



Legislative Fiscal Bureau

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March 16, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Request for Funding and Positions under Section 94 of 2009 Wisconsin Act 100 --
Agenda Item V

BACKGROUND

The provisions of 2009 Wisconsin Act 100 make a series of changes to the state's operating while intoxicated (OWI) laws. Under Act 100, \$8.8 million GPR was deposited to the Joint Committee on Finance's supplemental GPR appropriation to address possible increased costs associated with the OWI law changes.

Under section 94 of Act 100:

"The department of administration, on behalf of and with the assistance of the state public defender, district attorneys, the director of state courts, the department of justice, and the department of corrections, shall, not later than 60 days after the effective date of this subsection, submit to the joint committee on finance a request for funding for a proposed number of created positions and a request for funding necessary to process offenses related to operating a motor vehicle while under the influence of an intoxicant, a controlled substance, a controlled substance analog, or any combination of an intoxicant, a controlled substance, and a controlled substance analog, under the influence of any other drug to a degree that renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree that renders him or her incapable of safely driving or operating a motor vehicle with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood."

In addition, Act 100 appropriated \$6.6 million GPR in 2010-11, to the Department of Corrections for enhanced community treatment for persons convicted of second- and third-offense OWI violations.

REQUEST

On March 1, 2010, the Department of Administration (DOA) submitted the required Act 100 request. Funding is requested as follows: (a) \$1,963,000 GPR in 2010-11 to Corrections for equipment costs and staffing of the monitoring center; (b) \$1.4 million GPR to the District Attorney (DA) function to address funding reductions under the 2009-11 biennial budget; (c) \$480,500 GPR and 4.0 GPR toxicology analyst positions to the Department of Justice (DOJ) in 2010-11 to provide increased resources to process an increased number of blood samples submitted to the state crime laboratories associated with OWI felony violations; (d) \$231,100 GPR to the Director of State Courts in 2010-11 for reserve judge funding; and (e) \$144,900 GPR in 2010-11 to provide funding associated with increased appointment of State Public Defender (SPD) cases to private bar attorneys.

The request before the Committee totals \$4,219,500 GPR and 4.0 GPR positions. Of the \$8.8 million GPR allocated to the Committee to address costs under Act 100, \$4,580,500 GPR would remain unallocated under the DOA request before the Committee if approved in its entirety. The Department of Administration indicates that this balance may be utilized in future requests, "if an emergency occurs for an agency and increased workloads cannot be absorbed within current budgets."

The Department of Administration also indicates that the Committee "should consider allocating some portion of unused funding set aside for Act 100 to address the private bar shortfall in fiscal year 2010-11." Private bar attorneys are assigned SPD cases primarily in two circumstances: (a) overflow cases; and (b) cases where an SPD staff attorney has a conflict of interest that precludes the attorney from providing representation. In 2008-09, 60,679 new cases were accepted by private bar attorneys. It is currently estimated that the shortfall in funding for cases assigned to the private bar will increase to \$9.6 million GPR by the end of the biennium.

The remainder of this memorandum addresses the specific funding recommendations that have been made by DOA, as well as associated agency requests.

ANALYSIS

Department of Corrections. The s. 13.10 request from the Department of Corrections includes \$1,963,000 GPR for equipment and staffing costs for the Department as the result of supervising offenders on probation for second and third offense OWIs. Corrections estimates an increase of 2,015 offenders on probation for second and third OWI offenses by the end of 2010-11. The estimated increase is based on 2007 data from the Department of Transportation and assumes the following:

- 30% of 2nd and 3rd OWI offenders will be placed in county programs similar to the Winnebago County program (a statutorily-authorized, county-operated OWI treatment program expanded statewide under provisions of Act 100);
- A 7% reduction in recidivism of 2nd OWI offenders as a result of ignition interlock device use for first-time offenders, and a 7% reduction in recidivism of 3rd OWI offenders as a result of intensive treatment; and
- Offenders will be on probation for one year.

