



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #282

Compensation for Assistant District Attorneys (DOA -- Justice Information System Surcharge and District Attorneys)

[LFB 2011-13 Budget Summary: Page 36, #1 and Page 162, #3]

CURRENT LAW

District Attorney Function. District attorney offices are primarily responsible for prosecuting criminal and juvenile delinquency offenses at the trial level. The Department of Justice represents the state in felony and other significant criminal and juvenile delinquency cases on appeal. District attorney offices generally represent the state in misdemeanor, juvenile delinquency, and traffic appeals.

There are 71 district attorneys (DAs) in Wisconsin. Beginning with the general election in November, 2008, under Article VI, Section 4 of the Wisconsin Constitution, a DA is elected to a four-year term of office at the general election held in each presidential election year. Each county in the state is termed a "prosecutorial unit" except that Shawano and Menominee Counties form a two-county prosecutorial unit and jointly elect a single district attorney. Under current law, district attorneys are part-time positions in Buffalo (0.5), Florence (0.5), and Pepin (0.8) Counties, and are full-time in all other prosecutorial units.

While some counties have a single district attorney, most also have assistant district attorney (ADA) positions. In addition, counties over 100,000 in population have deputy DA positions. Deputy DAs perform supervisory and administrative responsibilities in addition to prosecuting cases.

Prior to January 1, 1990, DAs, deputy DAs and ADAs were county employees, and each county determined the level of prosecutorial staffing for its DA office. When DAs, their deputies, and assistants became state employees, all existing prosecutorial positions at the time transferred to state employment. On the date of transition to state service, 332.05 prosecutor positions became state employees. Under the budget bill, 420.90 prosecutor positions are

authorized in 2012-13, including 380.90 funded from general purpose revenue (GPR) and 40.0 funded from program revenue (PR). Funding for DAs in 2010-11 is \$42,289,100 GPR and \$2,382,900 PR. The PR funding derives primarily from federal grant funds.

Collective Bargaining for Attorneys Employed by the State. There are three collective bargaining units representing attorneys who are state employees: (a) the Association of State Prosecutors (ASP) represents ADAs; (b) the Wisconsin State Public Defender Association (WSPDA) represents assistant public defender attorneys; and (c) the Wisconsin State Attorneys Association (WSAA) represents other state agency attorneys, including those serving in the Department of Justice. Salaries for represented attorneys are collectively bargained every two years and, in practice, the state negotiates identical pay ranges for attorneys in all three collective bargaining units. However, the 2007-09 collective bargaining agreements have now been terminated and 2009-11 agreements were never concluded. [Certain state attorneys, for example attorneys in supervisory roles, are not represented by labor organizations and are subject to the state compensation plan for nonrepresented employees.]

GOVERNOR

Create a PR annual appropriation for salaries and fringe benefits of assistant district attorneys funded at \$1,000,000 PR annually. Funding for the appropriation would be provided from the justice information system surcharge. Require the offices of the district attorneys to work with the Office of State Employment Relations to allocate this funding.

DISCUSSION POINTS

1. The additional funding for ADA salaries and fringe benefits would be provided from the justice information system surcharge. The surcharge allocation language under the bill would provide, to a newly created ADA program revenue appropriation account, the amounts in the schedule for this appropriation account. In the 2011-13 biennium, this amount would be \$1,000,000 PR annually. The amount could be modified in future years.

2. The funding provided under the bill is limited to salary and fringe benefit costs. The \$1,000,000 annual provision, therefore, would provide \$872,200 for salaries and \$127,800 for fringe benefits annually in the 2011-13 biennium. If the \$1,000,000 allocation from the surcharge is continued in subsequent years, the initial salary increase of \$872,200 provided in 2011-12 could be maintained. In addition, \$127,800 would continue to be available for fringe benefit costs, but future increases in fringe benefit costs (for example, for health insurance coverage) would need to be covered either by future increases in the allocation of justice information system surcharge revenue for this purpose, or be provided from the general fund. If the \$1,000,000 allocation is maintained or adjusted in the future only for standard budget adjustments, than the salary increase provided in 2011-12 would be a one-time increase.

3. Based on current ADA salary levels, the \$872,200 increase, if distributed equally, would provide a general wage adjustment (GWA) of approximately 3.2% per ADA. It is not clear, however, that the increased funding would be provided as a GWA to all ADAs. The issue of how to

distribute the funding is discussed in more detail below.

