding for the Dane and Milwaukee County MEG prosecutors during 2007-09, but permitting DOA to determine the amount of funding to be provided for these prosecutors from each funding source. As the St. Croix position is not split funded under current law, the bill could be amended to simply direct DOJ to provide \$84,500 in 2007-08 and \$94,600 in 2008-09 in penalty surcharge funding to support the St. Croix County MEG prosecutor.

9. On the other hand, depending on the level of federal Byrne funding received by OJA during 2007-09, the Committee could elect to permit DOA to retain this discretion, in order to give DOA greater flexibility to determine the use of available Byrne and penalty surcharge funding to support local MEGs.

10. Subsequent to the introduction of SB 40, the federal government has finalized Wisconsin's Byrne award for FFY 2007, which will be utilized in state fiscal year 2007-08. While the FFY 2006 Byrne award totaled \$2,982,833 FED (reduced from \$4,949,087 in FFY 2005), for FFY 2007 the federal government will award OJA a state Byrne award totaling \$4,583,329 FED. In addition, both houses of Congress have included Byrne funding to the states as a part of their respective deliberations on the FFY 2008 federal budget. As a result, while there is still uncertainty as to the level of funding that will be provided for FFY 2008, at this time it appears that there will be available Byrne funding for both years of the upcoming 2007-09 biennium.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to direct the Department of Administration's Office of Justice Assistance to provide federal Byrne funding in each year of the biennium, in an amount to be determined by DOA, to support the following multijurisdictional enforcement group (MEG) prosecutor positions: (a) 2.0 prosecutor positions in Milwaukee County; and (b) 0.75 prosecutor position in Dane County. Further, direct the Department of Justice (DOJ) to provide state penalty surcharge funding in each year of the biennium, in an amount to be determined by DOA, to provide funding for these MEG prosecutor positions in Milwaukee and Dane Counties. Finally, direct DOJ to provide state penalty surcharge funding in each year of the biennium, in an amount to be determined by DOA, to fund a 1.0 MEG prosecutor position in St. Croix County.

2. Specify that 44% of the federal fiscal year 2007 and 2008 Byrne awards received by OJA be utilized to support local MEGs. [*This alternative may be selected in addition to Alternative 1.*]

3. Adopt Alternative 1, modified to require DOA to fully fund these MEG prosecutor positions during 2007-09 by: (a) providing \$60,000 in 2007-08 and \$65,900 in 2008-09, to fully fund the 0.75 MEG prosecutor in Dane County; and (b) providing \$143,000 in 2007-08 and \$157,600 in 2008-09 to fully fund the 2.0 MEG prosecutors in Milwaukee County. As the St. Croix position is not split funded, direct DOJ to provide \$84,500 PR in 2007-08 and \$94,600 PR in 2008-09 in state penalty surcharge funding to fully fund the 1.0 MEG prosecutor in St. Croix County. [*This alternative may be selected in addition to Alternative 2.*]

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