



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #271

### **Additional Assistant District Attorney Positions (District Attorneys)**

[LFB 2021-23 Budget Summary: Page 160, #3]

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#### **CURRENT LAW**

Prior to January 1, 1990, District Attorneys (DAs), assistant district attorneys (ADAs), and deputy district attorneys (DDAs) were county employees. Under 1989 Act 31, prosecutors became state employees on January 1, 1990. As a result, the state currently supports the costs of prosecutors' salaries and fringe benefits. These costs are primarily supported by the District Attorneys' salaries and fringe benefits annual GPR appropriation [s. 20.475(1)(d)]. Other costs associated with the operations of the District Attorney offices (such as support personnel and office supplies) are supported directly by the county.

On the date of transition to state service, 332.05 prosecution positions became state employees. In the base, 493.5 prosecutor positions were authorized, including 449 funded from general purpose revenue and 44.5 funded from program revenue. Of the 493.5 prosecutors statewide, 70 are elected DAs, 26 are Deputy DAs, and the remaining 401.9 are ADAs. Base salary and fringe benefit funding for DAs, ADAs, and deputy DAs in 2020-21 is \$51,022,700 GPR and \$3,882,500 PR.

#### **DISCUSSION POINTS**

1. In addition to GPR, local and federal grants are utilized to support program revenue positions in certain prosecutorial units. Prosecutorial units typically receive these grants directly, and utilize the funding to reimburse the state for the costs of the prosecutors' salaries and fringe benefits. [Each county is its own prosecutorial unit, except Shawano and Menominee Counties which form one prosecutorial unit.] The state receives these reimbursement payments in the District Attorneys' gifts and grants annual PR appropriation.

2. Note that the number of PR-funded prosecutor positions changes throughout the year as position authority for certain grant-funded project positions expires and position authority for new grant-funded positions is authorized by the Joint Committee on Finance under s. 16.505 of the statutes.

3. Of the 44.5 PR prosecutor positions for the District Attorney function, 42.5 PR positions are funded from various local and federal grants. One of the remaining PR positions (assigned to the Milwaukee County DA office) is supported by state revenue from the crime laboratory and drug law enforcement surcharge and DNA surcharge. While this prosecutor position is assigned to Milwaukee County, the position acts as a statewide DNA evidence prosecutor position. In addition, the other PR-supported ADA position is a sex predator prosecutor position in Brown which serves approximately 20 other DA offices.

4. Of the 42.5 PR positions funded from various local and federal grants, 3.0 PR positions are supported by grants from the corresponding county. These 3.0 PR positions are identified below in Table 1. Note that the grant-funded positions identified in the table are those positions for which a grant is provided directly from a county agency. Additional grant-funded positions may be supported by federal grants for which the county provides a match requirement or grants from other agencies for which the county provides indirect support. Further, positions supported by grants that only "pass through" the county are not included in Table 1.

**TABLE 1**

**Program Revenue Funded Prosecutor Positions Supported by County Grants**

<u>DA Office</u>	<u>FTE</u>	<u>Grant Funding Source(s)</u>
Dane	1.0	Dane County Narcotics Task Force
Fond du Lac	1.0	Fond du Lac County Board
Waukesha	1.0	Waukesha County Drug Enforcement Grant

5. Under 2019 Act 9, \$3,581,900 GPR in 2019-20 and \$4,794,900 GPR in 2020-21 and 61.46 additional prosecutor positions were provided. These positions were allocated to 56 counties as directed by the Governor. Table 2 shows the distribution of these additional positions as passed by the Legislature (Enrolled Assembly Bill 56), as modified by the Governor through veto (2019 Act 9), and total additional positions, by county.