4. Currently, the pay range for represented state attorneys is a minimum of \$49,429 and a maximum of \$119,471 annually. The Office of State Employment Relations (OSER) has provided the current average salaries of the attorneys in each of the three collective bargaining units. The average-salary data show that WSAA attorneys have the highest average salary, followed by the WSPDA attorneys. Association of State Prosecutors' average salaries are lower (and would remain lower even if the bill's provision of additional compensation for ADAs is approved). However, these average salary differences are largely the effect of differences in the average number years of state service for attorneys in each of the collective bargaining units. Higher average seniority results in higher average salaries. Table 1 shows the average seniority and salary data for each of the three units.

TABLE 1

**Current Average Seniority and Salaries
Represented State Attorneys**

<u>Collective Bargaining Unit</u>	<u>Average Seniority (Years)</u>	<u>Average Annual Salary</u>
Wisconsin State Attorneys Association	16.3	\$91,000
Wisconsin State Public Defenders Association	14.2	\$76,100
Association of State Prosecutors	11.6	\$69,900

5. The average salary differences between WSAA state attorneys and ADAs and assistant public defenders, also reflect the fact that, unlike ASP and WSPDA attorneys, WSAA attorneys are assigned to a broadband pay system that allows greater flexibility to set pay on original appointment and to provide discretionary compensation adjustments. The assignment of WSAA attorneys to a broadband system is the result of collective bargaining. Association of State Prosecutors and WSPDA attorneys do not have a broadband pay system and, as a result, new ADAs and assistant public defenders are typically hired at the pay range minimum and are not eligible for discretionary compensation adjustments. The higher average salaries for WSAA attorneys, therefore, reflect both higher average seniority and somewhat greater flexibility in setting salaries.

6. District Attorneys and ADAs have argued over the years that the beginning salaries for ADAs are too low and that annual increases to these initial salaries are inconsistent and generally too small. These officials argue that it takes up to seven years to fully train a prosecutor and that many ADAs leave because of dissatisfaction over salary, with a resulting loss of experience and training expense.

7. Under the bill, 330.05 ADA positions would be authorized in 2011-12 and 327.3 positions in 2012-13. Of the 71 DA offices in the state, nine small counties have a DA only; that is, no ADAs are on staff. Of the remaining 62 offices that have ADA positions, eight offices (13%) had no ADA departures between 2001 and 2010, while 54 offices (87%) experienced the departure of 424 ADAs. For these 54 DA offices, 12 offices (22%) had only one departure during the ten-year period; nine offices (17%) had two departures; and eight offices (15%) had three departures.

The remaining 25 offices (46%) experienced four or more departures over the ten-year period.

8. The extent to which attorneys may leave state service as ADAs due to dissatisfaction with salary levels cannot be answered based on the available data. It is likely that some resignations are related to salary issues, in whole or part, while other resignations are unrelated to salary concerns. The State Prosecutors Office (SPO) has provided data on employees vacating ADA positions for calendar years 2001 through 2010. This information provides some perspective on retention issues.

9. Of the 424 departures, 68 (16.0%) were transfers to ADA positions in a different county and 37 (8.7%) represented appointments to deputy DA positions or election or appointment to a DA position. Further, 81 departures (19.1%) were due to retirement, death, or discharge. It is clear that these types of departures (totaling 43.8%) cannot be characterized as indicating dissatisfaction with salary levels. The remaining cases, which represent resignations from ADA positions for other reasons, total 238, or 56.2% of the departures.

For 148 of these 238 resignations, no reason was recorded for the resignation. For the remaining 90 resignations, a variety of reasons were cited. These are summarized in Table 2.

TABLE 2

**Reasons for ADA Resignations
2001 - 2010**

<u>Reason for Resignation</u>	<u>Number</u>
Enter private practice	15
Non-DA State position	31
Personal or family issues	7
Municipal government position	11
Federal government position	12
Career change or return to school	8
Moving from state	6
Unknown	<u>148</u>
Total	238

It is not possible to determine from this data the extent to which dissatisfaction with ADA compensation motivated the 238 resignations. However, it appears that many motivational factors may enter resignation decisions for these attorneys, as is the case for other occupational groups.

10. As noted above, over this ten-year period, a total of 424 ADAs, departed from an ADA position. However, 105 of these departures were transfers to another DA office or appointments to deputy DA positions or election or appointment to a DA position. These changes do not constitute departures from the agency as a whole. The remaining 319 departures would be actual separations from the agency. The 319 separations equate to an annual average of 31.9 departures. Based on 330 total ADA positions, the ADA separation rate would be 9.7% annually.

