



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #413

### Convert Annual Program Revenue Appropriations to Continuing (Justice)

[LFB 2017-19 Budget Summary: Page 272, #14]

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#### CURRENT LAW

The following three appropriations are annual program revenue appropriations. As annual appropriations, the Department of Justice (DOJ) may not spend more than what is appropriated by the Legislature from each appropriation in a given fiscal year.

*Administrative Services Interagency and Intra-agency Assistance.* The appropriation may be utilized to provide administrative services to state agencies. The appropriation may collect monies received from within DOJ as well as payments from other state agencies for providing administrative services. The appropriation does not have any expenditure authority.

*Law Enforcement Services Sobriety Program.* The appropriation may be utilized to support DOJ's costs associated with analyzing data and preparing reports on 24/7 sobriety projects establish under the 24/7 sobriety pilot program. The pilot program was created under 2015 Act 55. Under the pilot program, DOJ is authorized to designate up to five counties to participate in a 24/7 sobriety program that is intended to provide a high level of monitoring to participants convicted of multiple operating while intoxicated (OWI) offenses to ensure that the participants are not consuming alcohol or controlled substances, with immediate sanctions if a violation occurs. Revenue for the appropriation may be generated from agreements between DOJ and participating counties that require the county to provide DOJ a portion of the fees the county collects from participants to operate the 24/7 sobriety project. The sobriety program appropriation does not have any expenditure authority.

*Law Enforcement Services Terminal Charges.* The terminal charges appropriation is utilized to support the Wisconsin transaction information for the management of enforcement (TIME) system. The TIME system provides law enforcement agencies across the state access to a variety of law enforcement-related databases. Current law authorizes DOJ to charge law

enforcement agencies for rentals, use of terminals, and related costs and services associated with the TIME system. These charges are credited to the terminal charges appropriation. Base funding and position authority for the appropriation is \$2,463,400 PR and 6.25 PR positions.

## **GOVERNOR**

Convert the interagency and intra-agency assistance appropriation, the sobriety program appropriation, and the terminal charges appropriation, from annual appropriations to continuing appropriations. As continuing appropriations, the Department would be authorized to spend any available cash balances credited to each appropriation regardless of appropriated levels authorized by the Legislature.

## **DISCUSSION POINTS**

1. The Governor recommends converting three annual PR appropriations within DOJ to continuing appropriations. Generally, converting a PR appropriation from annual to continuing provides an agency more flexibility in managing its resources, since the agency may spend amounts based on available cash balances in the appropriation. This could allow an agency to more effectively manage a given program. On the other hand, converting a PR appropriation from annual to continuing could also generally be viewed as a loss of legislative authority over agency expenditure levels. With continuing appropriations, agencies are authorized to spend beyond appropriation levels approved by the Legislature.

2. The remainder of this paper discusses the three annual PR appropriations the Governor's proposes for conversion to continuing status, and identifies alternatives that are specific to the individual appropriation.

### **A. Administrative Services Interagency and Intra-agency Assistance**

3. The Department's interagency and intra-agency assistance appropriation is authorized to support administrative services to state agencies. The appropriation may collect monies received from within DOJ as well as payments from other state agencies for providing administrative services. Since this appropriation does not have any expenditure authority, DOJ does not currently utilize this appropriation.

4. The Department currently allocates costs for administrative services, such as information technology projects, by directly charging those expenditures to appropriations that support programs that utilize the relevant administrative service. According to DOJ, "This makes it difficult for managers, auditors and budget analysts to determine the nature of the costs charges (personnel, equipment, supplies), the total pool of costs and the allocation that occurred without reviewing separate source documentation."

5. Rather than utilize its current method for allocating administrative service expenditures, DOJ would like to centralize these expenditures in its interagency and intra-agency assistance appropriation. If the appropriation were made continuing, DOJ would assess individual

programs within DOJ and other state agencies for these administrative services, and then make all expenditures from the interagency appropriation. In recognition of the Department's difficulty with managing administrative service costs under the current appropriation structure, the Committee could approve the Governor's recommendation to convert the interagency and interagency assistance appropriation to continuing [Alternative A1.]

