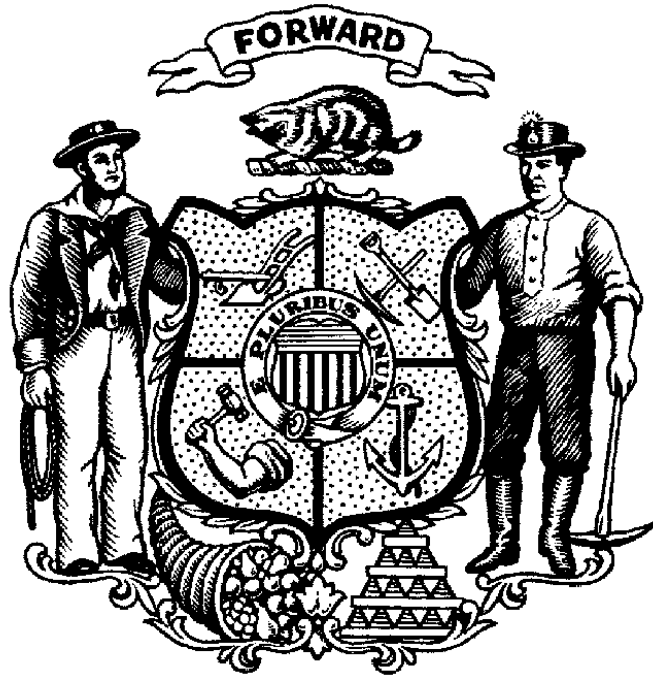


State of Wisconsin

Public Defender Board



Agency Budget Request
2015 – 2017 Biennium
September 15, 2014

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Wisconsin State Public Defender

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Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

September 15, 2014

Secretary Mike Huebsch
Department of Administration
1 E. Wilson St., 10th Floor
Madison, WI 53703

Dear Secretary Huebsch:

On behalf of the Public Defender Board, I am submitting the attached 2015-2017 biennial budget proposal. This budget proposal, which was approved by the board on September 5, 2014, addresses the agency's highest priority needs.

The State Public Defender's (SPD) budget is largely driven by external forces – that is, the number and severity of criminal charges filed against indigent persons who are constitutionally and statutorily guaranteed the right to counsel. I request that two appropriations (20.550(1)(d) and 20.550(1)(f)) be exempt from any cuts and lapses in this biennium and future biennia since they are pass-through payments to private bar attorneys, court reporters and interpreters. Any such cuts or lapses will cause or increase any structural deficits in those appropriations. Additionally, lapses or cuts in any salary appropriation will also cause a structural deficit in the appropriation related to private bar payments, because we would be required to hold attorney positions vacant. Therefore, additional cases would be assigned to the private bar instead of to staff attorneys, at an increased cost.

We again propose innovative options to the traditional justice model that could, if adopted, substantially reduce the number of cases in which the SPD appoints counsel, while increasing the range of options available to respond to criminal behavior, thus reducing justice system costs. These requests reinforce and build upon the value of the State Public Defender as an integral part of the criminal justice system.

We look forward to discussing these issues with you and your staff.

Sincerely,

Kelli Thompson
State Public Defender

AGENCY DESCRIPTION

The Public Defender Board oversees the Office of the State Public Defender, which provides legal representation for indigent persons who are accused of crimes or are defendants in certain civil matters. Pursuant to Wisconsin Statutes and administrative rules, the office determines financial eligibility based on an analysis of each applicant's income, assets, family size and essential expenses, unless the applicant is a juvenile or is seeking representation for cases involving mental health or protective placement proceedings.

The board consists of nine members appointed to three-year terms by the Governor with the advice and consent of the Senate. At least five of the nine must be members of the State Bar of Wisconsin. The board appoints a state public defender to oversee the agency.

The office was created by statute in 1965, became an independent agency in 1977, and gradually began to represent indigent clients at the trial level with both in-house and private bar attorneys.

The office consists of the Trial, Appellate, Administrative and Assigned Counsel Divisions and the Office of Legal Counsel and Office of Training and Development.

