



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #626

### Support and Administrative Staff (Public Defender)

[LFB 2023-25 Budget Summary: Page 479, #4]

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#### CURRENT LAW

Both the United States Constitution and the Wisconsin Constitution provide the right to counsel for individuals accused of a crime. The Sixth Amendment to the United States Constitution provides, in part, that, "In all criminal prosecution, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." Article I, Section 7 of the Wisconsin Constitution provides that, "In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel..." In *Gideon v. Wainwright* (1963), the United State Supreme Court held that the constitutional right to counsel guaranteed by the United States Sixth Amendment requires the government to provide counsel to indigent criminal defendants. However, under subsequent United States and Wisconsin Supreme Court decisions, there is no absolute right to the appointment of counsel in non-criminal cases carrying no threat of loss of physical freedom.

The cost of providing required counsel to the indigent in Wisconsin is generally the responsibility of the state through the Office of the State Public Defender (SPD). The SPD employs trial and appellate attorneys who represent clients who qualify for SPD representation. Generally, the State Public Defender provides legal representation for indigent persons: (a) facing a possible sentence that includes incarceration; (b) involved in certain proceedings under the Children's and Juvenile Justice Codes (Chapter 48 and 938 of the Wisconsin statutes); (c) subject to petitions for protective placement (Chapter 55 of the Wisconsin statutes); (d) facing involuntary commitment; (e) involved in certain post-conviction or post-judgment appeals; and (f) undergoing proceedings for modification of a bifurcated sentence, if representation has been requested by the indigent person or the case have been referred by a court, and the Public Defender determines that the case should be pursued. Further, unless the individual knowingly and voluntarily waives counsel or appoints his or her own counsel, the SPD must provide counsel to the following individuals without a determination of indigency: (a) those involved in certain proceedings under the

Children's and Juvenile Justice Codes; (b) those subject to petitions for protective placement; and (c) those facing involuntary commitment.

## **DISCUSSION POINTS**

1. The cost of providing counsel to the indigent in Wisconsin is generally the responsibility of the state through the SPD. The Office is primarily funded through general purpose revenue, which is utilized to support trial and appellate staff attorneys as well as reimbursements to private bar attorneys who are assigned indigent legal defense cases. Base resources for the SPD are \$113,150,900 GPR and \$1,505,200 PR and is currently authorized 614.85 GPR and 5.0 PR positions. Of the 614.85 positions employed by the SPD, 377.7 positions are assistant state public defenders (ASPDs).

2. In order to provide representation for indigent clients, the SPD has both a trial division and an appellate division. The trial division is comprised of 37 local trial offices located throughout Wisconsin, while the appellate division is comprised of two appellate offices, located in Madison and Milwaukee. Base resources for the SPD's trial division are \$60,906,300 GPR and 552.7 GPR positions, and base resources for the appellate division are \$5,241,600 GPR and 44.0 GPR positions.

3. In order to ensure that SPD offices are adequately staffed with support personnel, the SPD tries to maintain the following ratios between support personnel and staff attorneys: (a) one legal secretary for every five ASPDs; (b) one investigator for every 10 ASPDs; and (c) one client service specialist for every 20 ASPDs. The SPD is in the process of determining the correct ratio of paralegals to staff, as the SPD started hiring paralegals for the first time approximately four years ago.

4. Currently, in the trial and appellate divisions, the ratio of attorneys to all support staff positions (legal secretaries, investigators, client services specialists, and paralegals) combined is approximately two attorneys to one support staff. In some of the SPD's smaller offices, there may only be one support staff person on site for three to five attorneys. For comparison, the Department of Justice has a ratio of five attorneys to three support staff. Some District Attorneys have staffing ratios as high as three support staff to one attorney not including support from local law enforcement agencies.

5. To assist SPD attorneys, public defender investigators interview witnesses, visit crime scenes to gather evidence, prepare diagrams, take photographs, and obtain other information to identify defense issues. Client service specialists provide support to SPD attorneys and SPD clients by: (a) gathering pertinent information regarding an individual client's problems and needs; (b) investigating placement, treatment, and educational programs that could assist the client; and (c) preparing written recommendations to be considered at sentencing and revocation hearings.

6. In addition to their work with ASPDs, support staff at local offices are responsible for making calls to appoint cases to the private bar. If, in some instances, staff need to make hundreds of calls to appoint a case, the staff are not available to provide support to the ASPDs in the office. This increases the amount of time ASPDs spend on administrative matters, which is not the most cost-effective use of an ASPDs time.

7. In the 2021-23 budget, SPD received five positions related to all workload issues, including the impact of video evidence. However, the workload impact of video evidence continues to grow. For example, in one of the SPD trial offices, over a four-month period, the office downloaded and reviewed 7,000 hours of video evidence. In four months, the office had the equivalent of four positions annual hours' worth of video to review.

