



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #245

### **Pay Progression for Attorneys (District Attorneys, Justice -- General Agency Provisions, and Public Defender)**

[LFB 2013-15 Budget Summary: Page 139, #2, Page 270, #2, and Page 360, #4]

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#### **CURRENT LAW**

Under 2011 Act 238, an annual pay progression plan was created for assistant district attorneys (ADAs) to provide increased compensation for prosecutors. The pay progression plan consists of 17 hourly salary steps, with each step equal to one-seventeenth of the difference between the lowest annual salary (currently \$49,429) and the highest annual salary (currently \$119,471) for ADAs contained in the state compensation plan. Under the current state compensation plan, the value of one hourly salary step for ADAs equals \$1.97 per hour or \$4,120 annually.

Beginning with the first pay period that occurs on or after July 1, 2013, all ADAs who have served with the state as ADAs for a continuous period of 12 months or more, and who are not paid the maximum hourly rate, must be paid an hourly salary at the step that is immediately above their hourly salary on June 30, 2013. All other ADAs who are not paid the maximum hourly rate, must be paid an hourly salary at the step that is immediately above their hourly salary on June 30, 2013, when they have served with the state as ADAs for a continuous period of 12 months.

Beginning with the first pay period that occurs on or after July 1, 2014, and with the first pay period that occurs on or after each succeeding July 1, a supervising district attorney (DA) may increase the hourly salary of an ADA by an hourly salary step, or part thereof, above the prosecutor's hourly salary on the immediately preceding June 30. Notwithstanding the creation of a 17 hourly salary step pay progression plan, supervising DAs are authorized to: (a) deny annual salary increases to individual ADAs; or (b) increase the salary of individual ADAs by up to 10% per year. Currently, at the minimum annual salary of \$49,429, a 10% annual wage increase (\$4,942.90) exceeds the value of the current hourly step (\$4,120). For an ADA with an annual salary of \$75,000, the pay progression plan under Act 238 would permit the supervising DA to

provide an annual salary increase of up to \$7,500. There is no base funding for the pay progression system for ADAs created under Act 238.

Under current law, ADAs are the only class of attorneys in state government to have a pay progression system to provide increased compensation.

The 2011-13 state compensation plan provides a uniform minimum annual salary for all state attorneys of \$49,429, and a uniform maximum annual salary for all state attorneys of \$119,471. Consequently, the pay range is identical for all state attorneys.

## **GOVERNOR**

*District Attorneys.* Provide \$948,900 GPR in 2013-14 (\$819,800 in permanent position salary funding and \$129,100 in fringe benefits funding), and \$3,457,600 GPR in 2014-15 (\$2,987,200 in permanent position salary funding and \$470,400 in fringe benefits funding), for pay progression compensation increases for ADAs. The recommendation provides funding to: (a) increase each prosecutor's compensation to the next highest pay progression step in 2013-14; and (b) provide a 10% increase in compensation for each ADA in 2014-15, except for ADAs in Brown, Jefferson, Outagamie, Ozaukee, and Winnebago Counties whose elected DAs requested funding for one pay progression step.

*Justice.* Create a pay progression plan for assistant attorneys general (AAGs) that mirrors the pay progression plan created for ADAs under Act 238. Under the Governor's recommendation, additional funding for pay progression during 2013-15 would be provided by the Department of Justice (DOJ) from base resources. The Department has indicated an intent to utilize \$625,000 in funding from the national mortgage settlement to fund pay progression for AAGs.

*Public Defender.* Provide \$997,000 GPR in 2013-14 (\$861,300 for permanent salary increases and \$135,700 for associated fringe benefits costs), and \$1,978,600 GPR in 2014-15 (\$1,710,400 for permanent salary increases and \$268,200 for associated fringe benefits costs), to establish pay progression compensation increases for assistant state public defenders (ASPDs). Provide these amounts to a new GPR annual salary adjustments appropriation under the Office of the State Public Defender (SPD). Create a pay progression plan for ASPDs that mirrors the pay progression plan created for ADAs under Act 238.

## **DISCUSSION POINTS**

### **Pay Progression under 2011 Act 238 and under the 2011-13 State Compensation Plan**

1. Under the 2011-13 state compensation plan approved by the Joint Committee on Employment Relations, most classifications of state employees do not have any form of pay progression. However, under the current state compensation plan, 1,809.10 full-time equivalent (FTE) positions are eligible for some form of pay progression. The last general wage increase (2.0%) received by state employees was in June of 2009 for represented state employees only. As ADAs, AAGs, and ASPDs were all represented, these attorneys received this general wage increase.

2. The Office of State Employment Relations (OSER) has provided information on the various pay progression provisions that have been approved for certain classifications of state employees by the Joint Committee on Employment Relations for 2011-13. This information is included in the Appendix to this paper. [The pay progression provisions for ADAs under Act 238 do not take effect until the 2013-15 biennium. As a result, ADAs are not included in the Appendix.]

3. Employees who currently have some form of pay progression are generally limited to one or two pay progression adjustments in their careers. In addition, for most of these employment classifications, pay progression is typically limited to the entry level of each classification series, thereby, effectively limiting pay progression to the first one to three years of an employee's career. Pay progression for ADAs under Act 238, and pay progression, as recommended, for AAGs and ASPDs under AB 40 would create a 17 step pay progression system to move all attorneys from the minimum annual starting salary (currently \$49,429) to the maximum annual starting salary (currently \$119,471).

4. As the Appendix indicates, the available hourly salary increase for most classifications of state employees eligible for pay progression is typically less than the \$1.97 per hour salary step increase that would be provided to ADAs. In addition, pay progression for ADAs under Act 238 is not limited to this hourly salary increase. Instead, beginning July 1, 2014, and every fiscal year thereafter a supervising DA may increase the salary compensation of an ADA by up to 10% annually.

5. For other classifications of state employees, state agencies must initially fund pay progression from base resources. Under subsequent biennial budgets, however, standard budget adjustments will fully fund any agency-funded pay progression. Assembly Bill 40 would specifically budget increased funding to the DA function and the SPD for pay progression compensation increases. [It is worth noting that as the state primarily funds only salary and fringe benefit costs for the DA function, the DA function is arguably in less of a position to fund pay progression increases from base resources.]

