

State of Wisconsin

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Joint Committee on Finance

MEMORANDUM

To: Members
Joint Committee on Finance

From: Senator Alberta Darling
Representative John Nygren

Date: March 9, 2017

Re: s. 16.515/16.505(2), Stats. Request

Attached is a copy of a request from the Department of Administration, received March 9, 2017, pursuant to s. 16.515/16.505(2), Stats., on behalf of the Fond du Lac County District Attorney's Office.

Please review the material and notify **Senator Darling** or **Representative Nygren** no later than **Tuesday, March 28, 2017**, if you have any concerns about the request or if you would like the Committee to meet formally to consider it.

Also, please contact us if you need further information.

Attachments

AD:JN:jm

Date: March 1, 2017
To: Waylon R. Hurlburt
From: Nick Peak
Subject: Section 16.505(2) Request

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Attached is a s. 16.505(2) request analysis for your approval and processing. Listed below is a summary of each item:

DOA RECOMMENDATION:

<u>AGENCY</u>	<u>DESCRIPTION</u>	<u>2015-16</u>		<u>2016-17</u>	
		<u>AMOUNT</u>	<u>FTE</u>	<u>AMOUNT</u>	<u>FTE</u>
DAs 20.475(1)(h)	Gifts and grants				1.0*

* Project position ending 4/2/2019.

AGENCY REQUEST:

<u>AGENCY</u>	<u>DESCRIPTION</u>	<u>2015-16</u>		<u>2016-17</u>	
		<u>AMOUNT</u>	<u>FTE</u>	<u>AMOUNT</u>	<u>FTE</u>
DAs 20.475(1)(h)	Gifts and grants				1.0**

** Project position ending 12/31/2017.

WRH APPROVAL WRH (FORWARD TO Gail Tappen)



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

SCOTT WALKER
GOVERNOR
SCOTT A. NEITZEL
SECRETARY

Division of Executive Budget and Finance
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Date: March 1, 2017

To: Scott A. Neitzel, Secretary
Department of Administration

From: Nick Peak
Executive Policy and Budget Analyst

Subject: Request Under s. 16.505 from the Fond du Lac County District Attorney to
Extend a 1.0 FTE Program Revenue Assistant District Attorney Project
Position.

Request:

The Department of Administration, on behalf of the Fond du Lac County District Attorney's Office, requests the extension of a 1.0 FTE program revenue assistant district attorney project position. Position authority is requested through December 31, 2017.

Revenue Sources for Appropriation(s):

The revenue source for the position in the gifts and grants appropriation under s. 20.475(1)(h) is fees from participants in the program. As the position is funded from a program revenue continuing, all moneys received appropriation, there is no accompanying request for an increase in expenditure authority. Fond du Lac County will reimburse the salary and fringe benefits costs for the assistant district attorney prosecutor position from the amassed participant fees.

Background:

On February 26, 2010, the Joint Committee on Finance granted position authority for an assistant district attorney in Fond du Lac County to focus on a misdemeanor diversion program. The position was funded through an American Recovery and Reinvestment Act Byrne/Justice Assistance Grant award and was effective through December 31, 2012. When the American Recovery and Reinvestment Act Byrne/Justice Assistance Grant award ended, the position authority expired.

On January 3, 2013, the Committee granted position authority for a 1.0 FTE misdemeanor diversion assistant district attorney position in Fond du Lac County funded by a Byrne/Justice Assistance Grant through the Office of Justice Assistance. Byrne/Justice Assistant Grant funding and position authority terminated on

Scott A. Neitzel, Secretary
Page 2
March 1, 2017

December 31, 2016. This request is to extend position authority for the project position another year; however, this project position has already exhausted the final available extension of position authority under the grant.

The Fond du Lac District Attorney's Office indicates it has amassed adequate participant fees to fund salary and fringe benefits expenses related to the 1.0 FTE position for calendar year 2017.

