

PUBLIC DEFENDER

Budget Summary							
Fund	2020-21 Base	2021-23	2021-23	2021-23	2021-23	Act 58 Change Over	
	Year Doubled	Governor	Jt. Finance	Legislature	Act 58	Base Year Doubled	Amount Percent
GPR	\$215,887,200	\$225,977,900	\$224,013,700	\$224,013,700	\$224,013,700	\$8,126,500	3.8%
PR	<u>2,904,800</u>	<u>2,981,600</u>	<u>2,981,600</u>	<u>2,981,600</u>	<u>2,981,600</u>	<u>76,800</u>	2.6
TOTAL	\$218,792,000	\$228,959,500	\$226,995,300	\$226,995,300	\$226,995,300	\$8,203,300	3.7%

FTE Position Summary						
Fund	2020-21 Base	2022-23	2022-23	2022-23	2022-23	Act 58 Change
		Governor	Jt. Finance	Legislature	Act 58	Over 2020-21 Base
GPR	609.85	619.85	614.85	614.85	614.85	5.00
PR	<u>5.00</u>	<u>5.00</u>	<u>5.00</u>	<u>5.00</u>	<u>5.00</u>	<u>0.00</u>
TOTAL	614.85	624.85	619.85	619.85	619.85	5.00

Budget Change Items

1. STANDARD BUDGET ADJUSTMENTS [LFB Paper 101]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	-\$89,800	\$5,217,200	\$5,127,400
PR	<u>76,800</u>	<u>0</u>	<u>76,800</u>
Total	-\$13,000	\$5,217,200	\$5,204,200

Governor: Provide adjustments to the base totaling -\$77,500 GPR and \$37,500 PR in 2021-22 and -\$12,300 GPR and \$39,300 PR in 2022-23. Adjustments are for: (a) full funding of continuing position salaries and fringe benefits (-\$61,000 GPR and \$1,400 PR annually); (b) overtime (\$219,700 GPR and \$2,900 PR annually); and (c) full funding of lease and directed moves costs (-\$236,200 GPR and \$33,200 PR in 2021-22 and -\$171,000 GPR and \$35,000 PR in 2022-23).

Joint Finance/Legislature: Provide \$2,608,600 GPR annually for the State Public

Defender to support the annualized costs for 2020-21 attorney pay progression made in accordance with 2021 Act 7 (enacted on March 1, 2021). [Funding for this purpose was initially provided in the bill as a component of pay progression (see item #2).]

2. PAY PROGRESSION [LFB Paper 270]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$10,591,800	- \$9,270,800	\$1,321,000

Governor: Provide \$4,415,200 in 2021-22 and \$6,176,600 in 2022-23 to support pay progression plan for assistant state public defender (ASPD) attorneys to increase retention of experienced counsel. The ASPD pay progression plan is merit-based and consists of 17 hourly salary steps, with each step equal to one-seventeenth of the difference between the lowest annual salary (\$54,434 as of January 3, 2021) and the highest annual salary (\$131,456 as of January 3, 2021). The value of one hourly salary step equals \$4,534 annually. Notwithstanding the creation of a 17 hourly salary step pay progression plan, the State Public Defender is authorized to: (a) deny annual salary increases to individual ASPDs; and (b) increase the salary of individual ASPDs by up to 10% per year. Funding requested is approximately equal to one step in each year of the biennium and the difference between the general wage adjustments and two steps for each qualified ASPD for the prior biennium (2019-21).

Provide a one-time exemption to the maximum salary adjustment limitation to allow assistant state public defenders to receive pay progression that is greater than 10% of salary in 2021-22.

On March 1, 2021, 2021 Act 7 was enacted which specified that the State Public Defender (SPD) may provide pay progression increases for ASPDs in fiscal year 2020-21, and that such increases may exceed 10% of base pay during a fiscal year.

Joint Finance/Legislature: Modify SPD pay progression funding by -\$1,372,400 in 2021-22 and -\$2,681,200 in 2022-23, which results in net funding of \$434,200 in 2021-22 and \$886,800 in 2022-23. Adopt a non-statutory provision for the 2021-23 biennium to exempt the State Public Defender from the requirement that pay progression be provided beginning with the first pay period after July 1. Funding is intended to provide for a half step increase starting January 1, 2022 and 2023. [Note that \$2,608,600 annually initially provided in the bill to fund the annualized costs of a full pay step increase in 2020-21 is identified under standard budget adjustments (see item #1).]

[Act 58 Section: 9101(4)]

3. CHARGING AND SENTENCING ALTERNATIVES

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	-\$4,065,500	\$4,065,500	\$0

Governor: Modify funding by -\$1,355,200 in 2021-22 and -\$2,710,300 in 2022-23, and adopt the following law changes in order to reduce the number of SPD appointments. [Note that estimated annual savings from all requested law changes are generally halved in 2021-22 since private bar attorneys generally bill the SPD six months after being assigned a case.]

a. Provide that for the first offense violation of s. 947.01 Disorderly Conduct, if the alleged offender has not previously been convicted of a felony offense and has not been convicted of any similar offense in the previous three years, the prosecutor be required to offer the alleged offender the opportunity to either complete a diversion program or pay a forfeiture under a stipulated finding of guilt of a non-criminal ordinance violation. The SPD estimates that this law change would affect 3,773 cases and reduce SPD costs by \$1,149,400.

