



Legislative Fiscal Bureau

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Joint Committee on Finance

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Crime Laboratory Toxicology Testing (Justice)

[LFB 2021-23 Budget Summary: Page 372, #12]

CURRENT LAW

The Department of Justice's (DOJ) Division of Forensic Services, formerly known as the Crime Laboratory Bureau, operates the state's three regional crime laboratories, located in Madison, Milwaukee, and Wausau. Under s. 165.75(3) (a) of the statutes, the purpose of the state crime laboratories is to "provide technical assistance to local law enforcement officers in the various fields of scientific investigation in the aid of law enforcement. ...[T]he laboratories shall maintain services and employ the necessary specialists, technical and scientific employees for the recognition and proper preservation, marking and scientific analysis of evidence material in the investigation and prosecution of crimes in such fields as firearms identification, the comparison and identification of toolmarks, chemistry, identification of questioned documents, metallurgy, comparative microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and forensic photography."

DISCUSSION POINTS

1. The state crime laboratories are responsible for providing scientific and technical assistance to state and local law enforcement agencies, upon their request. The budget in 2020-21 for the state crime laboratories (less amounts budgeted for deoxyribonucleic acid (DNA) analysis) totals \$14,341,900 (all funds) and 91.4 positions. The state crime laboratories' funding is comprised of \$6,482,900 GPR and \$7,859,000 PR, as well as 53.4 GPR and 38.0 PR positions.

2. The three state crime laboratories are currently authorized the following types of specialists (excluding specialists for DNA analysis): (a) fingerprint and footwear examiners; (b) controlled substance analysts; (c) forensic program technicians; (d) toxicologists; (e) forensic imaging specialists; (f) firearms and toolmark examiners; (g) trace evidence examiners; (h) forensic science

training coordinators; and (i) identification technicians. In addition to these specialist positions, additional supervisory and support positions include forensic scientist supervisors, office associates, forensic science program chiefs, justice supervisors, a crime laboratory director, information services personnel, and an executive staff assistant.

3. The state crime laboratories are also authorized positions for DNA analysis activities. These positions include: (a) DNA analysts; (b) forensic scientist supervisors; and (c) forensic program technicians. Table 1 identifies the caseload of the state crime laboratory analysts during calendar year 2020. Many cases referred to the state crime laboratories require more than one type of analysis. As a result, the total number of case types opened and completed by the crime laboratories, as identified in Table 1, is larger than the total number of distinct law enforcement cases referred to the crime laboratories.

TABLE 1
Analyst Caseloads in Calendar Year 2020

<u>Case Type</u>	<u>Opened</u>	<u>Completed</u>
DNA databank	15,223	13,788
Controlled substances	3,813	3,675
DNA analysis	3,820	3,144
Toxicology	3,972	3,829
Firearms	451	403
Photo work order	502	490
Trace evidence	145	133
Crime scene response	104	49
Forensic imaging	86	77
Footwear or tire track	21	18
Toolmarks	23	20
Familial search	<u>1</u>	<u>1</u>
Total	28,161	25,627

4. The crime laboratories provide forensic toxicology services for law enforcement agencies. Forensic toxicology is generally an analysis of bodily specimens to determine the presence of chemicals that are harmful or for which ingestion is in some way defined as a criminal offense. The laboratories identify and quantify the amount of drugs, alcohol, and poisons in biological specimens such as blood, urine, or tissue. The information is used by law enforcement to help determine if laws have been violated and if criminal charges are warranted. Forensic toxicologists also assist in postmortem investigations to establish cause or circumstances of death. Depending on the case, toxicology testing can range from a single blood alcohol test to a determination of the concentration of multiple drugs and their metabolites in a single biological sample. Testing for the presence and quantity of alcohol is the most common toxicological test performed by the crime labs.

5. Full toxicology services are provided by the Madison and Milwaukee Crime Laboratories. The Wausau Crime Laboratory provides toxicology services only as it relates to blood alcohol content. For other toxicological services, the Wausau region is served by the Madison crime laboratory. The Crime Lab currently has 8.0 toxicology positions. In 2020, the crime labs opened 3,972 toxicology cases, and completed 3,829 cases.

6. The toxicology unit experienced high turnover in late 2020, and currently has three toxicologists in training and one vacancy, which is in the process of being filled. The Division indicates that toxicologists take over one year to become fully trained and maintain a full caseload, but are able to have a positive impact on caseloads prior to the completion of the training period.