Analysis:

Fond du Lac County's diversion program is designed to reduce long-term recidivism by diverting eligible, nonviolent offenders from the criminal justice system. Utilizing evidence-based principles and practices, the program identifies offenders based on their risk of reoffending and requires that individuals meet specific program expectations and remain crime free for the term of the diversion, typically six months to two years depending on the individual. Those who successfully complete the conditions of their diversion agreements are not subject to a criminal charge on their record; those who fail to meet program conditions are prosecuted for their charges. The program averages between 150 and 200 participants per year, and is targeted to reach 200 to 250 participants in upcoming years.

Since the program's inception, several new resources have been utilized to improve outcomes, including using a new risk assessment tool (COMPAS), partnering with new treatment providers to address a broader range of concerns amongst offenders, and expanding relationships with domestic abuse prevention and treatment providers, as well as expanding the use of alcohol and drug dependency treatment.

The misdemeanor diversion assistant district attorney serves as the program director for Fond du Lac County's diversion program and is responsible for managing and screening offenders to participate in the program, assuring victim's rights are covered, preparing the legal paperwork, making all court appearances and implementing the appropriate level of supervision and oversight for each individual participant.

Position authority for the project position expired December 31, 2016, and Fond du Lac County has a desire to continue the current program with a new project position. To continue the program, funding has been and will continue to be secured from the fees assessed to participants in the program, beginning in calendar year 2017.

While the Byrne grant was in effect, the county was allowed to keep 50 percent of the program fees it collected and may retain all fees when the grant is completed. In February 2012, the Fond du Lac County Board issued a resolution stating that any funds received from the fees should be placed in a segregated account to be used exclusively in administering the diversion program. The board has committed the amassed user fees to support the position in an ongoing fashion beginning in calendar year 2017.

Table 1: Fond du Lac County Misdemeanor Diversion Program			
	Year 1	Year 2	Year 3
Opening Fund Balance	\$74,000	\$51,000	\$28,000
Revenues	\$57,000	\$57,000	\$57,000
Expenditures	\$80,000	\$80,000	\$80,000
Ending Fund Balance	\$51,000	\$28,000	\$5,000

Table 1 illustrates the unsustainability of the position based on amassed funds, conservative revenue estimates and estimated operating expenses. The county has amassed \$74,000 in user fees in recent years to support the user fees collected to fund the position. The \$57,000 revenue estimate is a conservative estimate based on 100 participants, but could be higher given that the program averages 150 to 200 participants per year. The county anticipates this collection will increase based on the elimination of grant restrictions and the growing participation in the program. Lastly, the \$80,000 in expenditures is an estimated combined salary and fringe benefits costs for the position. It is unclear whether the collected user fees will be able to sustain the salary and fringe benefits expenses for the position on a permanent basis. If after a two-year period the user fee revenues look sustainable, the county could request the project position be converted to a permanent position.

The misdemeanor diversion assistant district attorney position furthers the state's policy to fight drug and other crimes and to reduce recidivism by diverting nonviolent offenders away from the traditional criminal justice system and directing them toward effective services and treatment.

Recommendation:

Modify the request to approve the creation of 1.0 FTE assistant district attorney two-year project position for the period of April 3, 2017, to April 2, 2019.



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

SCOTT WALKER
GOVERNOR

SCOTT NEITZEL
SECRETARY

Division of Enterprise Operations
State Prosecutors Office
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DATE: December 14, 2016

TO: Waylon Hurlburt, Administrator
Division of Executive Budget and Finance

FROM: Kasey Deiss, Director
State Prosecutors Office

SUBJECT: ***REQUEST UNDER S. 16.505 FOR DEPARTMENT 475: FOND DU
LAC COUNTY DISTRICT ATTORNEY'S OFFICE***

On behalf of the Fond du Lac County District Attorney's Office, I am submitting the attached request to extend position authorization for a 1.0 FTE program revenue project position in Department 475, District Attorneys.