6. On the other hand, since DOJ does not utilize the appropriation, the Committee could delete the appropriation [Alternative A2]. The appropriation was created under 1991 Act 91 (the 1991-93 biennial budget) in order to create similar interagency and intra-agency assistance appropriations in several programmatic sections of DOJ's appropriation schedule. However, since its creation, the administrative services interagency and intra-agency assistance appropriation has not been utilized by DOJ because it does not have any expenditure authority. Therefore, one could question the need for the appropriation. If the appropriation is deleted, DOJ could continue to manage its administrative service expenditures in a similar manner to its current practice.

7. Alternatively, the Committee could maintain current law and retain the appropriation as an annual appropriation [Alternative A3]. Under this alternative, if the Department desired to utilize the appropriation in the future, DOJ could request that the Committee increase the expenditure authority of the appropriation under s. 16.515 of the statutes. If such an increase is granted, the Committee would retain oversight over DOJ expenditure levels since the appropriation would be an annual appropriation.

#### **B. Law Enforcement Services Sobriety Program**

8. Under 2015 Act 55, the Legislature established the 24/7 sobriety program pilot project that is set to sunset after June 30, 2021. Under the program, DOJ is authorized to designate up to five counties to participate in a 24/7 sobriety program that is intended to provide a high level of monitoring to participants convicted of multiple OWI offenses to ensure that the participants are not consuming alcohol or other drugs, with immediate sanctions if a violation occurs. Generally, the 24/7 sobriety program requires participants to be tested for the use of alcohol at least twice daily, or for the use of a controlled substance as frequently as practicable. In June, 2016, DOJ designated the following five counties for the pilot program: (a) Racine; (b) Manitowoc; (c) Oneida; (d) Washburn; and (e) Green Lake.

9. Act 55 created an annual PR appropriation within DOJ for the 24/7 sobriety program with no expenditure authority. The appropriation is authorized to receive revenue from agreements between DOJ and participating counties that require the county to provide DOJ a portion of the fees the county collects from participants to operate the 24/7 sobriety project. Revenue from the agreements may be utilized by DOJ to analyze program data provided by the participating counties and to prepare reports on the program for submission to the Legislature. Act 55 requires DOJ to prepare annual reports on the program beginning January 15, 2017, and annually thereafter until January 15, 2021. The reports are required to include the following information: (a) a list of counties designated by DOJ to participate in the pilot program; (b) the number of participants in each county's project; (c) a description of each county's project; and (d) the recidivism rates for participants in each county's project.

10. As of April, 2017, the five counties designated for the pilot program were in the process of developing their projects and have not started operations. According to DOJ, the counties had to delay the implementation of their projects while contracts were established with a vendor that could supply software to allow the counties to track participants' adherence to sobriety requirements. The Department is currently in the process of working with each county on establishing a timeline to implement their programs.

11. On April 6, 2017, the Committee received an s. 16.515 request from the Department of Administration, on behalf of DOJ, to increase the expenditure authority of DOJ's sobriety program appropriation by \$110,500 PR in 2016-17 only. Funding under DOJ's request was comprised of \$58,400 for annual licensing and system costs for software utilized by the counties (and managed by DOJ) to support the pilot programs, \$29,600 for personnel costs (including salaries, fringe benefits, and travel expenses), \$15,000 for supplies and services, and \$7,500 for one-time training and software modification costs. Program revenue for these costs will be supported by DOJ's assessments to counties, who will, in turn, assess program participants. On April 26, 2017, the Finance Committee approved the s. 16.515 request.

12. Once the county pilot projects are implemented, revenue received by DOJ's appropriation will vary on an annual basis based on the agreements DOJ establishes with the counties as well as program participation rates. Due to this variability, one could argue that the appropriation should be made continuing so that DOJ would have flexibility in managing expenditures from the appropriation based on available revenue [Alternative B1]. Further, by making the appropriation continuing, DOJ could immediately utilize revenue received from its agreements with participating counties to analyze the program.

