



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #513

### **Violent Crime Prosecutors and Continuation of Sexual Assault Resource Prosecutor (Justice -- Law Enforcement Services)**

[LFB 2023-25 Budget Summary: Page 372, #6 and Page 373, #10]

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#### **CURRENT LAW**

While district attorneys are primarily responsible for prosecuting criminal and juvenile delinquency offenses at the trial or hearing level, DOJ's Division of Legal Services represents the state in felony and other significant criminal and juvenile delinquency cases on appeal. In addition, the Division: (a) represents the state in prisoner and sexually violent person ("sexual predator") conditions of confinement suits; (b) assists DAs, when requested, in certain criminal prosecutions; and (c) initiates criminal prosecutions and sexual predator commitments under limited circumstances. These prosecutorial and related functions constitute only a portion of the work of the Division and are primarily the responsibility of the following units in the Division: (a) Criminal Appeals; (b) Civil Litigation; and (c) Criminal Litigation. The criminal justice workload of the Division of Legal Services is generally GPR funded, supported by the Division's general program operations appropriation.

#### **DISCUSSION POINTS**

1. *Statutory Authorization.* Attorneys in the Criminal Litigation Unit frequently act as "special prosecutors." Under s. 978.045 of the statutes, a court may appoint a special prosecutor either on its own motion or at the request of a district attorney. A special prosecutor has all of the powers of a district attorney and may assist a district attorney in the prosecution of persons charged with a crime, in grand jury or John Doe proceedings, in sexually violent person commitment proceedings, or in investigations. Further, before a court makes a special prosecutor appointment that exceeds six hours per case, the court or the requesting district attorney must request assistance from staff in other prosecutorial units or from an assistant attorney general in DOJ's Criminal Litigation Unit.

2. Section 165.255 of the statutes provides that DOJ may represent the state in commitment proceedings for sexually violent persons under Chapter 980.

3. Under s. 165.60 of the statutes, the Department of Justice is authorized to enforce Chapter 108 of the statutes (Unemployment Insurance and Reserves). Furthermore, under s. 108.14(3m) of the statutes, the Department of Workforce Development, the Labor and Industry Review Commission, or the state may request representation from the Department of Justice in cases regarding unemployment insurance fraud. The Criminal Litigation Unit is responsible for handling such cases regarding unemployment insurance fraud.

4. Finally, under s. 165.25(3) of the statutes, DOJ is required to consult and advise with district attorneys, when requested by them, in all matters pertaining to the duties of their office. This consultation frequently involves the Criminal Litigation Unit.

5. *Program Administration.* Unit attorneys act as "special prosecutors" throughout Wisconsin by court motion or at the request of a district attorney. Frequently, these appointments involve homicide and white-collar crime cases, and other cases where the district attorney is unable to act. Most of the unit's criminal prosecutions result from such "special prosecutions." The unit's remaining criminal prosecutions involve cases for which the Department has original jurisdiction to initiate the criminal case. Table 1 identifies the criminal referrals to the unit by case type and case disposition for 2021-22.

**TABLE 1**  
**Criminal Referrals**

	<u>2021-22</u>
<i>Case Type</i>	
Special Prosecution	11
Assistance Request	24
Original Jurisdiction	<u>10</u>
Total	45
 <i>Case Resolution</i>	
Charged	19
No Charge or Ongoing Investigation	<u>7</u>
Total	26

6. Unit attorneys also handle sexual predator commitments and currently process a significant portion of all such commitments in the state. Under current law, a petition alleging that an individual is a sexually violent person may be filed by either: (a) DOJ, at the request of the agency with the authority or duty to release or discharge the person (either the Department of Corrections or the Department of Health Services); or (b) a district attorney. If an individual is found guilty of a sexual violent offense, he or she is sentenced to prison, while if an individual is found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, he or she is committed to an institution under the Department of Health Services (DHS). Subsequent

to an individual serving a prison sentence or being released from the care of DHS for having committed a sexually violent offense, the individual may be committed to DHS as a sexually violent person based on the petition filed by DOJ or a district attorney. If, after a trial, an individual is determined to be a sexually violent person, the court must enter a judgment on the finding and commit the person as a sexually violent person. In that event, the court must order the person committed to the custody of DHS for control, care, and treatment until the person is no longer a sexually violent person.

7. In 2021-22, the unit received 12 sexually violent person referrals and assumed these referrals. All other sexually violent person commitments were handled by district attorneys. Sexual predator commitment cases assumed by the Department generally stay open for an extended period of time as there are ongoing annual evaluations of sexual predator commitments. In 2021-22, the unit represented the state in 70 post-commitment proceedings.

8. The Criminal Litigation Unit meets the Department's statutory responsibility to consult and advice with district attorneys, in part, through the staffing of an on-call service that state prosecutors can contact for advice. Further, the unit targets publications and training sessions to local prosecutors. In addition, the unit sponsors training for newly elected district attorneys. This training reviews the duties of the office of district attorney and highlights the resources that are available through DOJ and other state and federal agencies.