Thank you for your attention to this matter.

Attachment

December 14, 2016
Fond du Lac County – Misdemeanor Diversion Program
s.16.505 Request

**DEPARTMENT OF ADMINISTRATION REQUEST UNDER S. 16.505 FOR
POSITION AUTHORIZATION**

I. REQUEST

The Department of Administration (DOA) requests, under s.16.505, the extension of project position authorization of a 1.0 FTE (BC91) program revenue (PR) assistant district attorney (ADA) position in the Fond du Lac District Attorney's Office from December 31, 2016, to December 31, 2017. This position will be funded from fees paid by participants in the Misdemeanor Diversion program. The position will be funded via appropriation 20.475(1)(h).

II. BACKGROUND

In December, 2009, the Office of Justice Assistance (OJA) approved a Fond du Lac grant application for a Misdemeanor Diversion prosecutor. The American Recovery and Reinvestment Act (ARRA) grant, made available through the Byrne Justice Assistance Grant (JAG) program, fully funded an ADA position that would focus on a misdemeanor diversion program. Funding had been authorized through December 31, 2012. Effective February 26, 2010, the Joint Committee on Finance (JCF) granted position authority for the Misdemeanor Diversion ADA through December 31, 2012.

ARRA Byrne JAG funding ended December 31, 2012. Effective January 3, 2013, JCF granted position authority for a 1.0 FTE PR Misdemeanor Diversion prosecutor through December 31, 2014. While funding eventually will be secured from fees assessed to participants in the program, OJA authorized grant funding for the position through December 31, 2014. Subsequently, DOJ awarded JAG Pre-Trial Diversion Program grant funds for a prosecutor's salary and fringe benefits through December 31, 2016. The Fond du Lac DA's office has now amassed sufficient program revenue from participant fees to continue the project position in a self-funded basis.

The 1.0 FTE ADA has worked with non-violent misdemeanor offenders accused of possession, theft crimes, criminal damage to property, obstruction, disorderly conduct, OAR due to OWI/PAC, and other non-violent misdemeanors. The two main target offender groups have included those who commit crimes to fuel substance abuse problems and those who are non-recidivist youths (age 25 and under) who can avoid the impact of a criminal conviction on their future aspirations. The goal has been to more effectively reduce recidivism among non-violent misdemeanor offenders by diverting at least 200-250 offenders per year into a program that recognizes and addresses the root cause of their criminal conduct. While the overall purpose and structure of the program remains the same, recently several changes have occurred including: training and commencing implementation of a new initial assessment tool (COMPAS) with potential participants, which has been helpful for

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s.16.505 Request

determining needs that must be addressed; partnering with new education and treatment providers to address concerns in several new areas; and, strengthening connections with domestic/abusive patterns treatment providers, and others who provide comprehensive assessment and referral for areas including AODA, mental health, and one-on-one counseling for victimization.

III. ANALYSIS

This position is in furtherance of the State's policy to fight drug and other crimes and to divert non-violent offenders away from the traditional criminal justice system and direct them toward services and treatment, thereby reducing recidivism.

IV. FISCAL ANALYSIS

As mentioned above, the funding will be provided by Fond du Lac County through the assessment of diversion program fees. Fond du Lac anticipates that fees already collected from this program plus future fees collected from participants will be sufficient to fund this position in an ongoing manner. The program revenue appropriation is continuing and will be re-estimated based on actual experience.

V. REVENUE SOURCE FOR APPROPRIATION

Initially, the source of the grant funds had been an ARRA grant made available through the Byrne JAG program. Subsequently, JAG Pre-Trial Diversion Program grant funding has been authorized and will last through December 31, 2016. Funds to continue the Misdemeanor Diversion program have been collected and will continue to be collected through fees assessed to program participants, and will be used in the long-term to fund the prosecutor position. Fond du Lac County will reimburse the salary and fringe benefit costs for the State-paid ADA position in the Department of District Attorneys.