**TABLE 2****Prosecutor Positions Provided by 2019 Act 9**

<u>County</u>	<u>Enrolled AB 56</u>	<u>2019 Act 9 Governor Veto</u>	<u>Total Additional</u>	<u>County</u>	<u>Enrolled AB 56</u>	<u>2019 Act 9 Governor Veto</u>	<u>Total Additional</u>
Adams	0.80	0.00	0.80	Marinette	0.40	0.00	0.40
Ashland	0.60	0.00	0.60	Marquette	0.60	0.00	0.60
Barron	1.00	0.00	1.00	Milwaukee	0.00	3.00	3.00
Bayfield	0.60	0.10	0.70	Monroe	2.00	-1.00	1.00
Brown	3.00	0.00	3.00	Outagamie	2.00	0.00	2.00
Buffalo <sup>1</sup>	0.20	0.00	0.20	Ozaukee	1.70	-0.10	1.60
Burnett	0.75	0.00	0.75	Pierce	0.50	0.00	0.50
Calumet	1.00	0.00	1.00	Polk	1.00	0.00	1.00
Chippewa	1.00	0.00	1.00	Portage	2.00	0.00	2.00
Columbia	1.25	-1.00	0.25	Price	0.50	0.00	0.50
Dane	0.15	1.00	1.15	Racine	2.00	0.00	2.00
Dodge	1.00	0.00	1.00	Rock	0.00	1.00	1.00
Douglas	1.50	0.00	1.50	Rusk	0.50	0.00	0.50
Dunn	2.00	0.00	2.00	Sawyer	1.00	0.00	1.00
Eau Claire	2.00	0.00	2.00	Shawano and Menominee	1.00	0.00	1.00
Florence <sup>2</sup>	0.10	0.00	0.10	Sheboygan	2.00	-0.50	1.50
Fond du Lac <sup>3</sup>	3.00	-1.00	2.00	St. Croix	1.00	0.00	1.00
Forest	1.00	0.00	1.00	Taylor	0.50	0.00	0.50
Green	0.50	0.10	0.60	Walworth	1.00	0.00	1.00
Green Lake	0.50	0.00	0.50	Washburn	0.75	0.00	0.75
Iowa	0.25	0.00	0.25				
Jackson	1.00	0.00	1.00	Washington	1.00	0.40	1.40
Jefferson	0.70	0.00	0.70	Waukesha	2.50	0.00	2.50
Juneau	0.50	0.00	0.50	Waupaca	0.50	0.00	0.50
Kenosha	1.00	0.00	1.00	Waushara	0.60	0.00	0.60
La Crosse	2.00	0.00	2.00	Winnebago	2.00	0.00	2.00
Langlade	1.00	0.00	1.00	Wood	<u>2.00</u>	<u>0.00</u>	<u>2.00</u>
Lincoln	1.00	0.00	1.00				
Manitowoc	2.00	-1.00	1.00	Total	64.95	0.00	64.95
Marathon <sup>3</sup>	4.50	-1.00	3.50				

<sup>1</sup> Buffalo had a 0.5 elected DA and a 0.5 ADA. The requested 0.2 positions were used to make both 0.6 positions.

<sup>2</sup> Florence had a 0.5 elected DA. The 0.1 position was used to make it a 0.6 position.

<sup>3</sup> Included PR positions converted to GPR positions.

6. Table 3 shows the total number of prosecutor positions authorized for each county.

**TABLE 3**

**State Prosecutor Positions – Base**

<u>County</u>	<u>Positions</u>	<u>County</u>	<u>Positions</u>
Adams	2.00	Marathon	12.00
Ashland	2.60	Marinette	3.00
Barron	4.00	Marquette	1.60
Bayfield	1.70	Milwaukee	124.50
Brown	17.00	Monroe	4.00
Buffalo	1.20	Oconto	2.00
Burnett	2.00	Oneida	2.50
Calumet	3.00	Outagamie	12.00
Chippewa	6.00	Ozaukee	4.60
Clark	2.00	Pepin	0.80
Columbia	5.00	Pierce	3.00
Crawford	1.00	Polk	4.00
Dane	30.00	Portage	6.00
Dodge	5.00	Price	1.50
Door	2.00	Racine	20.00
Douglas	5.00	Richland	1.80
Dunn	5.00	Rock	15.00
Eau Claire	11.00	Rusk	2.00
Florence	0.60	Saint Croix	7.00
Fond du Lac	8.00	Sauk	6.00
Forest	2.00	Sawyer	3.00
Grant	2.00	Shawano/ Menominee	4.00
Green	2.60	Sheboygan	9.00
Green Lake	2.00	Taylor	1.50
Iowa	2.00	Trempealeau	2.00
Iron	1.00	Vernon	2.00
Jackson	3.00	Vilas	2.00
Jefferson	6.00	Walworth	6.00
Juneau	3.00	Washburn	2.00
Kenosha	17.00	Washington	6.40
Kewaunee	1.50	Waukesha	19.00
LaCrosse	10.00	Waupaca	4.00
Lafayette	1.00	Waushara	2.60
Langlade	2.50	Winnebago	12.00
Lincoln	3.00	Wood	6.00
Manitowoc	6.00		
		Total	493.50

7. As noted above, under 1989 Act 31, prosecutors became state employees. Further, according the State Prosecutors Office (SPO), some counties have also utilized county resources to assist the District Attorney and his or her staff prosecute cases. For example, the SPO indicates that county corporation counsel in certain counties handle some children in need of protection or services (CHIPS) and juveniles in need of protection or services (JIPS) cases. Further, some counties provide

payment to public service special prosecutors for further prosecutorial assistance. Public service special prosecutors are attorneys appointed by the District Attorney who are willing to serve as a special prosecutor without state compensation. The extent to which these additional resources are utilized by each county is not tracked on a statewide basis.