b. Modify current law to legalize the possession and use of marijuana. Cost savings to the SPD associated with this modification are estimated at \$595,500 annually. Note that the estimate is based on the agency's budget request that possession of marijuana be reclassified as an ordinance violation for first- and second-time offenders and a misdemeanor for third-time offenders, provided that there are no allegations that the individual is manufacturing, distributing, or delivering a controlled substance. [See "Marijuana-Related Provisions"]

c. Modify current law to provide that violations of probation or extended supervision that are based only on a violation of a condition of release, not be subject to revocation, but be subject only to non-custodial sanctions. The SPD estimates that this law change would affect 2,090 revocation cases. If these rule violations had not become revocations, the SPD estimates annual savings of \$808,400. [See "Corrections -- Adult Sentencing."]

d. Modify current law to provide that bail jumping be reclassified as a misdemeanor no matter the initial charge. Under current law, bail jumping means failure to comply with the terms of a bond after being released from custody in a pending criminal matter. Bail jumping for a defendant who has been released on bond after being charged with a crime is a Class A misdemeanor (imprisonment not to exceed nine months or fine not to exceed \$10,000, or both) if the offense with which the defendant is charged is a misdemeanor and a Class H felony (a maximum sentence of three years of confinement and three years extended supervision and/or a \$10,000 fine) if the offense with which the defendant is charged is a felony, and bail jumping for a witness for whom bail has been required is a Class I felony (a maximum sentence of one and a half years of confinement and two years extended supervision and/or a \$10,000 fine). In 2019-20, SPD provided representation in 5,479 felony bail jumping cases. If these felonies had been misdemeanors, the SPD estimates annual savings of \$157,000.

Joint Finance/Legislature: Provision not included.

4. VIDEO EVIDENCE: WORKLOAD STAFFING [LFB Paper 485]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR	\$369,600	10.00	-\$183,500	- 5.00	\$186,100	5.00

Governor: Provide a net increase of \$188,200 in 2021-22 and \$181,400 in 2022-23 and 10.0 positions for the resources to receive and review video evidence such as police body worn cameras. Positions would include: (a) 7.0 attorneys; (b) 2.0 paralegals; and (c) 1.0 client service specialist. Funding would include \$665,800 in 2021-22, \$818,200 in 2022-23 and 10.0 positions in each year and reductions to the appropriation for private bar and investigator reimbursement to reflect cost reductions generated by the additional trial attorney positions (-\$477,600 in 2021-22 and -\$636,800 in 2022-23).

Joint Finance/Legislature: Modify the provision by -\$94,100 in 2021-22 and -\$89,400 in 2022-23 and -5.0 positions for the resources to receive and review video evidence such as police body worn cameras.

5. VIDEO EVIDENCE: SERVER STORAGE [LFB Paper 485]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$2,733,800	-\$1,366,800	\$1,367,000

Governor: Provide \$1,366,900 annually to account for the increased data storage costs of video evidence such as police body worn cameras. The bill reflects the agency's estimated cost to purchase sufficient server storage capacity to meet its current storage needs.

Joint Finance/Legislature: Modify the provision by -\$683,400 annually to account for the increased data storage costs of video evidence such as police body worn cameras.

6. EARLY AMORTIZATION PAYOFF [LFB Paper 486]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$507,200	-\$425,800	\$81,400

Governor: Provide \$507,200 in 2021-22 to pay off the amortized principal on improvements to office space leased for the State Public Defender in Madison. In conjunction with the consolidating multiple Madison area locations into a single location, interior improvements to the leased space were undertaken, and financed over a five-year period beginning in January, 2020. The recommendation would repay the financed improvements approximately

three years in advance.

Joint Finance/Legislature: Include provision. In addition, reduce funding for the State Public Defenders Office by \$210,000 in 2021-22 and \$215,800 in 2022-23 associated with current lease payments for remodeling costs.

7. INTERPRETER FUNDING

GPR	\$43,600
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Governor/Legislature: Provide \$21,800 annually to support payments for interpreters. Base funding for interpreters within the program operations appropriation is \$87,100. In recent years, the SPD has reallocated funding from trial representation and appellate representation to support the costs of interpreters. In 2019-20, the SPD incurred \$99,500 in interpreter costs.

8. INDEX PRIVATE BAR ATTORNEY COMPENSATION

Governor: Provide that the private bar rate be adjusted biennially by a percentage equal to the average of the consumer price index over the preceding 12-month period, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the Federal Department of Labor. The increase in hourly compensation would apply to cases assigned on or after July 1, 2023. The current private bar rate is \$70 per hour for time spent related to a case and \$25 per hour for travel time.

Joint Finance/Legislature: Provision not included.

9. PILOT CHIPS EXTENSION

Governor/Legislature: Extend the sunset date on the pilot program to provide counsel for parents of a child subject to a Child in Need of Protection or Services (CHIPS) proceeding in five counties from June 30, 2021 through the end of 2022-23. Under 2017 Act 253, the State Public Defender was required to establish a pilot program in Brown, Outagamie, Racine, Kenosha, and Winnebago counties to provide counsel to nonpetitioning parents in CHIPS proceedings. The act specified that the pilot program does not apply to a proceeding commenced after June 30, 2021.

[Act 58 Sections: 192, 193, and 194]