6. Pay progression for other classifications of state employees is automatically provided contingent on satisfactory performance. Under Act 238, pay progression for ADAs beginning July 1, 2014, would be wholly discretionary with the supervising DA based on merit. Likewise, under AB 40 pay progression for AAGs and ASPDs would also be wholly discretionary with the appointing authority based on merit. In providing funding for pay progression, the DA function and the SPD were budgeted funding assuming that all eligible attorneys would receive pay progression. In addition, for 2014-15, most ADAs were budgeted 10% pay progression salary increases and ASPDs were also budgeted pay progression salary increases in excess of the base one-step salary increase. Any budgeted pay progression funding not awarded would be lapsed to the general fund.

### **Attorney Recruitment**

7. Under current law, the DA function, the SPD, and DOJ have been able to recruit attorneys to fill vacant positions in the absence of pay progression.

8. The State Prosecutors Office in the Department of Administration on behalf of state

prosecutors indicated that, "The number of applicants varies due to geographic location, FTE of the vacancy [i.e., whether the position is full-time or part-time], the prospect of jobs in the private bar, and timing (i.e.-whether or not a law student is close to graduation). In recent years, jobs in the private bar have not been as plentiful as prior to the recession; so, the number of applicants for ADA vacancies has been greater than it would be in stronger economic times." The State Prosecutors Office went on to indicate that, "In some cases, only one or two applicants may apply for a vacancy. In other situations, as many as 30, 50, or 70 may apply."

9. Table 1 provides information for calendar years 2011 and 2012 and for the first quarter of 2013, as to the number of attorney applications received by the SPD and the number of attorney positions filled by the Office. During this time period the Office received 789 applications and filled 79 attorney positions, for an average of 10 applications for every attorney position filled.

**TABLE 1**

**Attorney Recruitment by the Office of the State Public Defender**

<u>Year</u>	<u># of Applications</u>	<u># of Positions Filled</u>
2011	365	52
2012	227	24
2013 (1st Quarter)	<u>197</u>	<u>3</u>
Total	789	79

10. During calendar years 2011 and 2012, DOJ had four rounds of recruitment for staff attorney positions. Table 2 provides information on the number of applications received for each round of hiring and a general description of the attorney positions that the Department sought to fill for that round of hiring. The Department of Justice indicated that 23 attorneys were hired during these four rounds of recruitment, with an average of 30 applications received for each position filled.

**TABLE 2**

**Calendar Year 2011 & 2012 Attorney Recruitment by the Department of Justice**

<u>Application Deadline</u>	<u># of Applications</u>	<u>Recruitment Description</u>
3/3/2011	20	Project position
7/1/2011	241	Multiple vacancies
3/5/2012	313	Entry-level
11/9/2012	<u>114</u>	Mid-level
Total	688	

## Attorney Retention

11. Table 3 provides information from OSER on the separation rates (rates of departure) from state service from 2003-04 through 2010-11 for ADAs and for other non-supervisory state attorneys represented by the Wisconsin State Public Defenders Association (WSPDA) and the Wisconsin State Attorneys Association (WSAA). Similar information on separation rates for these attorneys is not available for 2011-12.

**TABLE 3**

### Separations from State Service by Represented Non-Supervisory Attorneys

	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>
<b>Retirement</b>								
ADA	0.8%	0.5%	1.4%	2.5%	1.1%	2.2%	3.1%	3.0%
WSPDA	2.5	1.2	0.4	1.6	2.8	1.9	1.2	5.5
WSAA	3.1	3.5	2.8	1.4	4.6	4.7	4.5	8.2
<b>Non-Retirement Separations</b>								
ADA	10.5%	6.0%	6.8%	3.6%	6.8%	6.0%	4.2%	5.1%
ADA alternate*	11.0	7.0	9.3	4.7	7.9	7.1	4.2	N.A.
WSPDA	1.2	2.9	5.0	5.7	4.7	5.4	3.1	2.4
WSAA	2.7	2.1	3.2	1.0	1.4	2.2	0.4	2.2
<b>Total Retirement and Non-Retirement Separations</b>								
ADA	11.3%	6.5%	8.2%	6.1%	7.9%	8.2%	7.2%	8.1%
ADA alternate*	11.8	7.5	10.7	7.2	9.0	9.3	7.3	N.A.
WSPDA	3.7	4.2	5.5	7.4	7.5	7.3	4.3	7.9
WSAA	5.8	5.6	6.0	2.4	6.0	6.9	4.8	10.5

\*Turnover rate using alternate criteria with any movement external to working as a state prosecutor counted as a separation.

12. The state compensation plan has provided a uniform minimum and maximum annual salary for all state attorneys, classified and unclassified. Table 4 provides information compiled by OSER on separations from state service by job group by permanent classified employees (excluding the UW System) for 2009-10. This table indicates that classified attorneys in state service in 2009-10 did not have a high separation rate when compared to other job groups across state government. In 2009-10, permanent classified attorneys had a total separation rate of 5.4% compared to a 6.1% statewide total separation rate. [Assistant district attorneys and ASPDs are not included in this attorney data in Table 4 as they are unclassified employees.]

