



## Legislative Fiscal Bureau

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May 16, 2023

Joint Committee on Finance

Paper #318

### Additional GPR Prosecutor Positions (District Attorneys)

[LFB 2023-25 Budget Summary: Page 151, #6]

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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. Currently, 456.4 GPR prosecutor positions are authorized. Of the 456.4 prosecutors statewide, 70.0 are elected DAs, 26 are Deputy DAs, and the remaining 360.4 are ADAs. Base level salary and fringe benefit funding for DAs, ADAs, and deputy DAs is \$56,624,900 GPR.

#### 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 37.5 PR prosecutor positions for the District Attorney function, 35.5 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 35.5 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 64.95 additional prosecutor positions were provided. These positions were allocated to 56 counties as directed by the Governor. The attachment to this paper 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.

6. Under 2021 Act 59, \$457,800 GPR in 2021-22, \$562,300 GPR in 2022-23, and an additional 7.4 positions were provided as shown in Table 2 below.

**TABLE 2**

**Prosecutor Positions Provided by 2021 Act 59**

<u>County</u>	<u>Position Reduction</u>	<u>County</u>	<u>Position Reduction</u>
Columbia	1.00	Marathon	1.00
Fond du Lac	1.00	Monroe	1.00
Green	0.40	Sauk	1.00
Sauk County	0.50	Sheboygan	<u>0.50</u>
Manitowoc	1.00	Total	7.40

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

**TABLE 3**

**GPR State Prosecutor Positions 2022 - Base**

<u>County</u>	<u>Positions</u>	<u>County</u>	<u>Positions</u>
Adams	2.0	Marathon	13.0
Ashland	2.6	Marinette	3.0
Barron	4.0	Marquette	1.6
Bayfield	1.7	Milwaukee	90.0
Brown	16.0	Monroe	5.0
Buffalo	1.2	Oconto	2.0
Burnett	2.0	Oneida	2.5
Calumet	3.0	Outagamie	11.0
Chippewa	6.0	Ozaukee	4.6
Clark	2.0	Pepin	0.8
Columbia	6.0	Pierce	3.0
Crawford	1.0	Polk	4.0
Dane	28.0	Portage	6.0
Dodge	5.0	Price	1.5
Door	2.0	Racine	20.0
Douglas	5.0	Richland	1.8
Dunn	5.0	Rock	15.0
Eau Claire	10.0	Rusk	2.0
Florence	0.6	Sauk	6.0
Fond du Lac	8.0	Sawyer	3.0
Forest	2.0	Shawano/Menominee	4.0
Grant	2.0	Sheboygan	9.5
Green	3.0	St. Croix	7.0
Green Lake	2.0	Taylor	1.5
Iowa	2.0	Trempealeau	2.0
Iron	1.0	Vernon	2.0
Jackson	3.0	Vilas	2.0
Jefferson	6.0	Walworth	6.0
Juneau	3.0	Washburn	2.0
Kenosha	16.0	Washington	6.4
Kewaunee	1.5	Waukesha	17.0
Lacrosse	10.0	Waupaca	4.0
Lafayette	1.5	Waushara	2.6
Langlade	2.5	Winnebago	12.0
Lincoln	3.0	Wood	<u>6.0</u>
Manitowoc	7.0	Total	456.4

8. On March 15, 2022, the Governor announced that \$10.6 million in American Rescue Plan Act (ARPA) funding would be used to support 30 ADAs in 28 counties to address existing caseloads and court backlogs due to the pandemic. Further, Milwaukee County received an additional 15 ADA positions. Funding may also be used for operational expenses and must be expended by April, 2024.

9. As noted above, under 1989 Act 31, prosecutors became state employees. Further, according to 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.

10. In addition to county provided resources, the state provides additional resources to prosecutors 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**

11. Assembly Bill 43 would provide \$3,421,600 GPR in 2023-24, \$4,562,100 GPR in 2024-25, and 44.9 GPR positions annually, and \$91,500 GPR and 0.9 GPR positions in 2023-24, and \$116,800 GPR and 1.4 GPR positions in 2024-25 to provide additional ADAs requested by the 19 offices identified in Table 4. The table also identifies the number of ARPA-fund positions in each of the offices.

**TABLE 4**

**Proposed Additional GPR Assistant District Attorneys  
AB 43/SB 70**

<u>County</u>	<u>Proposed GPR ADA Positions</u>	<u>GPR Prosecutor Position Authority</u>	<u>Resulting GPR Prosecutor Position Authority</u>	<u>Current FED ADA Positions*</u>
Brown	6.0	16.0	22.0	2.5
Clark	2.0	2.0	4.0	0.0
Dane	10.0	28.0	38.0	3.0
Dodge	1.0	5.0	6.0	0.0
Eau Claire	2.0	10.0	12.0	1.0
Fond du Lac	0.5	8.0	8.5	1.5
Grant	1.0	2.0	3.0	0.0
Langlade	0.5**	2.5	3.0	0.0
Marathon	1.0	13.0	14.0	2.0
Marinette	1.0	3.0	4.0	0.0
Milwaukee	4.0	90.0	94.0	16.0
Monroe	2.0	5.0	7.0	0.5
Oneida	0.5**	2.5	3.0	0.0
Ozaukee	0.4**	4.6	5.0	0.0
Sauk	2.0	6.0	8.0	0.5
St. Croix	1.0	7.0	8.0	0.5
Walworth	3.0	6.0	9.0	0.5
Waukesha	7.4	17.0	24.4	1.5
Waupaca	<u>1.0</u>	4.0	5.0	0.0
Total	46.3			

\* Positions expire in April, 2024.

