

Criminal Justice Coalition

2019-21 Biennial Budget Proposal

Introduction

The **State Public Defender's Office (SPD)**, **Wisconsin District Attorney's Association (WDAA)**, **Association of State Prosecutors (ASP)**, **Department of Justice (DOJ)**, and **Director of State Court's Office (DSCO)** have collaborated to present a package of budget proposals that makes an efficient and systemic investment in a core Constitutional function of government - the criminal justice system. The proposal below does not contain many new concepts, and most are already included in the 2019 agency budget requests submitted in September 2018.

What this collaboration offers is a thorough review, by all major parts of the criminal justice system, of investments that are critical to ensure that Wisconsin meets its constitutional obligations to all citizens impacted by the justice system.

This package recognizes that the criminal justice system is made up of different actors with different fundamental roles and responsibilities but that are interrelated such that if one part of the system is under-resourced or inefficient, it impacts all others. All of these areas account for less than 2% of state government spending, but the implication for not providing adequate resources affects countless families, the accused, and victims of crime statewide.

For additional information on the coalition, please contact:

Jordan Lamb, ASP - 608-252-9358 or jkl@dewittross.com

Louis Molepske, President, WDAA - 715-346-1300 or louis.molepske@da.wi.gov

Adam Plotkin, SPD - 608-264-8572 or plotkina@opd.wi.gov

Dean Stensberg, DSCO - 608-266-6828 or dean.stensberg@wicourts.gov

Lane Ruhland, DOJ - 608-640-7203 or ruhlandl@doj.state.wi.us

Summary of Wisconsin District Attorney's Association/Association of State Prosecutors Request

1. Full-funding for Assistant District Attorney Pay Progression

The Wisconsin State Legislature prioritized the function of Wisconsin ADAs when they created the pay progression system in 2012 and funded in subsequent budgets. (*See Wis. Stat. § 230.12 (10) and (12) and 2011 Wisconsin Act 238.*) "Pay progression" creates a 17-step *discretionary merit based* program for providing pay increases to ADAs in an effort to strengthen our law enforcement system. We ask ADA pay progression be fully funded in the 2019-21 budget bill.

2019-21 BUDGET REQUEST: Provide approximately \$1.6 million in FY 2019-20 and \$3.2 million in FY 2020-21 to fund the Assistant District Attorney pay progression program. Wis. Stat. § 20.475 (1) (em).

2. Funding for 60.85 Additional Assistant District Attorney Positions

One of the most prominent barriers to effective and efficient enforcement of criminal laws in Wisconsin is the staffing shortage in Wisconsin's district attorneys' offices. Accordingly, we request funding and authorization for 60.85 new assistant district attorney positions.

2019-21 BUDGET REQUEST: Provide \$3,320,000 GPR in FY 2019-20 and \$4,427,000 in FY 2020-21 for these 60.85 positions.

3. Funding to Create and Staff a Prosecutor's Council

We request that the State create an independent prosecutor board that oversees and sets policies for a state prosecutor's office. The state prosecutor's office will assume duties relating to district attorneys that current law assigns to the Department of Administration (DOA), such as preparing a budget for all of the prosecutorial units, approving appointments of special prosecutors when needed, and making requests for assistant district attorneys in certain prosecutorial units.

2019-21 BUDGET REQUEST: Provide \$252,500 GPR in FY 2019-20 and \$246,500 GPR FY 2020-21 for the executive director position salary, the legislative liaison position salary, one-time moving costs (FY 2019-20), supplies and services expenses such as office space rent, copier/printer, telephone, IT services and office supplies for each FTE.

Summary of State Public Defender Request

1. Assigned Counsel Rate

Last adjusted down to \$40 an hour in 1995, the rate paid by the State Public Defender (SPD) to private attorneys appointed to represent indigent defendants is the lowest in the nation. The reimbursement rate is now having a significant and negative impact on defendants, circuit court operations, and county governments. The stagnant rate has resulted in fewer attorneys being willing to accept SPD appointments, which leads to delayed court calendars and increased costs as people are held in county jails for longer periods pre-trial.