**TABLE 4**

**Separations from State Service by Job Group 2009-10  
Permanent Classified Employees Excluding UW System\***

	Average Count in Job Group	Non-Retirement Separations		Retirement		Total All Separations	
		Number	Percent	Number	Percent	Number	Percent
Equal Opportunity Professionals & Supv	72.5	3	4.1%	6	8.3%	9	12.4%
General Laborers	277.5	18	6.5	14	5.0	32	11.5
Psychologists	212.0	14	6.6	9	4.2	23	10.8
Personal Care Aides	1,863.0	162	8.7	40	2.1	202	10.8
Purchasing Professionals & Supv	76.0	2	2.6	6	7.9	8	10.5
Administrators - Senior Executives	526.0	10	1.9	45	8.6	55	10.5
Health Therapists	157.5	7	4.4	8	5.1	15	9.5
Clerks - Shipping, Storage, & Related	131.0	7	5.3	5	3.8	12	9.2
Human Resources Professionals and Supv	382.5	10	2.6	25	6.5	35	9.2
Real Estate Technicians, Professionals & Supv	186.0	3	1.6	13	7.0	16	8.6
Claims Determination & Collections - Profs/Supv	456.5	15	3.3	23	5.0	38	8.3
Cleaning and Buildings - Supv	89.0	1	1.1	6	6.7	7	7.9
Media Technicians	25.5	1	3.9	1	3.9	2	7.8
Inspectors & Investigators - Products & Services	295.5	10	3.4	13	4.4	23	7.8
Technicians - Health Care & Related	831.0	40	4.8	22	2.6	62	7.5
Patient Care Professionals & Supv	955.0	46	4.8	25	2.6	71	7.4
Doctors, Dentists, & Veterinarians	149.0	8	5.4	3	2.0	11	7.4
Power Plant Occupations	125.0	2	1.6	7	5.6	9	7.2
Science Professionals & Supv	243.0	9	3.7	8	3.3	17	7.0
Aviation Occupations	14.5	0	0.0	1	6.9	1	6.9
Administrative Support - General	2,048.0	46	2.2	95	4.6	141	6.9
General Clerical Occupations	1,340.5	31	2.3	60	4.5	91	6.8
Inspectors & Investigators - Materials & Structures	74.0	0	0.0	5	6.8	5	6.8
Food Production & Food Service	495.0	24	4.8	8	1.6	32	6.5
Fiscal & Related Professionals & Supv	1,099.0	21	1.9	50	4.5	71	6.5
Teachers & Education Professionals & Supv	757.0	24	3.2	24	3.2	48	6.3
Program Support Professionals & Supv	1,051.5	23	2.2	39	3.7	62	5.9
Management Information Technicians	86.5	0	0.0	5	5.8	5	5.8
Social Services Professionals & Supv	2,690.0	89	3.3	65	2.4	154	5.7
Administrators - Others	240.0	2	0.8	11	4.6	13	5.4
<b>Attorneys</b>	<b>335.5</b>	<b>2</b>	<b>0.6</b>	<b>16</b>	<b>4.8</b>	<b>18</b>	<b>5.4</b>
Construction Trades	152.0	1	0.7	7	4.6	8	5.3
Law Enforcement & Public Safety	971.0	12	1.2	38	3.9	50	5.1
Planning & Research Professionals & Supv	584.0	7	1.2	23	3.9	30	5.1
Administrative Support - Fiscal	532.5	8	1.5	19	3.6	27	5.1
Technicians - Engineering & Related	561.0	5	0.9	23	4.1	28	5.0
Communication Equipment Operators	61.5	1	1.6	2	3.3	3	4.9
Management Information Professionals & Supv	1,298.0	18	1.4	44	3.4	62	4.8
Librarians, Archivist, & Curators	107.5	4	3.7	1	0.9	5	4.7
Mechanical Equipment, Construction & Repair	365.5	6	1.6	11	3.0	17	4.7

Job Group	Average	Non-Retirement		Retirement		Total All	
	Count in	Separations		Separations		Separations	
	Number	Percent	Number	Percent	Number	Percent	
Agricultural & Natural Resources Technicians	279.5	3	1.1%	8	2.9%	11	3.9%
Architects & Engineers	988.0	21	2.1	17	1.7	38	3.8
Environmental Specialists & Supv	523.5	5	1.0	15	2.9	20	3.8
Corrections Occupations	5,449.0	120	2.2	87	1.6	207	3.8
Miscellaneous Mechanics & Repairers	55.5	0	0.0	2	3.6	2	3.6
Dietitians & Nutritionists	58.0	0	0.0	2	3.4	2	3.4
Laboratory Technicians	30.5	1	3.3	0	0.0	1	3.3
Public Information & Media Professionals & Supv	97.5	2	2.1	1	1.0	3	3.1
Natural Resources Professionals & Supv	512.5	4	0.8	0	0.0	4	0.8
Seamstress & Upholsterers	<u>9.0</u>	<u>0</u>	0.0	<u>0</u>	0.0	<u>0</u>	0.0
<b>Total</b>	<b>29,921.0</b>	<b>848</b>	<b>2.8%</b>	<b>973</b>	<b>3.3%</b>	<b>1821</b>	<b>6.1%</b>

\*Separations data for UW System is not available.

13. Table 5 provides information compiled by OSER on separations from state service by job group by permanent classified employees (excluding the UW System) for 2011-12. Separation rates across state government increased substantially in 2011-12, when compared to 2009-10. In 2009-10 (Table 4), there was an average separation rate of 6.1% across the 50 job groups represented in the table. By 2011-12 (Table 5), the average separation rate had increased to 10.6%. Likewise the separation rate of classified state attorneys also increased over this time period from 5.4% in 2009-10, to 10.2% in 2011-12. In 2011-12, permanent classified attorneys had a total separation rate of 10.2%, slightly below the 10.6% statewide total separation rate.

**TABLE 5**  
**Separations from State Service by Job Group 2011-12**  
**Permanent Classified Employees Excluding UW System\***

Job Group	Average	Non-Retirement		Retirement		Total All	
	Count in	Separations		Separations		Separations	
	Number	Percent	Number	Percent	Number	Percent	
Equal Opportunity Professionals & Supv	66.0	4	6.1%	9	13.6%	13	19.7%
Public Information & Media Professionals & Supv	92.5	12	13.0	5	5.4	17	18.4
Personal Care Aides	1,707.0	261	15.3	49	2.9	310	18.2
Real Estate Technicians, Professionals & Supv	165.0	8	4.8	17	10.3	25	15.2
Teachers & Education Professionals & Supv	684.5	53	7.7	49	7.2	102	14.9
Patient Care Professionals & Supv	873.0	76	8.7	49	5.6	125	14.3
Mechanical Equipment, Construction & Repair	327.5	21	6.4	24	7.3	45	13.7
Inspectors & Investigators - Materials & Structures	66.0	4	6.1	5	7.6	9	13.6
General Laborers	258.5	22	8.5	13	5.0	35	13.5
Administrators - Senior Executives	509.5	28	5.5	40	7.9	68	13.3
Psychologists	223.5	21	9.4%	8	3.6%	29	13.0%
Program Support Professionals & Supv	1,060.5	72	6.8	61	5.8	133	12.5
General Clerical Occupations	1,177.0	87	7.4	60	5.1	147	12.5
Technicians - Health Care & Related	867.0	71	8.2	34	3.9	105	12.1
Administrative Support - General	1,850.5	101	5.5	122	6.6	223	12.1