VI. SPECIAL INFORMATION

The co-chairs of the Joint Committee on Finance, in a letter to Department of Administration Secretary dated June 12, 1996, set forth four additional items of information that should be included in a s.16.505 request for additional positions in the District Attorney program.

- 1) *An explanation of the effect of the positions on weighted caseload for the requesting counties (the LAB methodology is suggested).*

Table 1 indicates the LAB methodology's results using the modifications recommended by the Wisconsin District Attorneys Association and highlights that there would be no impact on the Fond du Lac County DA Office since the

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position authority already was approved in July, 2016. The table uses the most current court data available (2012-2014) and the positions authorized as of July 2015. It is important to note that the position need shown in the LAB methodology is a general need responding to all duties of a DA office and is not specific to a particular type of criminal activity or caseload.

- 2) *An assessment of similar caseload problems in counties not addressed by the request.*

Data with which to make this assessment are not available.

- 3) *An explanation of why the request has greater priority than similar needs existing in other counties.*

The funds will be made available from Fond du Lac County through the assessment of fees. The funding is not available to other counties.

- 4) *If the request is intended to address a specific type of caseload, an explanation of why this type of caseload has a greater priority than other types.*

These funds may not be used to address types of caseloads not specifically authorized by County Resolution.

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FINAL 2012-2014 DISTRICT ATTORNEY OFFICE WORKLOAD ANALYSIS

	7/20/16 GPR- Funded FTE Positions*	7/20/16 Program Revenue- Funded FTE Positions*	7/20/16 Total FTE Positions*	Additional FTE Needed	Estimated Total FTE Needed	Additional FTE Needed as a % of 7/20/16 GPR- Funded FTE	Additional FTE Needed as a % of 7/20/16 Total FTE	GPR- Funded FTE as a % of Estimated Total FTE Needed	Total FTE as a % of Estimated Total FTE Needed
DA Office									
Adams	1.20		1.20	1.36	2.56	113.33%	113.33%	46.88%	46.88%
Ashland	2.00		2.00	0.87	2.87	43.50%	43.50%	69.69%	69.69%
Barron	3.00		3.00	3.22	6.22	107.33%	107.33%	48.23%	48.23%