In June 2018, the Supreme Court of Wisconsin increased the hourly rate of reimbursement from \$70 to \$100 an hour effective January 1, 2020, for attorneys

appointed at county expense. Without a corresponding increase in the SPD rate, the current difficulty in finding counsel at \$40 an hour will likely accelerate, resulting in a systemic crisis for courts and significant additional costs to counties.

2019-21 BUDGET REQUEST: Provide \$16,612,700 in each year to raise the private rate to \$70 per hour effective with cases appointed on or after July 1, 2019.

2. Pay Progression

The final component in addressing the availability of attorneys to provide representation to indigent defendants is the retention of SPD staff attorneys through funding an established pay progression system. This merit-based pay incentive system covers assistant state public defenders as well as assistant district attorneys and assistant attorneys general. Retaining staff attorneys with knowledge and experience is especially critical in the face of the lack of available private attorneys. With skill and experience comes efficiency and ability to handle a high and complex caseload.

2019-21 BUDGET REQUEST: Provide \$1,767,900 in FY 20 and \$3,535,800 in FY 21 to fund the Assistant State Public Defender pay progression system.

3. Loan Assistance Pilot Program

The low rate of compensation is the main issue affecting the ability to find attorneys for SPD appointments. Another problem is the lack of attorneys physically located in the more rural areas of Wisconsin. This issue is similar to that faced by doctors, nurses, and other professionals who provide state services. One remedy that has been shown to have a positive impact is to provide loan assistance to incentivize locating in areas of geographic need.

Modeled largely on similar programs that already exist in Wisconsin for physicians, the goal of a pilot program is to attract attorneys to practice in rural areas. Not only can this incentive assist in SPD finding attorneys willing to take appointed cases, but it will benefit small local economies throughout the state.

2019-21 BUDGET REQUEST: Provide \$250,000 per year to create a pilot program to provide loan assistance to private attorneys who accept SPD appointments.

Summary of Department of Justice Request

1. Investment in Crime Lab Staffing

a. Forensic Specialists

It is imperative to keep up with increases in evidence submissions. To do this, we must allow our highly qualified analysts to focus their time on testing and analyzing evidence, which means finding other resources to take in and prepare evidence. This is why the Department is requesting 7 FTE forensic biologists who will be able to assist the analysts in the preparation of evidence and reports. Breaking down the evidence testing process into preparation and testing saves analyst time, and keeps our most senior scientists focused on actual case work. In addition, forensic biologists gain valuable training allowing them to potentially promote to analyst, saving the one to two years of down time it takes to train a fully-qualified analyst.

b. Dedicated Crime Scene Response Team

The crime labs are statutorily required to have a crime scene response function. We have been fulfilling this duty with our analysts, which takes them away from case work and is very disruptive to the efficiency of the labs. Based on initial information from the staffing needs assessment, DOJ is proposing a full-time dedicated Crime Scene Response Unit. At least three staff members dedicated to the Crime Scene Response Unit, one per laboratory, could have a positive impact on limiting the amount of time other staff members have to spend on crime scene response-related responsibilities. These team members could also spend time assisting analysts in the preparation of evidence and administrative tasks that otherwise detract from analysts focus on casework.

c. Digital Forensics Unit

Outside of the Wisconsin State Crime Lab, the State employs criminal analysts who work digital evidence. As criminals rely more and more on modern technology, more cases involve digital evidence which is retrieved and analyzed by our Digital Forensic Analysts. DFU examiners use a wide variety of computer programs and tools to access, recover, analyze, organize and report on information stored in electronic devices including computers, servers, storage devices, mobile phones, tablets, vehicles, appliances and wearable technology in support of criminal investigations. Digital forensic examiners work both in the office and in the field to provide law enforcement immediate field previews of devices. DOJ examiners also provide consultation services to examiners in other agencies, training to law enforcement, and court testimony in support of evidence they have recovered.