Job Group	Average	Non-Retirement		Retirement		Total All	
	Count in	Separations		Separations		Separations	
	Number	Percent	Number	Percent	Number	Percent	
Media Technicians	25.0	1	4.0%	2	8.0%	3	12.0%
Purchasing Professionals & Supv	67.0	5	7.5	3	4.5	8	11.9
Communication Equipment Operators	59.0	7	11.9	0	0.0	7	11.9
Seamstress & Upholsterers	8.5	0	0.0	1	11.8	1	11.8
Administrative Support - Fiscal	478.0	23	4.8	33	6.9	56	11.7
Planning & Research Professionals & Supv	590.5	43	7.3	25	4.2	68	11.5
Social Services Professionals & Supv	2,741.5	210	7.7	99	3.6	309	11.3
Administrators - Others	231.5	5	2.2	20	8.6	25	10.8
Power Plant Occupations	114.5	7	6.1	5	4.4	12	10.5
Fiscal & Related Professionals & Supv	1,107.5	55	5.0	60	5.4	115	10.4
Food Production & Food Services	475.0	35	7.4	14	2.9	49	10.3
<b>Attorneys</b>	<b>314.5</b>	<b>16</b>	<b>5.1</b>	<b>16</b>	<b>5.1</b>	<b>32</b>	<b>10.2</b>
Human Resources Professionals & Supv	385.0	21	5.5	17	4.4	38	9.9
Claims Determination & Collections - Profs/Supv	481.5	29	6.0	17	3.5	46	9.6
Construction Trades	135.5	4	3.0	8	5.9	12	8.9
Inspectors & Investigators - Products & Services	281.5	10	3.6	14	5.0	24	8.5
Corrections Occupations	5,064.0	258	5.1	166	3.3	424	8.4
Science Professionals & Supv	248.0	13	5.2	7	2.8	20	8.1
Law Enforcement & Public Safety	932.5	32	3.4	42	4.5	74	7.9
Laboratory Technicians	25.5	2	7.8	0	0.0	2	7.8
Technicians - Engineering & Related	480.5	11	2.3	26	5.4	37	7.7
Management Information Professionals & Supv	1,202.0	48	4.0	44	3.7	92	7.7
Clerks - Shipping, Storage, & Related	122.5	2	1.6	7	5.7	9	7.3
Management Information Technicians	69.5	2	2.9	3	4.3	5	7.2
Agricultural & Natural Resources Technicians	254.0	2	0.8	15	5.9	17	6.7
Environmental Specialists & Supv	494.0	5	1.0	27	5.5	32	6.5
Doctors, Dentists, & Veterinarians	139.5	5	3.6	4	2.9	9	6.5
Health Therapists	140.0	3	2.1	6	4.3	9	6.4
Cleaning and Buildings - Supv	87.5	1	1.1	4	4.6	5	5.7
Librarians, Archivists, & Curators	105.0	3	2.9	3	2.9	6	5.7
Natural Resources Professionals & Supv	483.5	9	1.9	18	3.7	27	5.6
Architects & Engineers	992.5	21	2.1	28	2.8	49	4.9
Dietitians & Nutritionists	61.5	2	3.3	1	1.6	3	4.9
Miscellaneous Mechanics & Repairers	60.5	1	1.7	1	1.7	2	3.3
Aviation Occupations	14.5	0	0.0	0	0.0	0	0.0
<b>Total</b>	<b>28,401.0</b>	<b>1,732</b>	<b>6.1%</b>	<b>1,281</b>	<b>4.5%</b>	<b>3,013</b>	<b>10.6%</b>

\*Separations data for UW System is not available.

14. While the salary provided to ADAs, ASPDs, and AAGs has been identified as a key concern in the retention of these employees, there are many factors that may contribute to an employee's decision to remain employed with his or her current employer or to seek opportunities elsewhere. 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 has provided data on employees vacating ADA positions for calendar years 2001 through 2012. This information provides some perspective on retention issues.

15. Of the 519 departures from 2001 through 2012, 81 (15.6%) were transfers to ADA positions in a different county and 43 (8.3%) represented appointments to deputy DA positions or election or appointment to a DA position. Further, 67 departures (12.9%) were due to retirement. In addition, 31 departures (6.0%) were due to discharge, layoff, position termination, health, disability, and death. In total, 222 (42.8%) of the 519 departures over a 12 year period, were not for reasons that would be clearly associated with salary dissatisfaction.

16. During this 12-year period, 56 departures (10.8%) were due to ADAs taking government positions with local units of government, the state, and the federal government, including 14 who became circuit court judges, 14 who took other state legal positions, five who became court commissioners, and one who became a federal judge. While these departures may have been motivated, in part, by salary dissatisfaction, they may also have been motivated by a desire for career advancement while still working in government, or for other reasons.

17. The remaining cases, which represent resignations from ADA positions for other reasons, total 241, or 46.4% of the departures. For 176 of these 241 resignations, no reason was recorded for the resignation. For the remaining 65 resignations, a variety of reasons were cited. These are summarized in Table 6.

**TABLE 6**

**Reasons for ADA Resignations  
2001-2012**

<u>Reason for Resignation</u>	<u>Number</u>
Private sector	18
Did not return from leave of absence	10
Local position	7
Other	6
Local legal position	6
Moved out of state	5
Family care	2
Personal reasons	2
Prosecutor with another state	2
Resigned-stay at home	2
Full-time to part-time	1
Practice in religious community	1
Moved out of country	1
Returned to school	1
Self-employed writer	<u>1</u>
Total	65

18. Over the 12-year period, it appears that many motivational factors may enter

resignation decisions for these attorneys, as is the case for other occupational groups.

19. As with ADAs, many attorney departures from DOJ and the SPD would likely occur regardless of pay progression. Of the 50 attorney departures from the SPD during the last two completed calendar years, 26 were due to retirement. Of the 14 attorney departures from DOJ in 2011, four were due to retirement. Of the seven attorney departures from DOJ in 2012, two were due to retirement.

20. Over the last two completed calendar years, three SPD attorneys resigned to take up positions as elected office holders. In addition, of the 14 attorney departures from DOJ in 2011, four left to take other positions in state service. Of the seven attorney departures from DOJ in 2012, three left to take positions as judges, two as Dane County Circuit Court Judges, and one as a Wisconsin Court of Appeals Judge. As with ADAs, while salary compensation may have played some role in these departures, it is also likely that some or all of these departures were also motivated by a desire for other career opportunities.