MISSION

The mission of the agency is to promote justice throughout Wisconsin by providing high-quality and compassionate legal services, protecting individual rights, and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system.

PROGRAMS, GOALS, OBJECTIVES AND ACTIVITIES

Program 1: Legal Assistance

Goal A: Continuously improve services to clients.

Objective/Activity: Fair treatment and representation of clients.

Goal B: Strengthen public value to clients, the community, other government agencies, other states and nations, and partners.

Objective/Activity: Reduce crime by reaching and educating young people before they offend.

Goal C: Continuously improve administrative management.

Objective/Activity: Maximize resources to serve eligible clients.

Agency Performance Measures

2013 and 2014 Goals and Actuals

Program Number	Performance Measures	Goal 2013	Actual 2013	Goal 2014	Actual 2014
1	Court grants attorney withdrawals at client request as a percentage of total trial cases.	2%	2.3%	2%	2.1%
1	Number of educational contacts with children and youth.	2,750	2,490	2,750	3,675
1	Number of qualified attorneys certified to take cases who accept at least 12 cases per year.	800	782	800	801
1	Number of cases with greatest risk of penalties handled by staff attorneys.	1,200	1,234	1,200	1,418

Note: Based on fiscal year.

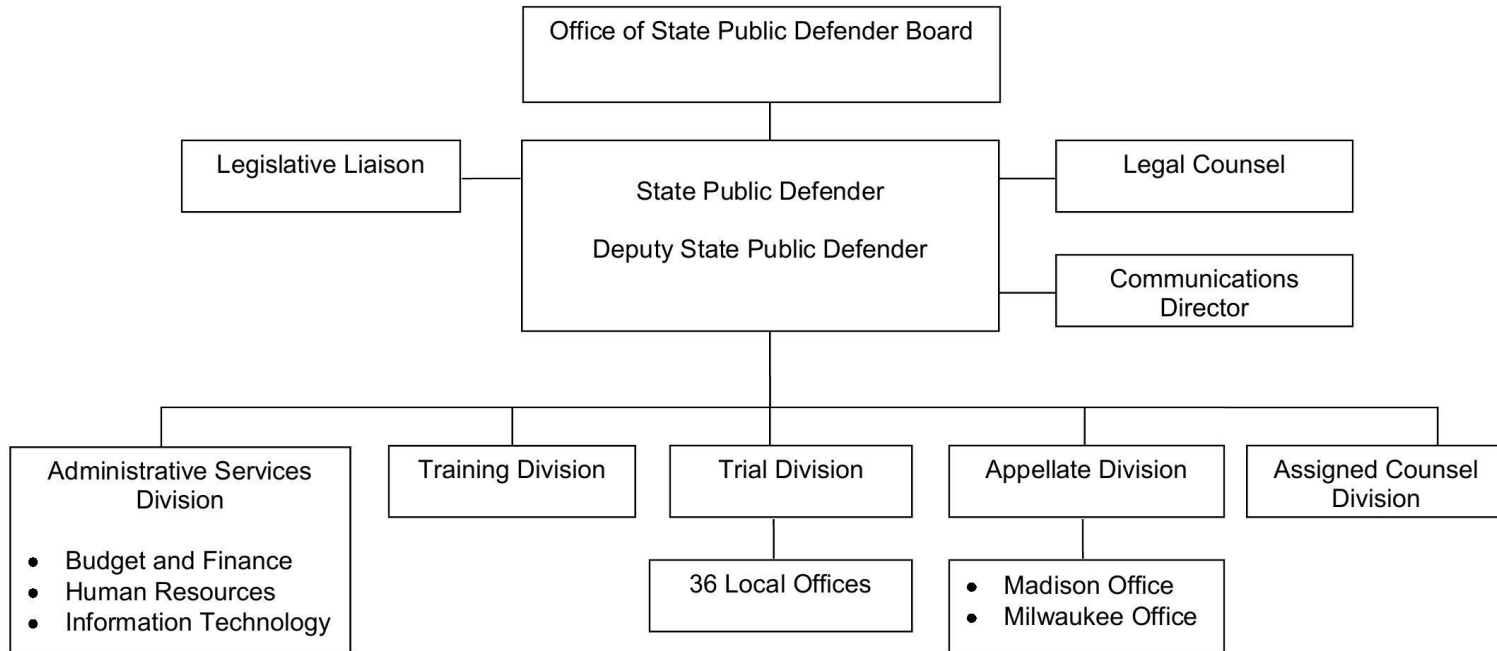
2015, 2016 and 2017 Goals

Program Number	Performance Measures	Goal 2015	Goal 2016	Goal 2017
1	Court grants attorney withdrawals at client request as a percentage of total trial cases.	2%	2%	2%
1	Number of educational contacts with children and youth.	2,750	2,750	2,750
1	Number of qualified attorneys certified to take cases who accept at least 12 cases per year.	800	800	800
1	Number of cases with greatest risk of penalties handled by staff attorneys.	1,200	1,200	1,200

Note: Based on fiscal year.

Agency Performance Measures

Office of the State Public Defender



Agency Total by Fund Source

Public Defender Board

1517 Biennial Budget

		ANNUAL SUMMARY					BIENNIAL SUMMARY				
Source of Funds		Prior Year Total	Adjusted Base	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE	Base Year Doubled (BYD)	Biennial Request	Change From (BYD)	Change From BYD %
GPR	S	\$90,801,607	\$82,894,300	\$88,113,600	\$94,421,200	583.85	583.85	\$165,788,600	\$182,534,800	\$16,746,200	10.1%