7. Assembly Bill 68/Senate Bill 111, would provide \$645,200 PR in 2021-22 and \$278,600 PR in 2022-23 and 4.0 PR positions annually supported by revenues from the DNA and Crime Lab and Drug Law Enforcement surcharges, to address the demand for forensic toxicology testing performed by the state crime laboratories, and to add instrumentation necessary to identify synthetic drugs and drug analogs that are toxic at very low levels. Of the total, \$455,000 PR in 2021-22 is provided as one-time funding. The forensic toxicology program identifies and quantifies drugs and alcohols in biological samples submitted by law enforcement agencies related to felony investigations.

8. The Division indicates that "On a short-term basis to avoid greater delays, the technical lead has been assigned to casework and several employees from a different unit (Controlled Substances) have been pulled from their duties to assist as much as possible in toxicology casework. Additionally, technical improvement activities have been delayed. Cumulatively, this is not sustainable long-term and will place the success of the unit at risk. Four additional full-time positions are required to process the current level of case submissions and perform mandatory technical improvement and non-casework activities per the recommendations of the Needs Assessment report. The work hours spent on activities other than benchwork, analysis and technical review include instrument maintenance and performance checks, assessment and validation, quality control of reagents and consumables, court preparation and testimony, evaluation of emerging methodology and technology, engagement with the forensic science community and stakeholders in the state, research and support of other laboratories." Given the high recent turnover in crime laboratory staff, the long lead time in training staff to the level of technical proficiency required for the positions, and the increasing workload of the laboratories, the Committee could provide \$190,200 PR in 2021-22 and \$278,600 PR in 2022-23 and 4.0 PR positions annually to address the demand for forensic toxicology testing performed by the state crime laboratories. [Alternative 1]

9. The Division indicates that the emergence of additional synthetic drugs and drug analogs requires additional instrumentation. Fentanyl analogs, novel opioids/benzodiazepines, and synthetic cannabinoids are the main drug classes that may be detected by Liquid chromatography-Tandem Mass Spectrometry (LC/MS/MS) instrumentation and missed by standard gas chromatography and mass spectrometry testing. The Division indicates that fentanyl and related analog cases increased from 36 cases in 2015 and to 411 cases in 2019. In order to address the need for more sensitive analytic equipment, AB 68/ SB 111 would provide one-time funding of \$455,000 PR in 2021-22 for LC/MS/MS instrumentation.

10. The administration intends for program revenue funding to be supported from a transfer of monies from DOJ's CLDLE and DNA surcharge fund. Under the bill, the fund is projected to have an opening balance of \$3,585,400 and to conclude the 2021-23 biennium with a balance of \$3,486,700. It should also be noted that the fund is estimated to operate in an imbalance during the 2021-23 biennium. In 2021-22, total obligations (\$17,398,600) are estimated to exceed annual revenue (\$17,300,000) by \$98,600. In 2022-23, total obligations would equal annual revenue.

11. In order to provide some additional support to toxicology functions associated with the crimes labs especially in light of the turnover of half the unit, the Committee may choose to provide a lower level of positions. Such an alternative could provide \$100,100 PR in 2021-22 and \$151,700 PR in 2022-23 and 2.0 PR positions annually supported by revenues from the DNA and Crime Lab and Drug Law Enforcement surcharges. [Alternative 2] Under this alternative, if additional positions beyond that provided are necessary and sufficient revenue is available, DOJ could seek supplemental funding and positions with a 14-day passive review request to the Committee.

12. In order to provide resources to purchase instrumentation associated with identifying synthetic drugs in samples provided by law enforcement, the Committee may choose to provide one time funding for updated laboratory instruments. This alternative would provide \$455,000 in 2021-22 for Liquid chromatography-Tandem Mass Spectrometry instrumentation and allow the laboratories to process samples at a more sensitive level of detection. [Alternative 3]

ALTERNATIVES

1. Provide \$190,200 PR in 2021-22 and \$278,600 PR in 2022-23 and 4.0 PR positions annually supported by revenues from the DNA and Crime Lab and Drug Law Enforcement surcharges, to address the demand for forensic toxicology testing performed by the state crime laboratories.

ALT 1	Change to Base	
	Funding	Positions
PR	\$468,800	4.00

2. Provide \$100,100 PR in 2021-22 and \$151,700 PR in 2022-23 and 2.0 PR positions annually supported by revenues from the DNA and Crime Lab and Drug Law Enforcement surcharges.

ALT 2	Change to Base	
	Funding	Positions
PR	\$251,800	2.00

3. Provide \$455,000 PR in 2021-22 for Liquid chromatography-Tandem Mass Spectrometry (LC/MS/MS) instrumentation supported by revenues from the DNA and Crime Lab

and Drug Law Enforcement surcharges.

ALT 3	Change to Base
PR	\$455,000

4. Take no action.

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