### **Compensation**

21. The 2011-13 state compensation plan provides a uniform minimum annual salary for all state attorneys of \$49,429, and a uniform maximum annual salary for all state attorneys of \$119,471. Consequently, the pay range is identical for all state attorneys.

22. The National Association for Law Placement, Inc. (NALP), produces a report on public sector and public interest attorney salaries. The report provides information on prosecutor and public defender attorney salaries nationally and by regions of the country. Wisconsin is a part of the East North Central region which also includes Indiana, Illinois, Michigan, and Ohio.

23. Table 7 provides NALP information on median and average prosecutor salaries in the East North Central region as of January 1, 2012, for prosecutors with one year or less of experience, five years of experience, and more than 15 years of experience. In calculating pay progression funding requirements for prosecutors under the 2013-15 budget, the administration used employment and compensation data from pay period 16 in 2012. Based on information from this pay period, Table 7 also provides information on Wisconsin prosecutor salaries in 2012 with one year or less of experience, five years of experience, and more than 15 years of experience.

**TABLE 7**

**Comparison of 2012 Wisconsin Prosecutor Salaries with 2012 Reported  
Prosecutor Salaries in the East North Central Region  
(Indiana, Illinois, Michigan, Ohio, and Wisconsin)**

<u>Years of Experience</u>	<u>East North Central Region</u>		<u>Wisconsin</u>	
	<u>Median</u>	<u>Average</u>	<u>Median</u>	<u>Average</u>
1 year or less	\$44,500	\$44,897	\$49,429	\$49,429
5 years	57,838	55,009	52,091	52,088
More than 15 years	71,012	77,592	95,547	93,871

24. Table 7 indicates that the compensation provided to Wisconsin prosecutors is above both the median and average salaries for prosecutors in the East North Central region for newly hired prosecutors and for prosecutors with 15 or more years of experience. On the other hand, the compensation for Wisconsin prosecutors is below the median and average salaries for prosecutors in the East North Central region for prosecutors with five years of experience.

25. Table 8 provides NALP information on median and average Public Defender attorney salaries in the East North Central region as of January 1, 2012, for Public Defender attorneys with one year or less of experience, five years of experience, and more than 15 years of experience. In calculating pay progression funding requirements for Public Defender attorneys under the 2013-15 budget, the administration used employment and compensation data from pay period 18 in 2012. Based on information from this pay period, Table 8 also provides information on ASPD salaries in 2012 with one year or less of experience, five years of experience, and more than 15 years of experience.

**TABLE 8**

**Comparison of 2012 Wisconsin Public Defender Attorney Salaries with 2012 Reported Public Defender Attorney Salaries in the East North Central Region (Indiana, Illinois, Michigan, Ohio, and Wisconsin)**

<u>Years of Experience</u>	<u>East North Central Region</u>		<u>Wisconsin</u>	
	<u>Median</u>	<u>Average</u>	<u>Median</u>	<u>Average</u>
1 year or less	\$46,054	\$44,673	\$49,429	\$51,418
5 years	55,333	53,467	51,484	51,484
More than 15 years	81,287	85,688	99,195	97,086

26. Table 8, similar to Table 7 for state prosecutors, indicates that the compensation provided to Wisconsin Public Defender attorneys is above both the median and average salaries for Public Defender attorneys in the East North Central region for newly hired attorneys and for attorneys with 15 or more years of experience. Compensation for Wisconsin Public Defender attorneys is below the median and average salaries for Public Defender attorneys with five years of experience.

27. Table 9 provides information on the salary compensation provided to AAGs as of pay period 16 in 2012 (the same pay period utilized by the administration to calculate pay progression for ADAs). While there is no comparable NALP data for AAGs, Table 9 provides information on annual salary compensation for AAGs with one year or less of experience, approximately five years of experience, and more than 15 years of experience. The annual salary compensation provided to AAGs across these experience levels exceeds the annual salary compensation provided to ADAs and ASPDs.

**TABLE 9**

**Annual Salary Compensation of Assistant Attorneys  
General as of Pay Period 16 in 2012**

<u>Years of Experience</u>	Wisconsin	
	<u>Median</u>	<u>Average</u>
1 year or less	\$60,734	\$56,767
5 years	65,956	66,991
More than 15 years	119,325	114,411

**Analysis**

28. The provisions of AB 40 would provide \$948,900 GPR in 2013-14, and \$3,457,600 GPR in 2014-15, for pay progression compensation increases for ADAs. The recommendation provides funding to: (a) increase each prosecutor's compensation to the next highest pay progression step in 2013-14; and (b) provide a 10% increase in compensation for each ADA in 2014-15, except for ADAs in Brown, Jefferson, Outagamie, Ozaukee, and Winnebago Counties whose elected DAs requested funding for one pay progression step.

29. The provisions of the bill would further provide \$997,000 GPR in 2013-14, and \$1,978,600 GPR in 2014-15, to establish pay progression compensation increases for assistant state public defenders (ASPDs). Finally, AB 40 would also provide pay progression for assistant attorneys general (AAGs), but under the bill funding for AAG pay progression would come from DOJ base resources. The Department of Justice has indicated an intent to utilize \$625,000 in funding from the national mortgage settlement to fund pay progression for AAGs.

30. As pay progression under 2011 Act 238 for ADAs, and for ASPDs and AAGs under AB 40, is a commitment to move these attorneys from the minimum annual salary compensation available to attorneys (currently \$49,429), to the maximum available annual salary compensation for attorneys (currently \$119,471), pay progression would involve a substantial ongoing financial commitment on the part of the state. For example, pay progression as developed for ADAs is intended over a 10- to 17-year period to move the salaries of prosecutors from the minimum annual salary (currently \$49,429) to the maximum annual salary (currently \$119,471). The costs to provide this pay progression continue to build on prior year increases. Under AB 40, the annual costs to provide this pay progression increases from \$948,900 in 2013-14, to \$3,457,600 in 2014-15. It is estimated that, if only additional step increases were provided to prosecutors in 2015-17, the costs of pay progression would continue to increase to \$4,941,700 in 2015-16, and \$6,404,000 in 2016-17. The costs of pay progression for ADAs would be still higher than these estimates if, during 2015-17, the DA function budgeted for mostly 10% annual pay progression increases as was done for 2014-15.