Utilizing data from the State Public Defender, the separation rate for this agency over the same ten-year period averaged 5.6%. Similar separation data for fiscal year 2009-10 for classified employees in state service (excluding the UW System) compiled by OSER indicate a separation rate of 6.1% for 37 state agencies. Based on these data, it appears the departure levels for ADAs are above average.

11. Administration officials indicate that the intent of the provision under the bill is to increase retention of experienced prosecutors. However, it is not clear that the provision of \$1,000,000 in additional compensation and fringe benefits for ADAs (a 3.2% salary increase, if applied equally) would have a significant effect on retention. It appears that some attorneys who are willing to undertake prosecution work as a possible career may come to the conclusion that they would prefer to practice law in a different way. The information reported in Table 2 illustrates this point. While increasing compensation for ADAs may help to address attorney retention levels, it is also possible that other workplace and non-workplace factors would continue to outweigh compensation in individual decisions to discontinue work as an ADA.

12. Department of Administration officials also indicate that, under the bill, the DAs will need to work with OSER to determine the allocation of the funding. The final allocation mechanism is unknown at this time. The bill does not provide any guidelines for these discussions.

13. While the bill would require the DAs and OSER to work together to allocate the new funding, it should be noted in this context that there has been, and currently is, significant disagreement between OSER and the DAs over the application of the 2009-11 furlough requirements to ADAs. Requiring these parties to now determine the distribution of \$1,000,000 in additional compensation for ADAs, with no parameters or guidelines on how this is to be accomplished, has potential difficulties. If the Committee decides to support the provision of these additional funds for ADA compensation, it may want to have a fuller understanding of how the compensation increases will be distributed and how this distribution supports the overall goal of ADA retention. The Committee may wish to review any distribution agreement that is eventually developed by OSER and the DAs prior to the release of these funds.

14. Under this alternative, OSER and the DAs would be required to develop and submit a plan to the Committee on or before September 30, 2011, for the distribution of the \$1,000,000 in additional funding for ADA compensation and fringe benefits. The \$1,000,000 in funding would be placed in the Committee's supplemental appropriation for release upon approval of the plan. The plan would be required to include a discussion of how the proposed distribution will improve the employment retention of assistant district attorneys. The Committee could review and approve or disapprove the plan, and the release of funds if the plan is approved, under s. 13.10 of the statutes. [Alternative 3]

15. In recent years, District Attorneys and ADAs, have advocated the establishment of a pay progression system for ADAs that would increase ADA pay by a specified amount each year in order to recognize professional growth and development and help retain experienced prosecution attorneys. Pay progression is a compensation mechanism that provides automatic annual compensation increases for qualifying employees. Under this approach, the employer usually must pay a salary increase to eligible employees who attain an additional year of service or time in class

with the employer (generally referred to as "step" progression), over a period of years. [This period, under prior DA/ADA proposals would be in the range of 17 to 20 years.] At the end of the period of years, the employee would progress from the minimum salary in the pay range to the maximum salary in the range. A pay progression system creates a long-term contractual obligation to provide automatic compensation increases each year, and typically would be negotiated as part of a collective bargaining agreement (or provided to nonrepresented employees as part of the state's compensation plan).

16. On April 26, 2011, the Committee adopted Motion #57 under budget deliberations for the Office of State Employment Relations. The motion specified that, in the 2011-13 biennium, state agencies be allowed to retain base funding for certain state attorneys who retire during this period and to utilize the difference between the salaries of the retiring attorneys and the salaries of new attorneys to be utilized for the institution of a pay progression system under a plan approved by the Joint Committee on Finance. The provision would be limited to state agency attorneys (that is, members of WSAA). The motion required the WSAA and OSER to develop a plan for the establishment of a pay progression system for these attorneys to be submitted to the Joint Committee on Finance on or before September 30, 2011. The plan must include a detailed description of how the pay progression system would be structured and administered and the fiscal cost of the system in the 2011-13 biennium, by fund source, and the projected costs in the following four biennia. The motion requires that the plan be approved by the Joint Committee on Finance under a 14-day passive review process.

17. Generally, the state's employment relations policies are very systematic and attempt to maintain a degree of consistency and parity. Policies are established to clearly delineate the parameters of compensation (pay ranges) and the manner in which similarly situated employees progress with respect to compensation. These policies are formalized through state law, the state's compensation plans for nonrepresented employees, and collective bargaining agreements with represented employees.