Funding includes \$1,071,900 GPR for electronic monitoring, ignition interlock devices, and sobriety costs, and \$891,100 GPR for limited-term-employees for the Department's monitoring center. Funding for equipment assumes that: (a) 25% of offenders will be placed on electronic monitoring for six months; (b) 50% of the offenders will have an ignition interlock placed in their vehicle during their probation; and (c) all offenders will be placed on a sobriety (a handheld device that detects the presence of alcohol through a breath sample) for six months. Funding for LTE staffing would support the equivalent of 25.85 communications operators and 1.75 communications supervisors to monitor additional offenders. This staffing would provide for increased operations at the monitoring center on a seven day per week, 24 hour per day basis. Funding would be phased in over time as staffing needs progress. The Department indicates that probation and parole agent staffing needs for new offenders can be absorbed within existing resources.

It should be noted that the requested funding could be adjusted by -\$9,900 GPR to correct a funding calculation error. While salary levels for LTE positions are equivalent to FTE positions, fringe benefits for LTEs are lower than for FTEs. In calculating salary and fringe benefit amounts for LTE staffing, the FTE fringe benefit rate (48.51%) for the 1.75 communications supervisors was applied, rather than the LTE fringe benefit rate (7.65%). Applying the LTE fringe benefit rate decreases the requested funding by -\$9,900 GPR.

The request does not include new positions for the monitoring center, but rather funding for LTE staffing. According to the request, "As it is unknown how many offenders will be sentenced to probation, use of LTEs is a short-term staffing strategy while data is collected to form the basis for adding permanent staff in future budgets." Instead of providing funding for 27.6 positions on a temporary basis, the Committee may wish to provide the positions at this time. As a result, positions would be included in the Department's base budget for the 2011-13 biennial budget. Providing permanent provisions would require an increase of \$171,900 GPR to account for FTE fringe benefit rate, rather than LTE fringe benefit rate. On an annualized basis, the 27.6 positions would cost \$1.7 million GPR. Alternatively, the Committee could deny the request and review any future requests for permanent staffing and equipment purchases based on actual workload and collected data.

District Attorneys. In identifying additional staffing and associated funding needs as a result of the passage of Act 100, DOA indicates that prosecutors identified the following provisions as

having a significant affect on workload: (a) making a fourth OWI offense a Class H felony if the offender had a prior OWI violation within the previous five years of committing the fourth offense; (b) criminalizing a first OWI violation if there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation; (c) reducing the minimum term of imprisonment for second and third OWI violations for offenders who successfully complete a period of probation that includes alcohol and other drug treatment; and (d) requiring courts to order a person's operating privileges to be restricted to operating a vehicle equipped with an ignition interlock device following: (1) an implied consent refusal; (2) an OWI conviction where the person had a blood alcohol level of 0.15 or above; and (3) an OWI conviction for a person who has at least one prior OWI offense.

Of the 71 DA offices statewide, 25 responded to the State Prosecutors Office (SPO) regarding the impact of Act 100 on their offices. [The SPO is responsible for coordinating DOA administrative duties relating to DA offices.] The SPO indicates that, "Some DAs estimated the additional number of felony and misdemeanor cases they will handle as well as increased time devoted to alternative sentencing options and violations of ignition interlock device installation requirements. Based on these figures, they estimated how many additional prosecutors they will need. Other DAs provided anecdotal insight into their caseload and estimated the number of additional Assistant DAs (ADAs) they will need. Finally, some expressed concern about the added responsibilities their offices will have under the law but did not estimate a number of prosecutors needed to fulfill these responsibilities." The following table lists the 12 DA offices that identified an additional need for staffing to the SPO as a result of the passage of Act 100, the number of positions requested, and the associated annual compensation.

**District Attorney Offices Requesting Additional
Position Authority Under Act 100**

<u>County</u>	<u>Requested Positions</u>	<u>Annual Compensation</u>
Kenosha	3.00	\$206,400
Winnebago	2.00	137,600
Marathon	1.50	103,200
Columbia	1.00	68,800
Jackson	1.00	68,800
St. Croix	1.00	68,800
Sauk	0.75	51,600
Monroe	0.50	34,400
Vilas	0.50	34,400
Green	0.25	17,200
Green Lake	0.25	17,200
Waukesha*	<u>0.10</u>	<u>6,900</u>
Total	11.85	\$815,300

*This estimate only reflects anticipated workload associated with addressing eligibility, appropriateness, and ongoing supervision of individuals who are eligible for a reduced minimum term of imprisonment for 2nd and 3rd OWI offenses for successfully completing a period of probation that includes alcohol and other drug treatment.