Total		\$90,801,607	\$82,894,300	\$88,113,600	\$94,421,200	583.85	583.85	\$165,788,600	\$182,534,800	\$16,746,200	10.1%
PR	S	\$1,788,084	\$1,306,200	\$1,347,900	\$1,348,200	5.00	5.00	\$2,612,400	\$2,696,100	\$83,700	3.2%
Total		\$1,788,084	\$1,306,200	\$1,347,900	\$1,348,200	5.00	5.00	\$2,612,400	\$2,696,100	\$83,700	3.2%
Grand Total		\$92,589,691	\$84,200,500	\$89,461,500	\$95,769,400	588.85	588.85	\$168,401,000	\$185,230,900	\$16,829,900	10.0%

Agency Total by Decision Item

Public Defender Board

1517 Biennial Budget

Source of Funds	ANNUAL SUMMARY						BIENNIAL SUMMARY			
	Prior Year Actual	Adjusted Base	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE	Base Year Doubled (BYD)	Biennial Request	Change From (BYD)	Change From BYD %
01 LEGAL ASSISTANCE										
Non Federal										
GPR	\$90,801,607	\$82,894,300	\$88,113,600	\$94,421,200	583.85	583.85	\$165,788,600	\$182,534,800	\$16,746,200	10.10%
S	\$90,801,607	\$82,894,300	\$88,113,600	\$94,421,200	583.85	583.85	\$165,788,600	\$182,534,800	\$16,746,200	10.10%
PR	\$1,788,084	\$1,306,200	\$1,347,900	\$1,348,200	5.00	5.00	\$2,612,400	\$2,696,100	\$83,700	3.20%
S	\$1,788,084	\$1,306,200	\$1,347,900	\$1,348,200	5.00	5.00	\$2,612,400	\$2,696,100	\$83,700	3.20%
Total - Non Federal	\$92,589,691	\$84,200,500	\$89,461,500	\$95,769,400	588.85	588.85	\$168,401,000	\$185,230,900	\$16,829,900	9.99%
S	\$92,589,691	\$84,200,500	\$89,461,500	\$95,769,400	588.85	588.85	\$168,401,000	\$185,230,900	\$16,829,900	9.99%
PGM 01 Total	\$92,589,691	\$84,200,500	\$89,461,500	\$95,769,400	588.85	588.85	\$168,401,000	\$185,230,900	\$16,829,900	9.99%
GPR	\$90,801,607	\$82,894,300	\$88,113,600	\$94,421,200	583.85	583.85	\$165,788,600	\$182,534,800	\$16,746,200	10.10%
S	\$90,801,607	\$82,894,300	\$88,113,600	\$94,421,200	583.85	583.85	\$165,788,600	\$182,534,800	\$16,746,200	10.10%
PR	\$1,788,084	\$1,306,200	\$1,347,900	\$1,348,200	5.00	5.00	\$2,612,400	\$2,696,100	\$83,700	3.20%
S	\$1,788,084	\$1,306,200	\$1,347,900	\$1,348,200	5.00	5.00	\$2,612,400	\$2,696,100	\$83,700	3.20%
TOTAL 01	\$92,589,691	\$84,200,500	\$89,461,500	\$95,769,400	588.85	588.85	\$168,401,000	\$185,230,900	\$16,829,900	9.99%
S	\$92,589,691	\$84,200,500	\$89,461,500	\$95,769,400	588.85	588.85	\$168,401,000	\$185,230,900	\$16,829,900	9.99%
Agency Total	\$92,589,691	\$84,200,500	\$89,461,500	\$95,769,400	588.85	588.85	\$168,401,000	\$185,230,900	\$16,829,900	9.99%

