



## Legislative Fiscal Bureau

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February 15, 2023

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Department of Justice: Section 13.10 Request for Permanent Position Authority for Field Drug Prosecutors -- Agenda Item II

### REQUEST

Under s. 13.10 of the statutes, the Department of Justice (DOJ) requests authority to replace 2.0 expiring GPR project positions in the legal services general program operations appropriation under s. 20.455 (1)(a) with 2.0 permanent GPR positions in the same appropriation to continue the work of the field drug prosecutors based in Wausau and Appleton. The Department indicates that the 2.0 GPR positions would be funded from existing resources for the remainder of 2022-23. Therefore, no additional funding is requested.

### BACKGROUND

In April, 2018, 2017 Wisconsin Act 261 was signed into law and included, among other items, the creation of two, five-year project positions funded by general purpose revenue (GPR) to act as special drug field prosecutors assigned to the Wausau and Appleton field offices of the Division of Criminal Investigation (DCI). The positions expire on April 10, 2023. Under Act 261, \$300,000 and 2.0 GPR attorney project positions were created to assist the Division of Criminal Investigation (DCI) in the Wausau and Appleton field offices and to assist district attorneys statewide in the prosecution of drug-related offenses. The project positions terminate after five years (an exemption from the current law time limitation for project positions of four years). The act also required DOJ 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. In 2021, the project attorneys assisted with 63 drug related cases.

The two field drug prosecutor positions support a 30-county area in North Central and Northeastern Wisconsin. A third permanent field drug prosecutor position is located in the Eau Claire

Regional Office of DCI and serves a 23-county region in Northwestern Wisconsin. The regular duties of DOJ attorneys fall into three primary categories: (a) training and consultation; (b) investigation; and (c) prosecution. Special prosecutors are primarily engaged in developing and providing training to local prosecutors, providing expert assistance and support to local prosecutors related to specific cases, assisting with investigations conducted by law enforcement agencies and regional multi-jurisdictional taskforces, and the prosecution of cases at the request of the district attorney.

## ANALYSIS

As identified in the table below, over the three full years of caseload assistance data for the 2.0 field drug prosecutor positions, the number of cases has remained consistent. Further, in the coming years, DOJ indicates that this caseload is expected to remain similarly consistent.

### Special Drug Prosecutor Assigned Case Count by Calendar Year

|  | <u>2019</u> | <u>2020</u> | <u>2021</u> |
|--|-------------|-------------|-------------|
| Total cases  | 68          | 64          | 63          |
| First degree reckless homicide (Len Bias)                                    | 21          | 30          | 28          |
| Methamphetamine distribution *   | 31          | 16          | 18          |
| Heroin/fentanyl distribution *   | 16          | 14          | 11          |
| Other (first degree homicide/murder, aggravated battery, false imprisonment) | 6           | 11          | 9           |

\* Some cases involve methamphetamine and heroin/fentanyl distribution and are reported in both categories.

The Department of Justice indicates that "feedback from the regional district attorneys and law enforcement agencies supported by the field drug prosecutors has been highly favorable, with the assistance provided being described as invaluable, much needed, immeasurable, and vitally important." The Department indicates that it will fund the positions for the remainder of 2022-23 using existing resources. Note that, since the positions expire on April 10, 2023, 2021 Act 58 (the 2021-23 biennial budget) removed these positions at the end of the biennium as non-continuing. Therefore, the positions are not included in DOJ's 2023-25 base budget. Entry level annualized funding for the two newly-created permanent positions would be \$152,600 GPR for salary and fringe benefits in the next biennium. If the permanent positions are approved and increased funding is not provided in the 2023-25 biennial budget, DOJ would be required to support the positions using base resources. [Note that the Committee cannot allocate funds in the current biennium (2021-23) for a future biennium (2023-25) through s. 13.10.]

Beginning in September, 2022, one of the two project positions became vacant and was vacant on January 1, 2023. Also as of January 1, DOJ's Division of Legal Services had a 0.25 GPR position auditor and a 0.25 GPR special agent that have been vacant for over six months. However, these partial positions are made a full time positions with 0.75 federally funded positions.

In order to extend the 2.0 GPR field drug prosecutors beyond April, 10, 2023, the Committee

could approve the Department's request for 2.0 permanent GPR positions in the same appropriation (s. 20.455(1)(a)). This would allow DOJ to continue the work of the field drug prosecutors based in Wausau and Appleton. [Alternative 1] Alternatively, it could be argued that since the positions were intended to be project positions, the Committee could deny the request. [Alternative 2]

## **ALTERNATIVES**

1. Approve the request for 2.0 permanent GPR positions for field drug prosecutors in the Department of Justice's Legal Services, General Program Operations appropriation (s. 20.455(1)(a)).

2. Deny the request.

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