13. On the other hand, given that the program was recently enacted, the Committee may wish to keep this appropriation as an annual appropriation so that the Legislature may retain oversight over DOJ's administration of the pilot program [Alternative B2]. Further, limiting the amount of funding DOJ may spend from the sobriety program appropriation could limit the amount of funding that DOJ would assess to counties participating in the program. If the appropriation remains as an annual appropriation, DOJ could request additional expenditure authority in the appropriation under s. 16.515 of the statutes once more information is available on the amount of revenue DOJ will receive in the appropriation as well as the costs DOJ will incur while analyzing the program.

14. The Committee may also wish to increase DOJ's expenditure authority in the appropriation, while still maintaining the appropriation as an annual appropriation. This could allow DOJ to expend funds received from counties in order to implement the program, while still allowing the Legislature to retain some oversight over DOJ spending levels. As noted above, on April 26, 2017, the Finance Committee approved a one-time expenditure authority increase of \$110,500 PR in 2016-17 under s. 16.515 of the statutes. Of this amount, \$7,500 PR was associated with one-time training and software modification costs. Therefore, the Committee could maintain the sobriety program appropriation as an annual appropriation, and increase its expenditure authority by \$103,000 PR annually [Alternative B3]. This alternative would increase funding under the bill by \$103,000 PR annually.

### **C. Law Enforcement Services Terminal Charges**

15. The Department administers the TIME system to provide law enforcement agencies across the state access to a variety of law enforcement-related databases. The TIME system provides law enforcement agencies access to the following information: (a) state and national wanted, missing, and unidentified persons; (b) stolen motor vehicles; (c) identifiable stolen property; (d) driver and vehicle registration files; (e) state and national criminal history information; (f) the sex offender registry maintained by the Department of Corrections; (g) persons subject to protection orders; and (h) other information of interest to law enforcement for officer safety. As of the beginning of 2016-17, the TIME system consists of 10,619 workstations located in 690 local, state, and federal law enforcement agencies in Wisconsin. Of these 10,619 workstations, 3,684 terminals are mobile units that provide information directly to the patrol officer. In addition to these physical workstations, limited, read-only access to the TIME system may also be accessed by law enforcement officers from a standard device with Internet access using an Internet browser.

16. The Department is authorized to assess fees to law enforcement agencies for the costs of terminal rental, usage, and related services to support the operation of the TIME system. These fees are collected in DOJ's terminal charges annual PR appropriation. The fee structure for the TIME system is established by the TIME Advisory Committee, which is comprised of members of various state and local law enforcement organizations. The current fee structure has been in place since 2010. Under the current structure, law enforcement agencies that are not federal agencies, the courts, the Department of Corrections, and District Attorney Offices are assessed \$50 per month for access to the TIME system. Courts and federal agencies are charged \$100 per month for TIME system access, while the Department of Corrections and District Attorney Offices are charged \$6,000 per month for access. In addition, TIME system users are charged \$3.50 per month for each certified officer in the law enforcement agency, with a minimum annual support fee assessment of \$168 per year. Finally, law enforcement agencies are charged \$620 per month to connect to the TIME system through BadgerNet, the statewide network managed by the Department of Administration.

17. Base funding and position authority for the appropriation is \$2,463,400 PR and 6.25 PR positions. The table below identifies TIME system revenue and expenditures from the appropriation from 2011-12 through 2015-16. During this time period, annual expenditures have totaled, on average, \$1,866,100 annually. Further, expenditures have been consistently below the expenditure authority for the appropriation. Finally, as a result of annual revenue exceeding expenditures, a balance has accrued in the appropriation. The Department estimates that it will conclude 2016-17 with an unencumbered balance of \$1,713,500 in the appropriation.

**Revenue and Expenditures from the Terminal Charges  
Appropriation, 2011-12 through 2015-16**

<u>Fiscal Year</u>	<u>Revenue</u>	<u>Expenditures*</u>
2011-12	\$2,396,700	\$1,848,400
2012-13	2,319,100	1,961,900
2013-14	2,150,500	1,940,200
2014-15	2,356,000	1,789,800
2015-16	2,256,900	1,790,300

\*Expenditure amounts include year-end encumbrances.