2019-21 BUDGET REQUEST: The department requests additional position authority (14 FTE) and \$735,800 GPR in FY 20 and \$931,200 GPR in FY21 to improve the efficiency of operations at the state crime laboratories and to enhance and increases digital forensic services provided to local law enforcement across the state.

2. DOJ Crime Lab Analyst Pay Progression and Reorganization

The Wisconsin Crime Lab is responsible for working nearly all forensic evidence for the State of Wisconsin. The importance of this work necessitates highly trained, highly skilled, and highly educated analysts. Wisconsin's current rates of pay for crime analysts, and minimal opportunities for advancement have resulted in significant turnover. Each time the State loses an analyst, DOJ is faced with the difficulty of attracting new candidates, most of which are entry level based on the current pay rates. Once the Department does find a candidate, the lab's accreditation requires the State expends significant resources and time training the analyst before he/she can work independently on casework. In the case of a DNA analyst, training to full accreditation standards can take up to 18 months after hire. In addition, as evidenced by the third-party assessment, the Crime Lab needs more autonomy within the agency in order to improve efficiency.

2019-21 BUDGET REQUEST: The department requests statutory changes to establish a progressive pay structure for science and technical staff of the state crime laboratories and adjust current pay rates, which the department will self-fund. The costs of pay adjustments as a result of this language will be absorbed within the base budget. Further, transfer the FTE position of crime lab director to new unclassified Division Administrator position that would report directly to the Office of the Attorney General. The position would include basic educational requirements in statute modeled after accreditation standards.

3. Division of Criminal Investigation Operating Budget

For well over a decade, DCI has relied on one-time funding sources to support basic, ongoing operating expenses like, unscheduled, case-driven over time (OID, and critical incidents), leases and mileage on law enforcement vehicles, training, and repair and replacement of investigative and safety equipment.

The revenue balances available to DCI have decreased substantially over the last few years due to the restriction on forfeiture adoptions and because a few substantial seizures were one-time and infrequent. While asset forfeiture policy at the federal level has changed, it is unwise to rely on unstable funding sources to fund critical law enforcement services.

2019-21 BUDGET REQUEST: DOJ recommends \$3.7 million over the biennium, to resolve the operational budget hole for the biennium so that DCI no longer has to rely on one-time funding to patch the deficit.

4. Converting Bureau of Computer Science Contractors to FTEs

The Bureau of Computing Services manages the Department's information technology infrastructure and assets and develops, supports, and maintains applications for managing and operating department programs. One of the most essential functions DOJ provides are the statewide law enforcement information systems, including the TIME system, Criminal History Database and State Crime Lab System. BCS is responsible for the technology and security of all of these systems.

2019-21 BUDGET REQUEST: DOJ is requesting 11 FTE IT positions to replace contractors performing ongoing duties, which will reduce IT staffing costs by \$1,000,000 per biennium once fully implemented. The positions will be phased in over a 2 year period (3 in FY20 and 8 in FY21).

Summary of Director of State Court's Request

1. Funding to Counties for Increase in Court Appointment Rate

In its June 2018 order, the Supreme Court raised the rate for court appointments made at county expense from \$70 to \$100 an hour. While the increase does not directly affect the Court's budget, the Director's office serves as a fiscal agent for disbursing money to counties for Circuit Court operations. It is estimated that the increase in the county appointment rate will raise annual costs for counties between \$2.8 and \$8 million per year depending on the percent of reimbursement the state provides. DSCO estimates that an additional \$5 million per year would effectively hold the counties harmless.

2019-21 BUDGET REQUEST: DSCO requests \$10,000,000 over the biennium as funding for counties to reimburse them for the additional cost based on raising the rate of county appointment.