31. The ultimate annual cost of pay progression would depend on turnover rates after implementation. Higher turnover rates would reduce this annual cost as more highly compensated attorneys would be replaced with lower compensated attorneys. It may be worth noting, however, that the intent of pay progression is to reduce turnover by increasing the annual compensation of

attorneys.

32. The value of individual attorneys to state agencies and DA offices increases with time of service. With experience, the ability of these attorneys to address an increased caseload improves, and the quality of representation that these attorneys can provide to the state and affected individuals also improves. In addition, when attorney turnover is reduced, state agencies and DA offices can minimize the resources that they must apply to the recruitment and training of new attorneys. Finally, in retaining quality staff, increased compensation can be a tangible way for state agencies and DA offices to indicate to their staff that they, and the work that they perform, is valued. For these reasons, the Committee could consider extending pay progression for ASPDs and AAGs under AB 40, as the Legislature did for ADAs under 2011 Act 238. [Alternative 1]

33. Available salary data for Wisconsin prosecutors and state public defenders when compared to salaries for prosecutors and public defenders in the East North Central region (Indiana, Illinois, Michigan, Ohio, and Wisconsin) indicates that Wisconsin prosecutors and public defenders with five years of experience are paid below the average and median salaries for these attorneys. To the extent that the Committee wished to adjust attorney compensation, the Committee could consider:

a. Deleting statutory provisions for a pay progression system for ADAs that requires pay progression compensation increases to be provided to ADAs until they have reached the highest annual salary available for attorneys in the state compensation plan;

b. Deleting statutory language under AB 40 for a pay progression system for ASPDs and AAGs that requires pay progression compensation increases be provided to these attorneys until they have reached the maximum annual salary available for attorneys in the state compensation plan;

c. Beginning with the first pay period that occurs on or after July 1, 2013, and with the first pay period that occurs on or after each succeeding July 1, increasing the hourly salary of an ADA, ASPD, or AAG by an hourly salary step, or part thereof, above the attorney's hourly salary on the immediately preceding June 30, provided that no pay progression compensation increases shall be provided to increase an attorney's hourly salary above pay Step 3 of the 17 step pay progression system modeled under 2011 Act 238; (the following additional funding would be provided for pay progression: (a) \$604,000 GPR in 2013-14, and \$1,216,500 GPR in 2014-15, to the DA function; and (b) \$683,400 GPR in 2013-14, and \$1,358,100 GPR in 2014-15, to the SPD); and

d. Directing OSER to modify any 2013-15 state compensation plan submitted to the Joint Committee on Employment Relations to reflect these provisions for pay progression for ADAs, ASPDs, and AAGs.

34. Under this alternative, recently hired ADAs, ASPDs, and AAGs would be provided pay progression salary increases to increase their annual compensation from \$49,429 annually (the minimum starting salary for an attorney) to \$57,668 annually. At this level of compensation, Wisconsin would be at or above the compensation provided to prosecutors and public defenders in the East North Central region. This alternative would reduce funding provided under the bill for

pay progression by: (a) \$344,900 GPR in 2013-14, and \$2,241,100 GPR in 2014-15 to the DA function; and (b) \$313,600 GPR in 2013-14, and \$620,500 GPR in 2014-15 to the SPD. [Alternative 2]

35. It is unclear to what extent annual salary compensation is playing a role in the decisions of attorneys to leave employment with DA offices and the SPD. As noted above, the ADA and ASPD separation rates have been in the range of separation rates for other state employee groups. It is possible that the more limited pay progression provisions created under Alternative 2 could improve attorney retention and avoid the significant fiscal effects that would be incurred under the Governor's provisions.

36. The Committee could also consider deleting pay progression for ADAs, ASPDs, and AAGs by: (a) deleting statutory pay progression provisions for ADAs; and (b) deleting the pay progression provisions for ADAs, ASPDs, and AAGs under AB 40. This alternative would delete: (a) funding provided to the SPD for pay progression by \$997,000 GPR in 2013-14, and \$1,978,600 GPR in 2014-15; and (b) funding provided to the DA function for pay progression by \$948,900 GPR in 2013-14, and \$3,457,600 GPR in 2014-15. [Alternative 3] Based on information provided by the 2012 NALP report, however, the SPD and DA functions might be disadvantaged under this alternative in retaining entry-level attorneys as they gain more experience and hit the five-year mark for service. In addition, the Legislature, through enactment of 2011 Act 238 has expressed its interest in having pay progression for the ADAs.

## **ALTERNATIVES**

1. Create a pay progression plan for assistant attorneys general (AAGs) and assistant state public defenders (ASPDs) that mirrors the pay progression plan created for assistant district attorneys (ADAs) under 2011 Act 238. Provide \$948,900 GPR in 2013-14 and \$3,457,600 GPR in 2014-15, for pay progression compensation increases for assistant district attorneys. Provide \$997,000 GPR in 2013-14, and \$1,978,600 GPR in 2014-15 to establish pay progression compensation increases for assistant state public defenders. [Under the Governor's recommendation, additional funding for pay progression for assistant attorneys general during 2013-15 would be provided by the Department of Justice from base resources.]

2. Modify the Governor's recommendation by: (a) deleting statutory provisions for a pay progression system for ADAs that requires pay progression compensation increases to be provided to ADAs until they have reached the highest annual salary available for attorneys in the state compensation plan; (b) deleting statutory language under AB 40 for a pay progression system for ASPDs and AAGs that requires pay progression compensation increases to be provided to ASPDs and AAGs until they have reached the highest annual salary available for attorneys in the state compensation plan; (c) beginning with the first pay period that occurs on or after July 1, 2013, and with the first pay period that occurs on or after each succeeding July 1, increasing the hourly salary of an ADA, ASPD, or AAGs by an hourly salary step, or part thereof, above the attorney's hourly salary on the immediately preceding June 30, provided that no pay progression compensation increases shall be provided to increase an attorney's hourly salary above pay Step 3 of the 17 step pay progression system modeled under 2011 Act 238; and (d) directing the Office of

State Employment Relations to amend any 2013-15 state compensation plan submitted to the Joint Committee on Employment Relations to reflect these provisions for pay progression for ADAs, ASPDs, and AAGs. Reduce funding for pay progression by: (a) \$344,900 GPR in 2013-14, and \$2,241,100 GPR in 2014-15 to the DA function; and (b) \$313,600 GPR in 2013-14, and \$620,500 GPR in 2014-15 to the SPD.