Based on the estimate of need submitted by these 12 county DA offices, the Committee could consider providing \$815,300 GPR and 11.85 GPR positions annually. While the Wisconsin District Attorneys Association (WDAA), in a letter to the Committee dated March 3, 2010, requested that this level of resources be provided to these offices in each year of the current biennium, as Act 100 first applies to violations committed on or after July 1, 2010, Act 100 provisions will not lead to increased prosecutorial caseload in 2009-10. As a result, the Committee could consider providing these resources beginning in 2010-11.

Department of Administration staff indicates, however, that due to uncertainty regarding the workload that will actually materialize under Act 100, as well as the impact of 2009-11 biennial budget reductions on overall funding for the DA function, DOA did not forward this recommendation to the Committee. Instead, DOA recommends utilizing a portion of the funding provided under Act 100 to address the funding reductions for the DA function under Act 28 (the 2009-11 biennial budget). Department of Administration staff indicates that as the workload implications of Act 100 are better understood, that staffing for the DA function may be reconsidered either in 2010-11, or in subsequent budgets.

The 2009-11 biennial budget contained a number of cost reduction measures affecting state agencies. The budget actions affecting the DA function, include: (a) a 1% across-the-board funding reduction; and (b) a reduction to reflect savings associated with the requirement that all prosecutors

(other than elected district attorneys) take eight days of unpaid leave (furlough) annually. In addition, under Act 28, the DA budget was not provided funding for a 2% pay raise, effective June 7, 2009, because assistant district attorneys (ADAs) had not settled their 2007-09 collective bargaining agreement at the time the 2009-11 budget was being deliberated. The 2007-09 ADA collective bargaining agreement, which includes the 2% increase, was eventually settled after enactment of Act 28 (the agreement was ratified under 2009 Wisconsin Act 51, and enacted on October 28, 2009).

The Department of Administration estimates that providing \$700,000 GPR annually to the DA function would eliminate these Act 28 funding issues, provided all prosecutors (other than elected district attorneys) take eight days of furlough annually. If ADAs take five days of furlough annually, then DOA estimates that \$943,800 GPR annually would be required to eliminate funding issues under Act 28. [It is the understanding of this office that the Association of State Prosecutors, which represents ADAs, has not agreed to have its members take more than five days of furlough annually during 2009-11.]

The Committee could consider approving DOA's recommendation to provide \$700,000 GPR annually to address DA funding issues under Act 28. Under this alternative, if ADAs do not voluntarily agree to take eight days of furlough annually, DOA would likely have to impose layoffs to generate the required Act 28 furlough savings for the DA function. This is due to the fact that the DA function has limited supplies and services funding (\$248,000 GPR annually that is utilized to pay DOA charges and special prosecution costs). As a result, cost savings for the function must generally be achieved through reduced salary and fringe benefits costs.

The Committee could also consider providing \$943,800 GPR annually to eliminate the Act 28 funding issues for the DA function. Under this alternative, ADAs would not have to take more than five days of furlough annually to balance the DA budget. It could be anticipated, however, that if the state permits ADAs to take five days of furlough annually, instead of the eight days annually budgeted under Act 28, that other state bargaining units would seek similar concessions on furlough days. Reducing the number of required furlough days for all represented employees statewide to five days annually would require additional annual funding of \$16,657,300 (all funds), or \$6,299,800 GPR.

Alternatively, the Committee could also deny any funding or positions for the DA function at this time. Under this alternative, additional supplemental funding for 2009-10 could be reconsidered after the DA function has received its pay plan supplement for the fiscal year and its current year fiscal shortfall may be determined with greater accuracy.

As the 2009-10 state fiscal year is well over half completed, if no additional supplemental funding was to be provided to the DA function, necessary layoffs to generate required Act 28 savings would be far more extensive than if layoffs had been implemented at the beginning of the current fiscal year. The necessary level of layoffs would depend, in part, on whether ADAs took five or eight days of unpaid leave in the current fiscal year. For example, if all ADAs took eight

days of furlough annually but no funding supplement was provided to the DA function, it is estimated that approximately 9.7 full-time equivalent (FTE) prosecutors with the least seniority would have to be laid off to generate the required savings if the state had a full fiscal year to generate the savings. By contrast, if the state had only three months to generate the required savings, under this example four times as many entry-level prosecutors would have to be laid off to generate the required savings, or 38.6 FTE.