8. On March 15, 2022, the Governor announced that \$11.5 million in American Rescue Plan Act (ARPA) funding would be used to support 16 additional ASPDs and 11 support positions in Milwaukee County to address court backlogs due to the pandemic. Funding must be used by April, 2024. In addition, federal funding supports 14 ASPD and 22 staff positions in offices around the state until October, 2023. The locations of current ARPA staff include: Baraboo, Eau Claire, Elkhorn, Green Bay, Hudson, Janesville, Kenosha, Madison, Milwaukee, Sheboygan, Sparta, Spooner, Stevens Point, Waukesha, and Wausau. Even though these positions expire in October, 2023, only one position has been vacant for six months or more as of April, 2023.

9. In total, all federal Covid relief funding provided 63 staff to over 20 counties including 30 ASPDs, 23 paralegals, four investigators, three client services specialists, and three legal secretaries. All of these positions were removed from the SPD's 2023-25 budget as a standard budget adjustment.

10. In order to continue to provide additional litigation and administrative support to partially address workload in the trial and appellate divisions, the bill provides the SPD \$2,784,200 GPR in 2023-24 and \$3,579,000 GPR in 2024-25, and 50.0 GPR positions annually. These positions include: 20.0 paralegal, 10.0 investigator, 7.0 client services specialist, and 11.0 legal secretary positions to partially address this issue.

11. Further, due to increased turnover and additional staff, the bill provides the SPD with 1.0 GPR additional human resources specialist and 1.0 GPR staff development program specialist in the administrative office to recruit, onboard, and train staff. Even with an additional Human Resources Specialist, SPD's ratio would still be one of the highest among state agencies at one HR position per 117 positions (next highest being DOJ at 1:93). Note that under s. 16.004 (20), which directs DOA to provide human resource service to most executive branch agencies, SPD and DOJ are exempt. In addition, due to increased turnover and the onboarding of new staff, the bill provides a dedicated training position to provide consistent, intensive, and specific SPD onboarding and training for new employees and reduce the onboarding requirements of staff with full workloads in local offices. This position would also provide logistical support for the current training activities of the SPD that focus on the direct representation of clients.

12. Support staff assist ASPDs by with various aspects of direct representation requirements such as working with attorneys and clients to investigate and prepare their case for trial, assistance with administrative matters such as drafting and eFiling court documents, and reviewing video evidence. Given that additional staff support would help address the workload impact of ASPD's by allowing attorneys to focus more time on legal representation rather than also performing administrative, research and/or investigative activities, the Committee could provide \$2,784,200 GPR in 2023-24 and \$3,579,000 GPR in 2024-25 and 50.0 GPR support staff annually to replace and enhance staff currently supported with federal funds. [Alternative 1] These positions would start in

October, 2023.

13. As indicated previously, ARPA funds currently support 33.0 staff support positions throughout the state. If the Committee wishes to provide support, but at the same level as federal positions, the Committee could provide \$1,748,000 GPR in 2023-24 and \$2,243,000 GPR in 2024-25, and 33.0 positions annually. [Alternative 2] Note that as FED positions, there is only one position are that has been vacant for six months. This alternative would provide the SPD with 23.0 paralegal, 4.0 investigator, 3.0 client services specialist, and 3.0 legal secretary positions starting in October, 2023.

14. If the Committee wishes to provide support, but at lower level than the current federal positions, the Committee could provide \$1,388,800 GPR in 2023-24 and \$1,785,000 in 2024-25 and a total of 25.0 GPR positions. [Alternative 3] This alternative would allow the SPD to determine which specific positions to create based on the agency's needs.

15. As indicated earlier, the currently funded FED positions were removed as a standard budget adjustment. If no action is taken, the federal positions would expire in April, 2024, without replacement. [Alternative 4]

## ALTERNATIVES

1. Provide \$2,784,200 GPR in 2023-24 and \$3,579,000 GPR in 2024-25 and 50.0 GPR positions annually starting in October, 2023, to address workload issues for staff assisting State Public Defender attorneys.

<b>ALT 1</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
GPR	\$6,363,200	50.00

2. Provide \$1,748,000 GPR in 2023-24 and \$2,243,000 GPR in 2024-25 and 33.0 GPR positions annually starting in October, 2023, to address workload issues for staff assisting State Public Defender attorneys.

<b>ALT 3</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
GPR	\$3,991,000	33.00

3. Provide \$1,388,800 GPR in 2023-24 and \$1,785,000 GPR in 2024-25 and 25.0 GPR staff positions annually starting in October, 2023.

<b>ALT 3</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
GPR	\$3,173,800	25.00

4. Take no action.

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