<b>ALT 2</b>	<b>Change to Bill</b>
	Funding
GPR	- \$3,520,100

3. Delete pay progression for ADAs, ASPDs, and AAGs by: (a) deleting statutory pay progression provisions for ADAs; and (b) deleting the pay progression provisions for ADAs, ASPDs, and AAGs under AB 40. Further, delete funding provided to the: (a) SPD for pay progression by \$997,000 GPR in 2013-14, and \$1,978,600 GPR in 2014-15; and (b) DA function for pay progression by \$948,900 GPR in 2013-14, and \$3,457,600 GPR in 2014-15.

<b>ALT 3</b>	<b>Change to Bill</b>
	Funding
GPR	- \$7,382,100

Prepared by: Paul Onsager  
Appendix

## APPENDIX

### Approved 2011-13 Pay Progression Provisions for Certain Classifications of State Employees

#### A. Annual Progression Adjustments (Comp Plan Section A - 2.03 & 2.08)

<u>Classification</u>	<u>Eligibility*</u>	<u>Amount (Per Hour)</u>	<u>Filled FTE</u>
Budget & Policy Analyst-Agency	once	\$1.20	15.0
Budget & Policy Analyst-Division	once	1.20	24.8
Crime Victims Claims Specialist	once	1.20	6.0
DMV Field Agent	once	1.40	0.0
DOA Program Specialist	once	1.20	2.0
Economist	once	1.20	5.0
Elections Specialist	once	1.20	15.0
Emergency Government Specialist	once	1.20	15.0
Employee Benefit Plan Policy Adv-Entry	once	1.20	0.0
Environmental Coordinator	once	1.20	3.0
Ethics Specialist	once	1.20	0.0
Grants Specialist	once	1.20	28.6
Health Care Rate Analyst	once	1.20	1.0
Human Services Program Coordinator	once	1.20	16.1
Institution Human Resources Director	once	1.20	5.0
Insurance Examiner	once	1.20	10.0
Loan Analyst	once	1.20	1.0
Lottery Customer Service Specialist	once	1.20	12.8
Natural Resources Bureau Data Coordinator	once	1.20	1.0
Natural Resources Financial Assistance Specialist	once	1.20	2.0
PECFA Program Specialist	once	1.20	0.0
Printing Technician	once	1.20	18.3
Public Defender Investigator	once	1.20	12.5
Public Utility Rate Analyst	once	1.20	0.0
Real Estate Specialist	once	1.20	14.0
Revenue Agent	once	1.20	61.2
Revenue Economist-Confidential	once	1.20	4.0
Revenue Field Agent	once	1.20	15.0
Technical Writer	once	1.20	0.0
Tourism Specialist Assistant	once	1.20	0.0
Trust Funds Specialist	once	1.20	33.0
University Benefits Specialist	once	1.20	19.5
UW Human Resources Manager	once	1.20	40.4
Workers Compensation Examiner	once	1.20	0.8
Accountant	twice	1.20	99.5

<u>Classification</u>	<u>Eligibility*</u>	<u>Amount (Per Hour)</u>	<u>Filled FTE</u>
Accountant-Confidential	twice	\$1.20	0.0
Agriculture Auditor	twice	1.20	1.0
Auditor	twice	1.20	26.0
Consumer Credit Examiner	twice	1.20	2.0
Equal Opportunity Program Specialist	twice	1.20	1.0
Equal Opportunity Specialist	twice	1.20	4.0
Executive Equal Opportunity Specialist	twice	1.20	0.0
Executive Human Resources Specialist	twice	1.20	3.0
Financial Examiner	twice	1.20	20.0
Fuel Tax & Registration Auditor	twice	1.20	5.0
Human Resources Specialist	twice	1.20	16.8
Insurance Financial Examiner	twice	1.50	14.0
IS Business Automation Analyst	twice	1.20	57.0
IS Comprehensive Services Professional	twice	1.20	31.9
IS Data Services Professional	twice	1.20	18.5
IS Network Services Professional	twice	1.20	69.0
IS Professional-Confidential	twice	1.20	3.8
IS Support Technician-Confidential	twice	1.20	0.0
IS Systems Development Services Professional	twice	1.20	23.0
IS Technical Services Professional	twice	1.20	75.9
Mortgage Banking Examiner	twice	1.20	0.0
Motor Vehicle Program Specialist-Senior	twice	1.20	1.5
Payroll & Benefits Specialist	twice	1.00	79.6
Program and Policy Analyst	twice	1.20	80.1
Public Utility Auditor	twice	1.20	0.0
Research Analyst	twice	1.20	11.3
Revenue Auditor	twice	1.20	47.0
Revenue Field Auditor	twice	1.20	28.0
Risk Management Specialist	twice	1.20	15.1
Securities Examiner	twice	1.20	3.0
University Grants and Contracts Specialist	twice	1.20	24.8
Urban and Regional Planner	twice	1.20	<u>15.0</u>
			1,158.5

\*Eligible on anniversary of adjusted continuous service date (except DMV field agent based on time-in class).

**B. Progression After 12 Months for Lettered Classifications (Comp Plan Section A - 2.05)**

<u>Classification</u>	<u>Eligibility</u>	<u>Amount (Per Hour)</u>	<u>Filled FTE</u>
Apprenticeship Training Representative (A)	once	\$1.55	0.0
Apprenticeship Training Representative (B)	once	1.60	3.0
Cadet Specialist (A)	once	1.50	3.0
Employment & Training Counselor (A)	once	1.50	1.0
Employment & Training Counselor (B)	once	1.55	1.0
Employment & Training Specialist (A)	once	1.50	65.0
Experiential Recreation Specialist (A)	once	1.50	0.0
Labor Market Analyst (A)	once	1.55	0.0
Labor Market Analyst (B)	once	1.60	0.0
Medigap Insurance Specialist (A)	once	1.50	1.0
Ombudsman Services Specialist (A)	once	1.55	0.0
Psychological Associate (A)	once	1.80	20.5
Psychological Services Assistant (A)	once	1.55	1.0
Recreation Leader (A)	once	1.50	5.0
Rehabilitation Case Manager (A)	once	1.55	1.0
Vocational Rehabilitation Counselor (A)	once	1.70	<u>10.0</u>
			111.5