Finally, the purpose of the amounts placed in the Committee's appropriation under Act 100 was to address funding necessary for various agencies to respond to the changes to the state's OWI laws. The funding recommended by DOA for the DA function is not related to the provisions of Act 100, but rather focuses on issues related to the 2009-11 budget. One might argue that as a result of Act 28 reductions, enforcement of state criminal laws, including the OWI law changes under Act 100, could be affected. However, the funding in Act 100 was not appropriated to address agency budget reductions under Act 28.

As indicated previously, on March 3, 2010, the President of the WDAA wrote to the Committee regarding the DOA request. The letter indicated that the WDAA disagreed with the DOA recommendation and sought funding for the following:

	<u>2009-10</u>	<u>2010-11</u>
Budget Shortfall	\$700,000	\$700,000
11.85 Positions	815,300	815,300
Pay Progression	<u>1,050,600</u>	<u>1,050,600</u>
Total	\$2,565,900	\$2,565,900

The budget shortfall and position requests are discussed above, the attachment addresses pay progression.

Department of Justice. Under current law, DOJ is authorized 5.0 toxicology analyst positions. These positions in the state crime laboratories provide analysis in felony death investigation cases, sexual assault cases, bail jumping cases to determine if the conditions of bail were violated, as well as providing blood alcohol analysis and drug screenings in OWI cases. Under current law, these positions perform approximately 250 blood alcohol analyses annually for alleged felony OWI violations. While blood alcohol analyses for misdemeanor OWI violations are processed by the State Lab of Hygiene, the state crime laboratories generally process blood alcohol analyses for alleged felony OWI violations.

Based on Department of Transportation data from 2005 through 2008, approximately 1,300 4th offense OWI convictions annually occur within five years of a prior offense. As a result, DOJ estimates that making a 4th offense OWI violation a Class H felony if committed within five years of a prior offense under Act 100, will increase its blood alcohol analysis caseload for alleged felony

OWI violations by approximately 1,300 cases annually. For an unknown subset of these cases, law enforcement will not only seek a blood alcohol analysis, but a drug screening as well. While factoring in some increased efficiency from processing this increased caseload in batches, DOJ estimates that it would need an additional 4.0 toxicology analysts in 2010-11, to process this additional caseload at a cost of \$340,500. The Department indicates that the toxicology analysts would require an additional two gas-chromatography units at a one-time cost of \$140,000.

The Department of Administration recommends that the Committee approve this request to permit DOJ to process the anticipated increased workload. It is unclear how DOJ would address the increased workload without the additional resources. The Deputy Attorney General indicates that, "These additional resources will enable DOJ to maintain a two-to-five day processing time required for felony OWI blood samples. There is a significant need to keep processing time within five days, as persons charged with a felony OWI have a statutory right to a preliminary hearing. For some defendants, this right is within 10 days of a defendant's initial appearance. Toxicology reports indicating a defendant's BAC [blood alcohol content] level help establish the probable cause determination required to proceed with felony charges."

While district attorneys are primarily responsible for prosecuting criminal and juvenile delinquency offenses at the trial or hearing level, the Division of Legal Services in DOJ generally represents the state in felony and other significant criminal and juvenile delinquency cases on appeal. The Department estimates that making a 4th OWI offense within five year of a prior offense a felony could lead to approximately 1,300 additional felony convictions annually. In the Department's experience, approximately one-third to one-half of OWI felony cases are appealed annually with the state being represented by DOJ on these appeals. As a result, the Department estimates that these law changes could lead to an additional 433 to 650 criminal appeals cases annually. Department staff indicates that Criminal Appeals Unit attorneys, on average, handle approximately 60 cases annually. As a result, the Department estimates that it would require an additional 9.0 assistant attorneys general to process a possible increased felony appeal caseload of 540 cases annually. If these positions were filled at the minimum salary level, the first year cost of the positions would be \$819,000, and the ongoing annual cost of the positions would be \$744,300. The Department further indicates that 9.0 additional assistant attorneys general would require 2.0 additional legal secretaries at a first year cost of \$123,000, and an ongoing annual cost of \$109,400.

The Department of Administration has recommended that the Committee not approve this latter DOJ request for additional positions to process an increased felony appeal workload. "Act 100 becomes effective on July 1, 2010, and it will take several months before appeals of OWI convictions begin reaching the department. If an emergency situation arises and cases are appealed more quickly than expected, the department could make a request under the s. 13.10 process for increased funding and position authority in the Division of Legal Services."

