



Legislative Fiscal Bureau

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2017

Joint Committee on Finance

Paper #487

Court Transcripts, Discovery, and Interpreter Funding (Public Defender)

[LFB 2017-19 Budget Summary: Page 340, #4]

CURRENT LAW

In addition to the United States Constitution and the Wisconsin Constitution provide the right to counsel for individuals accused of a crime, defendants have a constitutional right to "discovery"; that is, the disclosure of the prosecutor's evidence. This constitutional right is incorporated in the Wisconsin Constitution and in statute in s. 971.23. Prosecutors comply with this discovery obligation by making available copies of reports, recordings, and other pertinent investigative materials. Counties and other parties may charge the SPD for copying costs incurred in providing these materials. Base funding for the transcripts, discovery, and interpreters appropriation is \$1,325,700 GPR.

GOVERNOR

Provide \$81,800 GPR annually to support payments for transcripts, discovery, and interpreters.

Modify current law to no longer allow compensation of a court reporter or clerk of circuit court for the cost of "handling" transcripts or court records.

DISCUSSION POINTS

1. The cost of providing counsel to the indigent in Wisconsin is generally the responsibility of the state through the SPD. The Office is primarily funded through general purpose revenue, which is utilized to support trial and appellate staff attorneys as well as reimbursements to private bar attorneys who are assigned indigent legal defense cases. In order to provide

representation for indigent clients, the SPD has both a trial division and an appellate division. The trial division is comprised of 36 local trial offices located throughout Wisconsin, while the appellate division is comprised of two appellate offices, located in Madison and Milwaukee.

2. The SPD is responsible for the cost of transcripts of court proceedings that SPD staff and private bar attorneys request from the courts, for copying costs incurred by counties and other parties to provide SPD attorneys with discovery materials, and for the cost of interpreters needed for attorney-client communication and other case preparation (the courts are responsible for the costs of in-court interpreters). Discovery may include video and audio recordings. The SPD experienced an increase in payments for video recordings since 2004-05 due in part to 2005 Wisconsin Act 60 which codified requirements that law enforcement agencies make an audio or (audio/visual) recording of a custodial interrogation of a juvenile who is suspected of committing a crime if the interrogation is conducted at a place of detention. It also required law enforcement agencies to make a recording, if feasible, of a custodial interrogation of a juvenile suspected of committing a crime if the interrogation is conducted at a place other than a place of detention with some exceptions. Further, 2005 Act 60 provided that custodial interrogations of adult felony defendants should be recorded and admitted into evidence at trial, and that, barring good cause not to do so, the judge may instruct the jury that they may consider the absence of a recording when weighing the evidence. Squad car recordings and security camera recordings also contribute to the increased costs in this appropriation. Recordings may also entail transcription costs because of the need to present the court with an accurate record of the recorded statement, interrogation, or other conversation.

3. Discovery may further include transcripts. The need for transcripts is a function of the number of type of cases appointed, their complexity, the number and duration of court appearances and trials, and the number of cases in which defendants seek post-conviction (appellate) representation from SPD. In addition, transcript requests have become more numerous and complex as more items have become electronic such as video surveillance, audio and video recordings and interrogations. Audio and video files take significant time to transcribe since people may talk at the same time or the quality of the audio and video increases the difficulty of an accurate transcription. The SPD indicates that it has measures in place to reduce the cost of transcripts, such as reviewing transcript expenditures on a monthly basis to identify higher than average expenditure levels and then making sure the expenditure was appropriate.

4. Like transcripts, interpreter payments are driven by the number of cases appointed. Interpreters may be needed to aid collection of discovery and in order for the defendant to assist in their defense. The SPD indicates the agency has attempted to mitigate costs for interpreters through language line services. However, that option is not always available when meetings or interviews occur in jails, courthouses, and other non-office settings. The SPD indicates that interpreter costs have increased in general, an example being increased funding to the Courts last biennium to help offset these increasing costs.

5. All counties bill the SPD for discovery. Discovery payments from this appropriation are driven by the number of cases appointed. In addition, the SPD incurs interest costs on payments made after thirty days, which happened in 2003-2004 and 2013-14. Total appropriated funding, expenditures, and the difference between appropriations and expenditures for each year since 2001-

02 are shown in the table below. The SPD indicates that it has either allowable transferred expenditures to other appropriations in order to prevent accumulating a deficit, or carried obligations into the next fiscal year.

Transcript, Interpreter, and Discovery Total Funding 2001-02 to 2015-16

<u>Fiscal Year</u>	<u>Appropriated</u>	<u>Expended</u>	<u>Difference</u>
2001-02	\$1,339,100	\$1,365,781	-\$26,681
2002-03	1,339,100	1,449,304	-110,204
2003-04	1,339,100	1,595,480	-256,380
2004-05	1,339,100	1,966,968	-627,868
2005-06	1,339,100	1,761,832	-422,732
2006-07	1,339,100	1,644,047	-304,947
2007-08	1,339,100	1,775,960	-436,860
2008-09	1,339,100	1,844,328	-505,228
2009-10	1,325,700	1,963,371	-637,671
2010-11	1,325,700	2,084,068	-758,368
2011-12	1,325,700	2,098,427	-772,727
2012-13	1,325,700	2,013,207	-687,507
2013-14	1,325,700	2,279,247	-953,547
2014-15	1,325,700	2,429,151	-1,103,451
2015-16	1,325,700	2,406,052	-1,080,352

6. In 2015-16, the SPD incurred a total of \$2,406,100 in transcript, discovery, and interpreter costs. The SPD indicates that a deficit is not expected in this biennium, because of higher than average employee turnover and, thus, the allowable expenditures were addressed through reallocation. The following table shows the expenses for transcripts, discovery, and interpreters, the amount appropriated, and the difference between the amount appropriated and expenses.