Bayfield	1.00		1.00	0.90	1.90	90.00%	90.00%	52.63%	52.63%
Brown	12.00	1.00	13.00	11.46	24.46	95.50%	88.15%	49.06%	53.15%
Buffalo	1.00		1.00	0.61	1.61	61.00%	61.00%	62.11%	62.11%
Burnett	1.25		1.25	1.95	3.20	156.00%	156.00%	39.06%	39.06%
Calumet	2.00		2.00	1.01	3.01	50.50%	50.50%	66.45%	66.45%
Chippewa	5.00		5.00	1.49	6.49	29.80%	29.80%	77.04%	77.04%
Clark	2.00		2.00	0.56	2.56	28.00%	28.00%	78.13%	78.13%
Columbia	4.75		4.75	3.32	8.07	69.89%	69.89%	58.86%	58.86%
Crawford	1.00		1.00	-0.25	0.75	-25.00%	-25.00%	133.33%	133.33%
Dane	26.85	3.00	29.85	3.21	33.06	11.96%	10.75%	81.22%	90.29%
Dodge	4.00		4.00	2.12	6.12	53.00%	53.00%	65.36%	65.36%
Dor	2.00		2.00	0.71	2.71	35.50%	35.50%	73.80%	73.80%
Douglas	3.50		3.50	3.07	6.57	87.71%	87.71%	53.27%	53.27%
Dunn	3.00		3.00	2.93	5.93	97.67%	97.67%	50.59%	50.59%
Eau Claire	8.00	1.00	9.00	4.46	13.46	55.75%	49.56%	59.44%	66.86%
Florence	0.50		0.50	0.39	0.89	78.00%	78.00%	56.18%	56.18%
Fond du Lac	5.00	2.00	7.00	5.44	12.44	108.80%	77.71%	40.19%	56.27%
Forest	1.00		1.00	1.91	2.91	191.00%	191.00%	34.36%	34.36%
Grant	2.00		2.00	2.09	4.09	104.50%	104.50%	48.90%	48.90%
Green	2.00		2.00	0.99	2.99	49.50%	49.50%	66.89%	66.89%
Green Lake	1.50		1.50	0.67	2.17	44.67%	44.67%	69.12%	69.12%
Iowa	1.75		1.75	0.98	2.73	56.00%	56.00%	64.10%	64.10%
Iron	1.00		1.00	-0.27	0.73	-27.00%	-27.00%	136.99%	136.99%
Jackson	2.00		2.00	1.62	3.62	81.00%	81.00%	55.25%	55.25%
Jefferson	5.30		5.30	1.83	7.13	34.53%	34.53%	74.33%	74.33%
Juneau	2.50		2.50	0.67	3.17	26.80%	26.80%	78.86%	78.86%
Kenosha	15.00	1.00	16.00	7.16	23.16	47.73%	44.75%	64.77%	69.08%
Kewaunee	1.50		1.50	-0.14	1.36	-9.33%	-9.33%	110.29%	110.29%
La Crosse	8.00		8.00	4.95	12.95	61.88%	61.88%	61.78%	61.78%
Lafayette	1.00		1.00	0.26	1.26	26.00%	26.00%	79.37%	79.37%
Langlade	1.50		1.50	1.99	3.49	132.67%	132.67%	42.98%	42.98%
Lincoln	2.00		2.00	1.44	3.44	72.00%	72.00%	58.14%	58.14%
Manitowoc	5.00		5.00	2.73	7.73	54.60%	54.60%	64.68%	64.68%
Marathon	8.50	2.50	11.00	3.60	14.60	42.35%	32.73%	58.22%	75.34%
Marinette	2.50	0.10	2.60	0.49	3.09	19.60%	18.85%	80.91%	84.14%
Marquette	1.00		1.00	0.49	1.49	49.00%	49.00%	67.11%	67.11%
Milwaukee	87.00	33.50	120.50	-21.80	98.70	-25.06%	-18.09%	88.15%	122.09%
Monroe	3.00		3.00	3.15	6.15	105.00%	105.00%	48.78%	48.78%
Oconto	2.00		2.00	0.94	2.94	47.00%	47.00%	68.03%	68.03%
Oneida	2.50		2.50	1.55	4.05	62.00%	62.00%	61.73%	61.73%
Outagamie	9.00		9.00	8.83	17.83	98.11%	98.11%	50.48%	50.48%