Department of Justice staff, however, have raised a number of issues regarding 4th offense OWI appeals. While OWI felony cases going to trial may take many months to a year to conclude in circuit court, other OWI felony cases resolved by plea may be concluded in as little as a month.

OWI felony cases resolved by plea may nonetheless be appealed requiring DOJ to represent the state. This could involve cases with adverse suppression of evidence rulings for defendants pleading guilty or no contest. Under state law, defendants who have lost a suppression of evidence motion in an OWI case may still appeal that evidentiary ruling even if they subsequently plead guilty or no contest. Arguably, this law encourages defendants to settle with prosecutors, while still permitting them to challenge the adverse evidentiary finding.

In addition to appeals from OWI convictions (whether from a plea or from conviction after trial), suppression of evidence rulings from circuit court may be appealed before any conviction is entered in a case. The Department indicates that in cases in which important state evidence is ruled inadmissible at trial, the state has a strong interest in immediately appealing the circuit court ruling as the state cannot appeal a subsequent not guilty verdict.

As a result the Department has expressed concerns that it may begin to see these evidentiary appeals on a more expedited timeline. What is unclear, however, is how frequently these evidentiary motions are filed and appealed in OWI cases.

As DOJ will experience an increased OWI felony appeal caseload as a result of Act 100, the Committee could consider providing 11.0 GPR positions and \$942,000 GPR in 2010-11. Alternatively, given that there will be a delay before these OWI appeals begin reaching DOJ, the Committee could consider creating these positions for the final three months of 2010-11, at a cost of \$384,300 GPR. Finally, the Committee could adopt DOA's recommendation and deny the request at this time.

Circuit Courts. The request includes \$231,100 GPR in funding for reserve judges to address the anticipated workload increase of reclassifying fourth offense OWI within a five-year period from a misdemeanor to a felony. Based on 2007 caseload data from the State Public Defender's Office, DOA estimates an increase of 1,301 cases in the court system, which would require 1.996 additional judgeships. To allow circuit courts to handle increased caseloads statewide, instead of providing 1.996 judgeships (which must be statutorily-designated), DOA recommends providing equivalent funding for the use of reserve judges. If funding is not provided, circuit courts would be required to address any increased caseload utilizing existing personnel.

Office of the State Public Defender. As with DOJ, SPD staff estimates that the primary Act 100 change affecting its costs and workload is the provision making a fourth OWI offense a Class H felony, if the offender had a prior OWI violation within the previous five years of committing the fourth offense. Based on an assumption that 50% of the increased felony OWI workload would qualify for SPD representation, the SPD estimates that it would incur additional cost of \$120,600 GPR in 2010-11. The remaining \$24,300 GPR in projected increased costs in 2010-11, associated with Act 100 provisions relate to: (a) additional criminal cases resulting from a lower prohibited alcohol content level; (b) violations of the ignition interlock device requirements; (c) increased sanctions for certain OWI offenses causing injury; (d) additional criminal cases for a felon in possession of a firearm due to the reclassification of certain 4th offense OWI violations as felony violations; (e) criminalizing a first-offense OWI violation if there was a minor passenger under 16

years of age in the motor vehicle at the time of the violation; (f) additional criminal cases resulting from longer periods of time that individuals will be subject to revocation of driving privileges due to longer OWI incarceration periods; and (g) additional revocation cases resulting from longer terms of imprisonment, and from expanded authority to place persons on probation following an OWI conviction. This cost estimate assumes that the increased caseload would be assigned to private bar attorneys.

As the SPD will experience an increased OWI caseload as a result of Act 100, the Committee could consider approving this request for funding as recommended by the DOA Secretary. On the other hand, as other agency requests have been denied by DOA until the state has more experience with caseload changes under Act 100, the Committee could also consider denying the request at this time.

ALTERNATIVES

A. Department of Corrections

1. Approve the request to transfer \$1,963,000 GPR from appropriation s. 20.865(4)(a) to appropriation s. 20.410(1)(bd) for equipment and staffing costs for the Department of Corrections, as the result of supervising offenders on probation for second and third offense OWIs.

2. In addition to Alternative A1, adjust the request by -\$9,900 GPR related to funding calculations for LTE fringe benefit rates.