9. Under 2017 Act 261, \$300,000 and 2.0 GPR attorney project positions were created to assist the Division of Criminal Investigation (DCI) in the field offices of Wausau and Appleton and to assist district attorneys in the prosecution of drug-related offenses. The Department of Justice is required to submit an annual report to the Joint Committee on Finance on the project prosecutor attorney positions that describes the activities and assesses the effectiveness of the attorneys in assisting DCI in the Appleton and Wausau field offices. Note that at a 13.10 meeting on February 15, 2023, the Joint Committee on Finance made these 2.0 field prosecutor positions permanent. In 2021, the project attorneys assisted with 63 drug related cases.

#### **A. Violent Crime Prosecutors**

10. The bill would expand DOJ's role in supporting and assisting local agencies statewide through prosecutors at DOJ with specific expertise. The Department has developed a special prosecutor model, including AAGs assigned as regional special drug prosecutors, a sexual assault resource prosecutor, and a traffic safety prosecutor. The 2.0 additional AAGs and 1.0 paralegal advanced proposed under Assembly Bill 43/Senate Bill 70 would expand the scope of assistance to include additional types of violent crimes such as homicides, not limited to drug trafficking or sexual assault.

11. The special prosecutor model is intended support DA offices across the state but one of the additional positions is intended to focus on violent crime in southeastern Wisconsin. Special prosecutors could provide training and consultation in addition to taking on prosecutions at the request of DA's. This may be of assistance to smaller offices with particularly complex or time-consuming cases or offices in larger counties with high turnover or vacant positions. According to DOJ, "special prosecutors are a tool to adapt to evolving public safety needs and ensure local prosecutors have the

training, expertise and resources to effectively prosecute cases of violent crime."

12. Given the assistance that specialized AAGs can provide to local offices, the Committee could provide two violent crime AAGs and one paralegal-advanced as would be provided in AB 43/SB 70. [Alternative A1] This alternative would provide \$185,800 GPR in 2023-24 and \$242,800 GPR in 2024-25 and 3.0 positions starting in October, 2023.

13. The Division of Legal Services currently has two vacant ARPA-funded AAGs in the Criminal Litigation and Public Integrity unit. These positions are removed in conjunction with standard budget adjustments. If the Committee wishes to provide support for prosecutorial assistance to local district attorneys but at a lesser amount that provided under AB 43/SB 70, 2.0 GPR violent crime prosecutor positions could be provided when the federal positions expire in December, 2023. [Alternative A2] This alternative would provide \$85,900 GPR in 2023-24 and \$161,900 GPR in 2024-25 and 2.0 GPR positions.

## **B. Sexual Assault Resource Prosecutor**

14. In addition, the bill would continue the responsibilities of a sexual assault resource prosecutor project position created under 2019 Act 9 that ends in July, 2023. This position has provided local offices assistance in the following ways: (a) case consultations for DAs through review of cases and recommendations; (b) strategic support in issues related to trials and sentencings hearings, she assists with legal and social science research; (c) technical assistance; (d) the prosecutor training day at Wisconsin Forensic Interviewer Guideline training; and (e) developed and spearheaded the two and 1/2-day regional training courses to help DAs navigate sexual assault cases. This position is also removed as a standard budget adjustment.

15. The Department indicates that few county district attorney's offices have the resources to have a prosecutor specialize in sexual assaults. Therefore, most assistant district attorneys assigned to a sexual assault prosecution would benefit from consulting with a colleague with previous experience. In addition, DOJ indicates that staffing this position at the state level ensures that prosecutors in every county have training, mentorship, and direct legal support to prosecute sexual assaults. Further, the resource prosecutor provides a resource for DAs requesting a special prosecutor or needing assistance due to ADA turnover or vacancies.

16. Given the specialized assistance that this sexual assault prosecutor provides, and that project positions are statutorily limited to four years, the Committee may decide to make the position permanent. [Alternative B1] This alternative would provide \$58,400 GPR in 2023-24 and \$78,000 GPR in 2024-25 and 1.0 position for an assistant attorney general to continue providing training and resources for prosecutors on sexual assault cases. Funding provided would start the positions in October, 2023.

## ALTERNATIVES

### A. Violent Crime Prosecutors

1. Provide \$185,800 GPR in 2023-24 and \$242,800 GPR in 2024-25 and 3.0 GPR positions to provide prosecutorial assistance to county district attorneys related to violent crimes cases. Funding provided would start the positions in October, 2023. [This alternative may not be selected with Alternative 2.]

ALT A1	Change to Base Funding	Positions
GPR	\$428,600	3.00

2. Provide \$85,900 GPR in 2023-24 and \$161,900 GPR in 2024-25 and 2.0 GPR positions to provide prosecutorial assistance to county district attorneys related to violent crimes cases. Funding provided would start the positions in December, 2023. [This alternative may not be selected with Alternative 1.]

ALT A2	Change to Base Funding	Positions
GPR	\$247,800	2.00

3. Take no action.

### B. Sexual Assault Resource Prosecutor

1. Provide \$58,400 GPR in 2023-24 and \$78,000 GPR in 2024-25 and 1.0 GPR position for an assistant attorney general to continue providing training and resources for prosecutors on sexual assault cases. Funding provided would start the positions in October, 2023.

ALT B1	Change to Base Funding	Positions
GPR	\$136,400	1.00

2. Take no action.

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