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Ozaukee	3.00		3.00	1.66	4.66	55.33%	55.33%	64.38%	64.38%
Pepin	0.80		0.80	-0.18	0.62	-22.50%	-22.50%	129.03%	129.03%
Pierce	2.50		2.50	0.67	3.17	26.80%	26.80%	78.86%	78.86%
Polk	3.00		3.00	2.84	5.84	94.67%	94.67%	51.37%	51.37%
Portage	4.00		4.00	3.93	7.93	98.25%	98.25%	50.44%	50.44%
Price	1.00		1.00	0.09	1.09	9.00%	9.00%	91.74%	91.74%
Racine	18.00		18.00	11.23	29.23	62.39%	62.39%	61.58%	61.58%
Richland	1.80		1.80	-0.10	1.70	-5.56%	-5.56%	105.88%	105.88%
Rock	14.00		14.00	2.57	16.57	18.36%	18.36%	84.49%	84.49%
Rusk	1.50		1.50	0.52	2.02	34.67%	34.67%	74.26%	74.26%
Saint Croix	6.00		6.00	1.05	7.05	17.50%	17.50%	85.11%	85.11%
Sauk	5.00	0.80	5.80	1.36	7.16	27.20%	23.45%	69.83%	81.01%
Sawyer	2.00		2.00	1.10	3.10	55.00%	55.00%	64.52%	64.52%
Shaw/Men	3.00		3.00	2.19	5.19	73.00%	73.00%	57.80%	57.80%
Sheboygan	7.50		7.50	4.08	11.58	54.40%	54.40%	64.77%	64.77%
Taylor	1.00		1.00	0.41	1.41	41.00%	41.00%	70.92%	70.92%
Trempealeau	2.00		2.00	1.13	3.13	56.50%	56.50%	63.90%	63.90%
Vernon	2.00		2.00	-0.09	1.91	-4.50%	-4.50%	104.71%	104.71%
Vilas	2.00		2.00	1.17	3.17	58.50%	58.50%	63.09%	63.09%
Walworth	5.00		5.00	2.46	7.46	49.20%	49.20%	67.02%	67.02%
Washburn	1.25		1.25	0.96	2.21	76.80%	76.80%	56.56%	56.56%
Washington	5.00		5.00	4.08	9.08	81.60%	81.60%	55.07%	55.07%
Waukesha	14.50	2.00	16.50	7.68	24.18	52.97%	46.55%	59.97%	68.24%
Waupaca	3.50		3.50	1.36	4.86	38.86%	38.86%	72.02%	72.02%
Waushara	2.00		2.00	1.16	3.16	58.00%	58.00%	63.29%	63.29%
Winnebago	10.00		10.00	5.97	15.97	59.70%	59.70%	62.62%	62.62%
Wood	4.00		4.00	5.40	9.40	135.00%	135.00%	42.55%	42.55%
TOTALS	382.95	46.90	429.85	139.66	569.51				

*Modifications:

- 1) The 0.5 GPR FTE in Washburn (0.25 FTE) that also serves Burnett (0.25 FTE) is divided by the FTE shown in parentheses.
- 2) In Milwaukee, the total FTE used is 120.50 rather than 121.50 due to the following factor:
 - a) the 1.0 FTE DNA position serves the entire state; so, showing it as a Milwaukee position distorts the data.
- 3) In Brown the total FTE used is 13.00 rather than 14.00 due to the following factor:
 - a) the 1.0 ADA FTE sex predator position in Brown is excluded because it also serves approximately 20 other DA offices.
- 4) In Fond du Lac the total FTE used is 7.00 rather than 8.00 because the Title IV-E CHIPS/TPR position has no funding.
- 5) In Outagamie the total FTE used is 9.00 rather than 10.00 because the VAWA position has no funding.
- 6) The weighted time estimate for CHIPS cases was changed from 2.61 hours to 6.0 hours effective in the 2004-06 study, based on a 7/04 WDAA Executive Board recommendation.
- 7) CHIPS extensions include permanency plan review petitions filed under s. 48.365 beginning with data for 2006.
- 8) Immunization cases filed by DA Offices under s. 48.13(13) are included with CHIPS cases beginning with data for 2006.
- 9) WDAA Executive Board authorized the following changes to the weighted time estimates beginning with the 2007-09 caseload study:
 - a) Increase the "reviewing case referrals that are not prosecuted" from 35 to 100 hours per year, thereby reducing hours available per prosecutor to handle individual cases to 1162 per year.
 - b) Weighted time estimate for Class A and First Degree Reckless homicides changed from 100 hours each to 160 hours each.
 - c) Weighted time estimate for "All other Homicides" changed from 50 to 80 hours each.
 - d) The weighted time estimate for misdemeanors changed from 2.17 hours each to 2.91 hours each.
 - e) The weighted time estimate for criminal traffic changed from 1.68 hours each to 2.91 hours each.
 - f) Weighted time estimate for juvenile delinquency changed from 3.32 hours each to 3.44 hours each.