**C. Progression After 18 Months for Lettered Classifications (Comp Plan Section A - 2.06)**

<u>Classification</u>	<u>Eligibility</u>	<u>Amount (Per Hour)</u>	<u>Filled FTE</u>
Offender Classification Specialist (A)	once	\$1.63	9.0
Probation & Parole Agent (A)	once	1.66	69.0
Probation & Parole Agent (B)	once	2.86	38.5
Social Worker-Corrections (A)	once	1.66	1.0
Social Worker-Corrections (B)	once	2.86	<u>48.5</u>
			166.0

**D. Excise Tax Agents, Special Agents and Criminal Analysts (Comp Plan Section A - 2.04)**

<u>Classification</u>	<u>Eligibility**</u>	<u>Amount (Per Hour)</u>	<u>Filled FTE</u>
Criminal Analyst	3 steps	\$1.28	4.0
Excise Tax Agent	3 steps	1.45	3.0
Special Agent	3 steps	1.45	16.0
Criminal Analyst-Senior	4 steps	1.28	9.0
Excise Tax Agent-Senior	4 steps	1.22	6.0
Special Agent-Senior	4 steps	1.22	<u>58.0</u>
			96.0

\*Eligible on anniversary date of start in classification series.

**E. Engineering and Science Progressions (Comp Plan Section A - 2.07)**

<u>Classification</u>	<u>Eligibility</u>	<u>Amount (Per Hour)</u>	<u>Filled FTE</u>
Construction Representative	3 steps	~\$1.15	0.0
Facility Designer	3 steps	~1.15	0.0
Hydrogeologist	3 steps	~1.60	4.0
CADD Specialist	5 steps	~1.03	2.0
Engineering Specialist	5 steps	~1.03	1.0
Environmental Engineering Specialist	5 steps	~1.03	0.0
Radiation Engineering Specialist	5 steps	~1.03	0.0
Surveyor	5 steps	~1.03	0.0
Agricultural Engineer	5 steps	~0.81	0.0
Air Management Engineer	5 steps	~0.81	4.0
Architect	5 steps	~0.81	0.0
Civil Engineer	5 steps	~0.81	0.0
Civil Engineer-Transportation	5 steps	~0.81	124.0
Communications Engineer	5 steps	~0.81	0.0
Electrical Engineer	5 steps	~0.81	0.0
Electronic Engineer	5 steps	~0.81	0.0
Engineering Consultant-Building Systems	5 steps	~0.81	0.0
Engineering Consultant-Electrical Systems	5 steps	~0.81	0.0
Engineering Consultant-Fire Suppr Systems	5 steps	~0.81	0.0
Engineering Consultant-HVAC	5 steps	~0.81	0.0
Engineering Consultant-Plumbing Prod Rev	5 steps	~0.81	0.0
Engineering Consultant-Refrig Systems	5 steps	~0.81	0.0
Engineering Consultant-Uniform Dwelling	5 steps	~0.81	0.0
Environmental Civil Engineer	5 steps	~0.81	0.0
Landscape Architect	5 steps	~0.81	0.0
Mechanical Engineer	5 steps	~0.81	0.0
Natural Resources Engineer	5 steps	~0.81	1.0
Nuclear Engineer	5 steps	~0.81	5.0
Preservation Architect	5 steps	~0.81	0.0
Public Service Engineer	5 steps	~0.81	2.0
Waste Management Engineer	5 steps	~0.81	0.0
Wastewater Engineer	5 steps	~0.81	3.0
Water Reg & Zoning Engineer	5 steps	~0.81	2.0
Water Resources Engineer	5 steps	~0.81	0.0
Water Supply Engineer	5 steps	~0.81	0.0
Agricultural Marketing Consultant	5 steps	~0.91	0.0
Air Management Specialist	5 steps	~0.91	6.0
Chemist	5 steps	~0.91	11.0
Conservation Biologist	5 steps	~0.91	0.0
Controlled Substance Analyst	5 steps	~0.91	3.0

<u>Classification</u>	<u>Eligibility</u>	<u>Amount (Per Hour)</u>	<u>Filled FTE</u>
Cytotechnologist	5 steps	~\$0.91	0.0
DNA Analyst	5 steps	~0.91	22.0
Environmental Analysis & Rev Specialist	5 steps	~0.91	9.0
Environmental Enforcement Specialist	5 steps	~0.91	1.0
Environmental Health Specialist	5 steps	~0.91	5.0
Environmental Toxicologist	5 steps	~0.91	1.0
Examiner of Questioned Documents	5 steps	~0.91	0.0
Fingerprint & Footwear Examiner	5 steps	~0.91	6.0
Firearms & Toolmark Examiner	5 steps	~0.91	0.0
Fisheries Biologist	5 steps	~0.91	0.0
Food & Dairy Sanitarian	5 steps	~0.91	5.0
Forensic Imaging Specialist	5 steps	~0.91	0.0
Forester	5 steps	~0.91	18.0
Health Physicist	5 steps	~0.91	3.0
Medical Technologist	5 steps	~0.91	1.0
Microbiologist	5 steps	~0.91	19.5
Natural Resources Educator	5 steps	~0.91	0.0
Natural Resources Research Scientist	5 steps	~0.91	0.0
Parks & Recreation Specialist	5 steps	~0.91	1.0
Plant Pest & Disease Specialist	5 steps	~0.91	2.6
Public Health Sanitarian	5 steps	~0.91	2.0
Toxicologist	5 steps	~0.91	0.0
Trace Evidence Examiner	5 steps	~0.91	0.0
Waste Management Specialist	5 steps	~0.91	2.0
Wastewater Specialist	5 steps	~0.91	5.0
Water Regulation & Zoning Specialist	5 steps	~0.91	1.0
Water Resources Management Specialist	5 steps	~0.91	3.0
Water Supply Specialist	5 steps	~0.91	2.0
Wildlife Biologist	5 steps	~0.91	0.0
			<u>277.1</u>
Grand Total - All non-attorney FTE positions eligible for pay progression:			1,809.1