8. In addition to county provided resources, the state provides additional resources to prosecutors resources through the Department of Justice (DOJ). The Department identified the following positions providing direct assistance to DAs: (a) 6.0 general criminal litigation assistance positions; (b) 2.0 traffic safety resource prosecutor positions; (c) 2.0 Milwaukee district attorney gun unit positions; (d) 4.0 drug enforcement resource prosecutor positions assigned to Eau Claire, Wausau, Appleton and Madison; (e) 1.0 sexual assault kit initiative (SAKI) Prosecutor position; (f) 3.0 sex predator prosecutor positions; (g) 3.0 white collar crime positions; (h) 1.0 unemployment and worker’s compensation fraud positions; and (i) 1.0 statewide prosecutors education and training coordinator and electronic evidence resource prosecutor position.

**New GPR positions**

9. In the 2019-21 budget bill, the Governor recommended the creation of an additional 30.0 assistant district attorney positions. The Joint Committee on Finance agreed with the 30.0 positions. The Assembly increased the number of new positions by an additional 34.95. The budget bill, as passed by the Legislature, created a total of 64.95 positions, which were distributed amongst 53 counties as the Shawano/Menominee prosecutorial unit.

10. In his partial veto of the 2019-21 budget, the Governor deleted the language specifying the distribution of the 34.85 positions created by the Assembly and Legislature and directed the Department of Administration and State Prosecutors Office to allocate the positions to counties "in a manner the considers need holistically, including staffing needs based on creation or expansion of treatment alternatives and diversion programs, meeting with victims prior to changing, addressing backlogs, and utilizing available workload analyses."

11. As a consequence of the Governor's veto, the administration reallocated 5.60 positions. The following counties had positions that were approved by the Legislature shifted to other counties.

<u>County</u>	<u>Position Reduction</u>
Columbia	1.00
Fond du Lac	1.00
Manitowoc	1.00
Marathon	1.00
Monroe	1.00
Ozaukee	0.10
Sheboygan	<u>0.50</u>
Total	5.60

12. Assembly Bill 68/Senate Bill 111 would provide 9.9 GPR ADA positions annually and funding to support these positions. Of the 9.9 positions, 5.5 are new GPR ADA positions, 4.0 are

ADA positions converted from PR to GPR and 0.4 ADA positions are included to add on to existing part-time positions. Under the bill these additions and conversions would affect eight county DA offices.

13. The Department of Administration indicates that the 5.5 positions are provided to the specified counties whose positions were modified by the Governor after the passage of 2019 Act 9. This alternative would provide \$313,400 GPR in 2021-22, \$417,900 GPR in 2022-23 and allocate new positions to: (a) Columbia; (b) Fond du Lac; (c) Manitowoc; (d) Marathon; (e) Monroe; and (f) Sheboygan (0.5 position). In addition, the bill would provide \$30,400 GPR annually and an additional 0.4 GPR position to increase a 0.6 GPR prosecutor position in Green County to full-time.

14. If the Committee wishes to fund the additional 5.5 GPR prosecutor positions and increase the Green County position to full-time, \$343,800 GPR in 2021-22, \$448,300 GPR and 5.9 GPR positions annually could be provided. This alternative would provide positions to counties impacted by the Governor's 2019 Act 9 partial veto. [Alternative A1]

15. If no action is taken regarding new GPR positions, total state supported District Attorney staff would remain at 493.5 positions (449 GPR positions). [Alternative A2]

### **Conversion of PR Positions**

16. In addition, the bill recommends conversion of some permanent PR positions to GPR positions. Specifically, 4.0 PR positions in two counties were created on a permanent basis funded from what was anticipated to be on-going PR funding. However, federal or county grant funding has declined and, therefore, funding may no longer be available. These counties are identified below.