3. In addition to Alternative A1, provide \$171,900 GPR and 27.60 GPR permanent positions (25.85 communications operators and 1.75 communications supervisors) for the Department's monitoring center, rather than LTE staff funding. *[Alternative A3 may not be chosen in combination with Alternative A2.]*

4. Deny the request.

B. District Attorneys

1. Approve the request to provide \$700,000 GPR annually from the Committee's GPR supplemental appropriation to the district attorneys' GPR salaries and fringe benefits appropriation [s. 20.475(1)(d)] to address funding reductions for prosecutors under 2009 Wisconsin Act 28 (the 2009-11 biennial budget act). Under this alternative, the district attorney budget would only be balanced if assistant district attorneys took eight days of unpaid leave annually as provided for under Act 28. *[This alternative may be selected with B3.]*

2. Provide \$943,800 GPR annually from the Committee's GPR supplemental appropriation to the district attorneys' GPR salaries and fringe benefits appropriation [s. 20.475(1)(d)] to address funding reductions for prosecutors under Act 28. Under this alternative,

the district attorney budget would be balanced if assistant district attorneys took five days of unpaid leave annually. [*This alternative may be selected with B3, and in lieu of B1.*]

3. Provide \$815,300 GPR in 2010-11, from the Committee's GPR supplemental appropriation to the district attorneys' GPR salaries and fringe benefits appropriation [s. 20.475(1)(d)] to create 11.85 GPR-funded assistant district attorney (ADA) positions as follows: (a) 3.0 ADAs to Kenosha County; (b) 2.0 ADAs to Winnebago County; (c) 1.5 ADAs to Marathon County; (d) 1.0 ADA to Columbia County; (e) 1.0 ADA to Jackson County; (f) 1.0 ADA to St. Croix County; (g) 0.75 ADA to Sauk County; (h) 0.5 ADA to Monroe County; (i) 0.5 ADA to Vilas County; (j) 0.25 ADA to Green County; (k) 0.25 ADA to Green Lake County; and (l) 0.1 ADA to Waukesha County.

4. Deny the request.

C. Department of Justice

1. Approve the request to provide \$480,500 GPR in 2010-11, from the Committee's GPR supplemental appropriation to the Department of Justice's law enforcement services' general program operations appropriation [s. 20.455(2)(a)] to: (a) create 4.0 toxicology analyst positions; and (b) acquire two gas-chromatography units. These resources would be provided to the state crime laboratories to process an increased number of OWI felony blood samples. [*This alternative may be selected in addition to either C2 or C3.*]

2. Provide \$942,000 GPR in 2010-11, from the Committee's GPR supplemental appropriation to the Department of Justice's legal services' general program operations appropriation [20.455(1)(a)] to provide a full year of funding to create 9.0 assistant attorneys general and 2.0 legal secretaries to address an increased OWI felony appeal caseload under 2009 Act 100.

3. Provide \$384,300 GPR in 2010-11, from the Committee's GPR supplemental appropriation to the Department of Justice's legal services' general program operations appropriation [s. 20.455(1)(a)] to provide three months of funding to create 9.0 assistant attorneys general and 2.0 legal secretaries to address an increased OWI felony appeal caseload under Act 100. [*This alternative may be selected in lieu of C2.*]

4. Deny the request.

D. Circuit Courts

1. Approve the request to transfer \$231,100 GPR from the appropriation under s. 20.865(4)(a) to the appropriation under s. 20.625(1)(a) for reserve judges to address anticipated workload increases.

2. Deny the request.

E. Office of the State Public Defender

1. Approve the request to provide \$144,900 GPR in 2010-11, from the Committee's GPR supplemental appropriation [s. 20.865(4)(a)] to the Office of the State Public Defender's private bar and investigator reimbursement appropriation [s. 20.550(1)(d)] to provide funding for increased private bar costs associated with an increased criminal caseload under Act 100.

2. Deny the request.

Prepared by: Paul Onsager, Chris Carmichael, and Art Zimmerman
Attachment

ATTACHMENT

Pay Progression for Assistant District Attorneys

The March 3, 2010, WDAA letter proposes that \$1,050,600 annually be provided for pay progression for ADAs. Pay progression is a compensation mechanism that provides automatic annual compensation increases for qualifying employees. Under this approach, the employer usually must pay a salary increase to eligible employees who attain an additional year of service or time in class with the employer (generally referred to as "step" progression), during the first dozen or more years of employment. A pay progression system creates a long-term contractual obligation to provide automatic compensation increases each year, and typically would be negotiated as part of a collective bargaining agreement (or provided to nonrepresented employees are part of the state's compensation plan).