18. Conducting employment relations policy in a manner that treats one group of employees differently than another group of similar employees could result in difficulties. The Committee may wish to apply the WSAA provision to ADAs and assistant public defenders as well as state agency attorneys. Under this alternative, the collective bargaining units of the ADAs and assistant public defenders would be included in the Motion #57 provision. To maintain consistency in the treatment of these attorney groups, the \$1,000,000 provided for ADA compensation under the bill could be deleted. [Alternative 4]

19. The Committee may instead want to await the results of the plan and fiscal projections required under Motion #57 before deciding on the applicability of pay progression to attorneys or any other employment groups. [Because state employment relations policy generally maintains a level of consistency with respect to compensation and benefits of state employees, the establishment of pay progression for WSAA attorneys and other state attorneys could result in efforts to provide equivalent treatment for other professional classifications in state government.] The Committee could delete the Governor's provision of \$1,000,000 in compensation funding for ADAs and delay any action on attorney compensation until it has reviewed the WSAA/OSER report. [Alternative 5]

20. Finally, the Committee may conclude under Alternative 2 in the *Justice Information System Surcharge Overview Paper, #120*, that it wishes to restore the justice information system surcharge to its historical function. This alternative would delete the recommendation in the bill to alter the allocation mechanism for justice information system surcharge revenue, reduce the surcharge from \$21.50 to \$14.50, and would again limit the functions funded from the surcharge to justice information systems at DOA and the courts, and deposit \$1 from every assessed surcharge to the general fund. If the Committee wished to again limit the justice information system surcharge to funding justice information systems, the Committee could delete the Governor's recommendation. [Alternative 4]

21. If the Committee nonetheless wished to preserve funding for additional compensation for ADAs it could provide \$1,000,000 GPR annually to a new GPR annual appropriation for salaries and fringe benefits of assistant district attorneys. [Under this alternative, justice information system surcharge funding for ADA compensation would be deleted. Instead, funding for additional compensation for ADAs would be provided from the general fund.] [Alternative 5]

ALTERNATIVES

1. Approve the Governor's recommendation to create a PR annual appropriation for salaries and fringe benefits of assistant district attorneys funded at \$1,000,000 PR annually. Funding for the appropriation would be provided from the justice information system surcharge. Require the offices of the district attorneys to work with the Office of State Employment Relations to allocate this funding.

2. In addition to Alternative 1 or 5, require the Office of State Employment Relations and the District Attorneys to develop and submit a plan to the Joint Committee on Finance on or before September 30, 2011, for the distribution of the \$1,000,000 in additional funding for additional assistant district attorney compensation and fringe benefits. Require the plan to include a discussion of how the proposed distribution will improve the employment retention of assistant district attorneys. Require the Committee to act on the plan under s. 13.10 of the statutes. Place \$1,000,000 PR annually in justice information system surcharge funding in the Committee's supplemental program revenue appropriation for release upon approval of the plan, if Alternative 1 is adopted. Place \$1,000,000 GPR annually in the Committee's supplemental GPR appropriation for release upon approval of the plan, if Alternative 5 is approved.

3. Delete the provision. Instead, specify that, in the 2011-13 biennium, District Attorneys and the State Public Defender be allowed to retain base funding for assistant district attorneys and assistant public defenders respectively who retire during this period and to utilize the difference between the salaries of the retiring attorneys and the salaries of new attorneys to be utilized for the institution of a pay progression system under a plan approved by the Joint Committee on Finance. Require the Association of State Prosecutors, the Wisconsin State Public Defender Association, and the Office of State Employment Relations (OSER) to develop a plan for the establishment of a pay progression system for these attorneys to be submitted to the Joint Committee on Finance on or before September 30, 2011. The plan must include a detailed

description of how the pay progression system would be structured and administered and the fiscal cost of the system in the 2011-13 biennium, by fund source, and the projected costs in the following four biennia. Require that the plan be approved by the Joint Committee on Finance under a 14-day passive review process. [This alternative treats represented assistant district attorneys and assistant public defenders in the same manner as represented state agency attorneys (under the Wisconsin State Attorneys Association) under Motion #57, adopted by the Committee on April 26, 2011.]

ALT 3	Change to Bill
	Funding
PR	- \$2,000,000

4. Delete provision.

ALT 4	Change to Bill
	Funding
PR	- \$2,000,000

5. Delete the PR annual appropriation for salaries and fringe benefits of assistant district attorneys and its associated expenditure authority of \$1,000,000 PR annually. Create a GPR annual appropriation for salaries and fringe benefits of assistant district attorneys and provide \$1,000,000 GPR annually to the appropriation. [This alternative would provide funding to the program but change the funding source of the program to GPR.]

ALT 5	Change to Bill
	Funding
GPR	\$2,000,000
PR	<u>-2,000,000</u>
Total	\$0

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