\*\* Positions would increase existing part-time ADA positions to full-time. The position in Langlade County starts in 2024-25.

12. The Department of Administration indicates that the new GPR positions reflect those requested in the agency request with adjustments to reflect the ending of FED positions. As result, GPR positions would start when FED positions end.

13. If the Committee wishes to fund the additional 46.3 positions it could provide \$3,513,100 GPR and 44.9 GPR positions in 2023-24, and \$4,678,900 GPR and 46.3 GPR positions annually in 2024-25 to fund positions starting in October, 2023 at \$35 an hour. [Alternative 1]

14. If no action is taken regarding new GPR positions, total state supported staff for the District Attorneys would remain at 456.4 GPR positions. [Alternative 4]

## Conversion of PR and FED Positions

15. In addition, the bill recommends conversion of some FED and PR positions to GPR positions. Specifically, \$237,100 GPR and -\$237,100 PR and 3.0 GPR and -3.0 PR positions in 2023-24, and \$515,900 GPR and -\$237,100 PR in 2024-25 and 8.5 GPR and -3.0 PR positions, to convert funding for certain prosecutor positions from program revenue to general purpose revenue as identified below. These positions are identified in Table 5. [Note that the federal funding for positions converted were removed as part of standard budget adjustments as non-continuing items.]

**TABLE 5**

### Conversion of PR and FED Positions AB 43/SB 70

<u>County</u>	<u>Recommended PR to GPR Positions</u>	<u>Recommended FED to GPR Positions*</u>	<u>Total Converted Positions</u>
Fond du Lac	1.0	1.5	2.5
Kenosha	0.0	2.0	2.0
Milwaukee	2.0	0.0	2.0
Outagamie	<u>0.0</u>	<u>2.0</u>	<u>2.0</u>
Total	3.0	5.5	8.5

\* Positions starts in 2024-25.

16. *Milwaukee*. One of two 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 two 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.

17. The bill provides the conversion of an additional 1.0 PR position to GPR funding for a community prosecutor position (CP). Since 2015, Near West Side Partners, Inc. (NWSPI), a non-profit organization founded through the support of five anchor institutions (Aurora Health Care, Harley-Davidson, Marquette University, MillerCoors, and Potawatomi Business Development Corporation) has provided funding for a community prosecutor (NWS CP) who serves neighborhoods within the boundaries of the Milwaukee Police Department District 3. The grant funds are set to expire on December 31, 2023. As of this point, Milwaukee does not know whether the grant will be renewed and the office states it has no alternative source of funding. The NWS CP is one of eight CPs in the Milwaukee County District Attorneys' Office, each of whom focuses on a distinct geographic area, targeting issues and helping design solutions to criminal activity and nuisance issues at the neighborhood level.

18. *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 funded through a federal Violence Against Women Act (VAWA) grant and since that time has been county funded. The bill would convert this county PR funding to a state GPR funded position. The position 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."

19. Conversion of the two Milwaukee County ADA and the Fond du Lac County positions from program revenue to general purpose revenue, would require \$237,100 GPR and -\$237,100 PR, and 3.0 GPR positions and -3.0 PR positions annually. [Alternative 2]

20. *ARPA Positions.* As noted above, ARPA funds were provided to fund additional ADA positions across the state. The Kenosha office was given two ADA positions allocated for two years and paid for by ARPA funds. In 2022, the Office was successful in hiring two law school graduates, who they trained. Therefore, the Office requested these two positions be converted to GPR funding and made permanent. The Outagamie office is requesting two ARPA funded positions be converted to GPR funding and made permanent. The Fond du Lac office is requesting 1.5 ARPA funded positions be converted to GPR funding and made permanent. Note, however that all 5.5 of these positions were vacant as of April, 2023.

21. Conversion of the ARPA ADA positions from federal to general purpose revenue, would require \$278,800 GPR and 5.5 GPR positions in 2024-25 starting in May, 2024 at \$35 an hour. [Alternative 3]

22. The Committee should note that as of April 1, 2023, statewide the District Attorney's had a total of 65.7 vacant ADA positions (36.8 permanent GPR, 7 permanent PR, 4.4 project PR and 17.5 FED project). Of this total, 27.1 ADA positions had been vacant for six or more months (9.6 were permanent GPR-funded positions and 3.0 were PR-funded, and 13.5 were FED-funded project positions and 1.0 more was PR-funded). (Again, note that the FED project positions were removed as a standard budget adjustment in 2024-25.) Given the number of vacancies, it could be argued that the Committee could concentrate funding increases on salary adjustments instead of providing more positions. [Alternative 4]

**ALTERNATIVES**

1. *GPR Positions.* Provide \$3,513,100 GPR and 44.9 GPR positions in 2023-24, \$4,678,900 GPR and 46.3 GPR positions annually in 2024-25 to provide additional ADAs.

<b>ALT 1</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
GPR	\$8,192,000	46.30

2. *Convert PR-Funded ADA Position Authority to GPR.* Provide \$237,100 GPR and -\$237,100 PR and 3.0 GPR and -3.0 PR positions annually, to convert funding for certain prosecutor positions from program revenue to general purpose revenue as identified below.

<b>ALT 2</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
GPR	\$474,200	3.00
PR	<u>- 474,200</u>	<u>-3.00</u>
Total	\$0	0.00

3. *Convert FED-Funded ADA Position Authority to GPR.* Provide \$278,800 GPR and 5.5 GPR positions in 2024-25. Note that the federal funding for positions converted are removed as part of standard budget adjustments as non-continuing items.]

<b>ALT 3</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
GPR	\$278,800	5.50

4. Take no action.

Prepared by: Sarah Wynn  
Attachment



## ATTACHMENT

### GPR 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.