18. The Department has accrued a balance in the terminal charges appropriation over several fiscal years in order to fund updates and functionality improvements to the TIME system without having to implement substantial changes in the fees charged to law enforcement agencies. System updates and upgrades are implemented as needed, and the costs may vary.

19. Due to the variation in the timing and cost of system upgrades, DOJ would like the terminal charges appropriation to be converted to a continuing appropriation so that it could have more flexibility in managing its expenditure of TIME system fees. The Department would also like the appropriation to be converted to continuing so that it could utilize the appropriation's existing balance to support modifications to the system that have been recommended by the TIME Advisory Committee. These system modifications include: (a) upgrading the authentication process for user access (user ID and password) as well as the ability of local law enforcement agencies to manage user access within their agency; (b) upgrading the storage capacity and functionality of the automated fingerprint identification system; (c) adding access to information on pardons, expungement, and other records to the TIME system; and (d) updating software licenses and implementing other technical updates to the TIME system. Based on these considerations, the Committee could approve the Governor's recommendation and convert the terminal charges appropriation to a continuing appropriation [Alternative C1].

20. On the other hand, the Committee could maintain current law [Alternative C2]. As discussed above, average annual expenditures from the appropriation (\$1,866,100) have been less than the appropriation's annual expenditure authority (\$2,463,400) by \$597,300 annually. Therefore, it could be argued that DOJ may be able to utilize its existing expenditure authority for the appropriation to manage ongoing costs for the TIME system as well as upgrades to the system. To the extent that DOJ is unable to support upgrades to the system, the Department could request that the Finance Committee increase the expenditure authority of the appropriation under s. 16.515 of the statutes. At that time, funding could be provided on a one-time basis to support the one-time costs of the system upgrades. Further, maintaining the annual status of the appropriation would allow the Legislature to retain oversight over the Department's expenditures.

21. In addition to maintaining the annual status of the appropriation, the Committee could also reduce the expenditure authority of the appropriation in order to more closely reflect average expenditures from the appropriation [Alternative C3]. Under this alternative, the expenditure authority of the appropriation would be reduced from \$2,463,400 PR annually to \$2,000,000 PR annually. Such a reduction would more closely align appropriated levels with DOJ's average

expenditures in recent years, while still providing DOJ a greater level of expenditure authority than it has utilized over the past five fiscal years. As noted above, if DOJ requires additional expenditure authority at a later date to support system upgrades for the TIME system, the Department could request an expenditure authority increase under s. 16.515. This alternative would reduce funding under the bill as well as DOJ's base budget by \$463,400 PR annually.

**ALTERNATIVES**

**A. Administrative Services Interagency and Intra-agency Assistance**

1. Include the Governor's recommendation to convert the administrative services interagency and intra-agency assistance appropriation from an annual appropriation to a continuing appropriation.
2. Delete the administrative services interagency and intra-agency assistance annual PR appropriation.
3. Maintain current law.

**B. Law Enforcement Services Sobriety Program**

1. Include the Governor's recommendation to convert the law enforcement services sobriety program appropriation from an annual appropriation to a continuing appropriation.
2. Maintain current law.
3. Retain the sobriety program appropriation as an annual appropriation, and increase the annual expenditure authority of the sobriety program appropriation by \$103,000 PR annually.

ALT B3	Change to	
	Base	Bill
PR	\$206,000	\$206,000

**C. Law Enforcement Services Terminal Charges**

1. Include the Governor's recommendation to convert the law enforcement services terminal charges appropriation from an annual appropriation to a continuing appropriation.
2. Maintain current law.
3. Retain the terminal charges appropriation as an annual appropriation, and reduce the annual expenditure authority of the terminal charges appropriation by \$463,400 PR annually.

ALT C3	Change to	
	Base	Bill
PR	- \$926,800	- \$926,800

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