Pay progression is a common feature of collective bargaining agreements between teachers and school districts in Wisconsin. However, except in very limited circumstances and usually narrower timeframes, the state does not authorize pay progression for its employees. Rather, the state's compensation system is based on a policy of providing general wage adjustments for state employees in each biennial budget cycle; these adjustments are dependent, in large part, on the availability of state funding. The last general wage adjustment, for most represented employees, including ADAs, was a 2% increase effective June 7, 2009. This increase was not provided to nonrepresented employees, due to budget limitations.

In addition to general wage adjustments, the state may provide targeted market adjustments, through labor contracts and the compensation plan, for certain employee classifications in order to maintain parity pay for these employees based on factors such as occupational and geographical labor market conditions. Assistant DAs received market adjustments in two of their last three labor agreements and in the 2007-09 collective bargaining agreement (the most recent agreement), effective October 12, 2008, each ADA in pay status on the effective date of the agreement received a market adjustment of \$1.25/hour (an average increase of approximately 3.36%).

State employment relations policy also maintains equivalency of pay range within a job classification. Therefore, the minimum and maximum pay ranges for all nonsupervisory state attorneys, whether classified or unclassified, represented or nonrepresented, is identical. In the state's employment classification system the attorney salary range is currently established at \$23.673/hour as the minimum (\$49,429 annually) and \$57.218/hour as the maximum (\$119,471 annually.) [It should be noted, however, that state agency attorneys represented by the Wisconsin State Attorneys Association (WSAA) have negotiated "broadband" pay status, which allows pay on appointment at higher than the minimum of the range, and allows discretionary compensation adjustments (DCAs) to be awarded (although DCAs are not currently being approved for any state employee). Collective bargaining agreements for assistant district attorneys and assistant public defenders do not establish broadband pay status for their members; therefore, all new attorneys are initially paid the minimum of the pay range.]

Typically, a pay progression system must specify the requirements for attaining a step (annual increase in salary), and the number of steps that are allowed. According to DOA, the WDAA proposal would include annual increases for ADAs whose performance has been evaluated as meritorious by the supervising District Attorney. The \$1,050,600 annual fiscal effect specified by the WDAA in its letter (equivalent to an increase of \$1.52/hour, an average increase of 4.3%, for each ADA), is based on 22 annual steps. This amount, however, reflects salary only and does not include the associated fringe benefit costs. With fringe included, the estimated amount would be \$1,248,000 all funds (\$1,098,200 GPR). [In a clarification of the pay progression proposal, a DA official indicates that, if collective bargaining on this issue was being conducted today, a 17-step system would be proposed. A 17-step system (equivalent to \$1.97/hour, an average increase of 5.6% for each ADA) would result in an estimated annual increase, including fringe benefits, of \$1,617,400 all funds (\$1,423,300 GPR).]

It should also be noted that the fiscal effect of pay progression, as is the case with any wage adjustment, would be cumulative over time. That is, each annual increase accrues to the base budget and must be provided in every subsequent year. Thus, the total cost of the proposed pay progression system for ADAs would be estimated at \$1,248,000 in the first year, \$2,496,000 in the second year, \$3,744,000 in the third year, and so forth.

Further, as noted above, state employment relations policy generally maintains a high level of equivalency, with respect to pay range, within a job classification. Under this policy, the establishment of pay progression for ADAs could result in equivalent treatment for other state attorneys. In addition, it may create pressure to provide pay progression for other professional classifications in state government. These developments would significantly increase the overall fiscal effect of providing salary increases based on a pay progression system.

Finally, it should be noted that the implementation of a pay progression policy would require its incorporation into the state's compensation plan for nonrepresented employees and/or the collective bargaining agreements of affected represented employees. The approval of these policies would be under the purview of the Joint Committee on Employment Relations (for compensation plan changes and recommendation of tentative collective bargaining agreements) and the Legislature (for final ratification of collective bargaining agreements and the appropriation of funds to finance the compensation increases.)