Agency Total by Decision Item

Public Defender Board

1517 Biennial Budget

Decision Item	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
2000 Adjusted Base Funding Level	\$84,200,500	\$84,200,500	579.85	579.85
3003 Full Funding of Continuing Position Salaries and Fringe Benefits	\$1,208,200	\$1,208,200	0.00	0.00
3005 Reclassifications and Semiautomatic Pay Progression	\$880,300	\$2,379,800	0.00	0.00
3007 Overtime	\$214,300	\$214,300	0.00	0.00
3010 Full Funding of Lease and Directed Moves Costs	\$436,200	\$488,100	0.00	0.00
4001 Private Bar Cost to Continue	\$1,409,000	\$1,409,000	0.00	0.00
4002 Expert Services Cost to Continue	\$0	\$0	0.00	0.00
4003 Transcripts, Interpreters and Discovery Cost to Continue	\$953,500	\$953,500	0.00	0.00
4501 Sentence Modifications	\$236,600	\$236,600	0.00	0.00
4502 Charging and Sentencing Alternatives	(\$2,510,500)	(\$5,021,000)	0.00	0.00
5001 Private Bar Rate	\$930,000	\$7,627,900	0.00	0.00
5003 Protective Occupation Status for SPD Investigators and Client Services Specialists	\$0	\$90,000	0.00	0.00
5004 Treatment and Diversion Expansion Infrastructure Support	\$553,400	\$639,700	9.00	9.00
5005 IT Mobile Technology	\$0	\$742,800	0.00	0.00
5010 IT Case Management System	\$950,000	\$600,000	0.00	0.00
TOTAL	\$89,461,500	\$95,769,400	588.85	588.85

GPR Earned

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance

DATE September 15, 2014

Revenue	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$0	\$0	\$0	\$0
PR Lapse	\$118,700	\$118,700	\$118,700	\$118,700
Restitution	\$300	\$0	\$0	\$0
Royalty Checks	\$3,400	\$3,500	\$3,500	\$3,500
Miscellaneous Revenue	\$11,200	\$9,500	\$9,500	\$9,500
Total	\$133,600	\$131,700	\$131,700	\$131,700

Program Revenue

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance
SUBPROGRAM		
NUMERIC APPROPRIATION	31	Gifts, grants and proceeds

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$44,100	\$48,200	\$50,200	\$51,200
Miscellaneous Sales	\$1,600	\$4,000	\$3,000	\$3,000
Miscellaneous Sponsors and Gifts	\$3,500	\$0	\$0	\$0
Total Revenue	\$49,200	\$52,200	\$53,200	\$54,200
Expenditures	\$1,000	\$2,000	\$0	\$0
Purchase of Sale Merchandise	\$0	\$0	\$2,000	\$2,000
Miscellaneous Expenditures	\$0	\$0	\$0	\$0
Total Expenditures	\$1,000	\$2,000	\$2,000	\$2,000
Closing Balance	\$48,200	\$50,200	\$51,200	\$52,200