2015-16 Expenses for Transcripts, Discovery, and Interpreters

Transcript Payments	\$1,465,460
Discovery Payments	858,834
Interpreter Payments	<u>81,759</u>
Total Expenses	\$2,406,052
2017 Base Funding	<u>\$1,325,700</u>
Difference	\$1,080,352

7. The Department of Administration indicates that the recommendation of \$81,800 GPR annually is based on the amount the SPD would need in order to fully fund interpreter expenses based on 2015-16. In addition, the administration recommends consolidating SPD appropriations (providing a block grant) in order to give the SPD more flexibility to transfer funding between what are currently separate appropriations. The administration indicates that this flexibility would ease the transfer of funds from one area of the agency to transcripts, discovery, and interpreter expenses. Base resources for the consolidated SPD general operations appropriation would be \$84,620,300 GPR and \$1,348,200 PR, with 614.85 GPR positions and 5.0 PR positions.

[This issue is addressed in a separate issue paper.] Given these considerations, the Committee may wish to approve the Governor's recommendation. [Alternative A1] As a result of this alternative, an increase of \$81,800 GPR annually would be provided to support payments for transcripts, discovery, and interpreters.

8. The SPD has reallocated expenditures from other appropriations to fund transcripts, discovery, and interpreters since 2001-02. As indicated in the above table, the use of reallocated expenses has continued to increase over the period. While the SPD has reallocated expenditures to balance agency appropriations, these reallocations have, at least in part, resulted in less funding being available for other agency activities. Given these considerations, the Committee could provide funding based on 2015-16 expenses for transcripts, discovery, and interpreters. [Alternative A2] As a result, an additional \$1,080,400 GPR annually would be provided to support payments for transcripts, discovery, and interpreters [a change of \$998,600 GPR annually to the bill]. This is the amount that the SPD requested in its 2017-19 budget submission.

9. In view of the flexibility to move allowable transcript expenses to other appropriations with available funds but also acknowledging shortfalls in prior years, the Committee may determine a different amount for transcript, discovery, and interpreter funding may be appropriate. If, for example, half the difference between 2015-16 appropriation and expenditures were provided, increased funding of \$540,200 GPR annually could be provided. [Alternative A3] Under this alternative, the SPD could directly fund a larger portion of the costs of transcripts, discovery, and interpreters, but may still need to reallocate expenses in order to address additional costs in this appropriation.

10. Under their current authority, the SPD and the administration have reallocated expenses in the past for transcript, discovery, and interpreter expenses. Given this, the current level of funding is appropriate. As such the current level of funding to the transcripts, discovery, and interpreter appropriation could be maintained. [Alternative A4]

11. Finally, court reporters and clerks can currently charge the SPD for preparing, handling, duplicating, and mailing documents to SPD staff or private bar attorneys. The Governor recommends modifying current law to no longer allow compensation of a court reporter or clerk of circuit court for the cost of "handling" transcripts or court records. The Department of Administration indicates this provision was included, because the SPD requested the change in wording in a prior biennium. The Public Defender has indicated that court reporters and clerks of court have charged less than \$50 annually under the "handling" wording of current law. The Committee may wish to adopt the Governor's recommendation to remove the "handling" wording of current law since "handling" currently has a minimal fiscal effect on SPD operations. [Alternative B1]

12. On the other hand, the Committee may wish to maintain the "handling" wording of current law, as this wording has been in existence since 1993 Act 16 and recently has had minimal effect on operations of the SPD. Retaining the statutory provision would continue to allow Clerks of Court and court reporters to charge a handling fee if, in the future, such costs were necessary. [Alternative B2]

13. The SPD requested this change in its 2015-17 budget request. However, the Governor

did not include this requested change in his 2015-17 budget recommendations. The SPD did not request this change in its 2017-19 budget request.

ALTERNATIVES

A. Funding

1. Approve the Governor's recommendation to provide \$81,800 GPR annually to support payments for transcripts, discovery, and interpreters.

ALT A1	Change to	
	Base	Bill
GPR	\$163,600	\$0

2. Provide an increase of \$1,080,400 GPR annually based on actual expenditures in 2015-16 for transcript, discovery and interpreter costs.

ALT A2	Change to	
	Base	Bill
GPR	\$2,160,800	\$1,997,200

3. Provide an increase of \$540,200 GPR annually for transcript, discovery and interpreter costs.

ALT A3	Change to	
	Base	Bill
GPR	\$1,080,400	\$916,800

4. Delete funding and maintain funding related to payments for transcripts, discovery, and interpreters.

ALT A4	Change to	
	Base	Bill
GPR	\$0	-\$163,600

B. Handling Costs

1. Approve the Governor's provision to modify current law to no longer allow compensation of a court reporter or clerk of circuit court for the cost of "handling" transcripts or court records.

2. Maintain current law related to compensation of a court reporter or clerk of circuit court for the cost of "handling" transcripts or court records.

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