17. *Milwaukee*. Two of four positions for which funding is recommended, an ADA on a drug team for the Milwaukee County speedy trial drug courts, currently is funded by a federal Byrne JAG grant from the Wisconsin Department of Justice to the Milwaukee Metropolitan Drug Enforcement Group (MMDEG). The federal Byrne JAG program grant from DOJ to MMDEG currently provides full PR funding for 4.0 ADAs and 5.0 law enforcement officers. Although federal Byrne JAG funding has declined in recent years, DOJ has made funding of multi-jurisdictional drug enforcement task forces a priority and provided level funding for the state's drug enforcement task forces from 2012 to 2018. Funding for all 4.0 ADAs was maintained over the last biennium because law enforcement agreed to new larger reductions in their part of the award. According to the Milwaukee DA's office, funding through the award is expected to continue to decline and law enforcement cannot be expected to take additional reductions to maintain the 4.0 ADA prosecutor positions. This means that funding for the one of the four positions may only be available for six to nine months. These four positions are four of nine positions that staff three speedy trial felony drug courts. One other position is funded by a separate grant and the remaining four are funded by GPR. These nine prosecutors are assigned to three, three person teams, which staff one speedy trial drug court. The administration indicates that reducing one team to two instead of three would significantly hinder the team's ability to review and prosecute cases due to the volume of court orders reviewed by the teams, the number of felony drug arrests and law enforcement referrals, and the volume of early intervention referrals. In a three person team two attorneys review referrals while the other conducts preliminary hearings on felony drug cases.

18. The bill recommends the conversion of an additional 1.0 PR positions to GPR funding for the violent crimes unit in Milwaukee County. Funding is currently provided by a grant from the North Central High Intensity Drug Trafficking area and office of National Drug Control Policy. The Milwaukee County DA's office was advised that the position will no longer be funded after December 31, 2020 and the position ended. This position one of six ADA positions that provided legal assistance and advice in support of HIDTA initiative in order to help target drug trafficking organizations and violent gangs. The ADAs work with HIDTA officers during investigations including: drafting, reviewing and approving applications for search warrants, subpoenas for records, wiretap orders, and electronic surveillance orders, and prosecute criminal cases in state court. The ADAs help coordinate referrals for federal prosecution when that venue is more appropriate. In addition, HIDTA ADAs work to identify non-violent, low level offenders, whose criminal activity is motivated by substance abuse, in order to redirect them into alternatives to traditional prosecution.

19. Conversion of the three Milwaukee County ADA positions from program revenue to general purpose revenue, would require \$333,100 GPR and -\$333,100 PR, and 3.0 GPR positions and -3.0 PR positions annually. [Alternative B1]

20. *Fond du Lac*. The Fond du Lac PR position is currently paid for by the county and funding is not guaranteed from year to year in the county budget. Until June 30, 2012, the position was funding through a federal Violence Against Women Act (VAWA) grant and since that time has been county funded. The recommendation is to convert this county PR funding to a state GPR funded position. The positions prosecutes domestic violence and sexual assault cases. The DA office indicates that "If the position ceased to exist, the cases would have to either be disbursed to every ADA in the office, or another ADA would be assigned this dedicated caseload, and create a shortfall in another area of the office."

21. Conversion of the Fond du Lac County ADA position from program revenue to general purpose revenue, would require \$74,400 GPR and -\$74,400 PR, and 1.0 GPR positions and -1.0 PR positions annually [Alternative B2]

**ALTERNATIVES**

**A. GPR Positions**

1. Provide \$343,800 GPR in 2021-22, \$448,300 GPR in 2022-23, and 5.9 GPR-funded positions annually, to provide additional ADAs requested by seven offices.

ALT A1	Change to Base	
	Funding	Positions
GPR	\$792,100	5.90

2. Take no action.

**B. PR Positions [Choose B1, B2, or B3]**

1. *Milwaukee County*. Provide \$333,100 GPR and -\$333,100 PR, and 3.0 GPR positions and -3.0 PR positions annually, to convert funding for certain prosecutor positions from program revenue to general purpose revenue.

ALT B1	Change to Base	
	Funding	Positions
GPR	\$666,200	3.00
PR	<u>- 666,200</u>	<u>- 3.00</u>
Total	\$0	0.00

2. *Fond du Lac County*. Provide \$74,400 GPR and -\$74,400 PR, and 1.0 GPR positions and -1.0 PR positions annually, to convert funding for certain prosecutor positions from program revenue to general purpose revenue.

ALT B2	Change to Base	
	Funding	Positions
GPR	\$148,800	1.00
PR	<u>- 148,800</u>	<u>- 1.00</u>
GPR	\$0	0.00

3. Take no action.

Prepared by: Sarah Wynn