Program Revenue

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance
SUBPROGRAM		
NUMERIC APPROPRIATION	33	Tuition payments

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$180,100	\$140,500	\$99,500	\$63,500
Miscellaneous Revenues	\$3,400	\$4,000	\$4,000	\$4,000
Training Course Fees	\$194,100	\$195,000	\$200,000	\$200,000
Total Revenue	\$377,600	\$339,500	\$303,500	\$267,500
Expenditures	\$237,100	\$240,000	\$0	\$0
Training Expenditures	\$0	\$0	\$240,000	\$245,000
Total Expenditures	\$237,100	\$240,000	\$240,000	\$245,000
Closing Balance	\$140,500	\$99,500	\$63,500	\$22,500

Program Revenue

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance
SUBPROGRAM		
NUMERIC APPROPRIATION	35	Payments from clients; administrative costs

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$0	\$0	\$0	\$0
Transfer from 20.550(1)(fb)	\$241,500	\$245,000	\$289,400	\$295,800
Total Revenue	\$241,500	\$245,000	\$289,400	\$295,800
Expenditures	\$241,500	\$245,000	\$0	\$0
2000 Adjusted Base Funding Level	\$0	\$0	\$246,300	\$246,300
3003 Full Funding of Continuing Position Salaries and Fringe Benefits	\$0	\$0	\$26,900	\$26,900
3010 Full Funding of Lease and Directed Moves Costs	\$0	\$0	\$7,100	\$7,300
3007 Overtime	\$0	\$0	\$2,800	\$2,800
Compensation Reserve	\$0	\$0	\$3,200	\$6,500
Health Insurance Reserves	\$0	\$0	\$3,100	\$6,000
Wisconsin Retirement System	\$0	\$0	\$0	\$0
Total Expenditures	\$241,500	\$245,000	\$289,400	\$295,800
Closing Balance	\$0	\$0	\$0	\$0

Program Revenue

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance
SUBPROGRAM		
NUMERIC APPROPRIATION	36	Private bar and inv. reimbursement; payments for legal representation

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$179,700	\$99,200	\$0	\$0
Court Ordered and Collected Atty Fees for Adults	\$24,700	\$25,000	\$25,000	\$25,000
Client Payments	\$768,300	\$785,500	\$877,600	\$884,000
DOA Contracted Collections (Net)	\$55,900	\$56,000	\$85,000	\$85,000
Court Ordered and Collected Atty Fees for Juveniles	\$308,500	\$308,500	\$308,500	\$308,500
Court Ordered and Collected Atty Fees for Commitments	\$25,400	\$25,000	\$25,000	\$25,000
Total Revenue	\$1,362,500	\$1,299,200	\$1,321,100	\$1,327,500
Expenditures	\$1,263,300	\$1,299,200	\$0	\$0
2000 Adjusted Base Funding Level	\$0	\$0	\$913,000	\$913,000
PR Cash Lapse	\$0	\$0	\$118,700	\$118,700
Transfer to 20.550(1)(l)	\$0	\$0	\$289,400	\$295,800
Total Expenditures	\$1,263,300	\$1,299,200	\$1,321,100	\$1,327,500
Closing Balance	\$99,200	\$0	\$0	\$0

Program Revenue

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance
SUBPROGRAM		
NUMERIC APPROPRIATION	37	Conferences and training

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$0	\$0	\$0	\$0
Penalty Surcharge Transfer from DOJ	\$163,800	\$144,800	\$157,100	\$162,300
Total Revenue	\$163,800	\$163,800	\$157,100	\$162,300
Expenditures	\$163,800	\$163,800	\$0	\$0
2000 Adjusted Base Funding Level	\$0	\$0	\$146,900	\$146,900
3003 Full Funding of Continuing Position Salaries and Fringe Benefits	\$0	\$0	\$100	\$100
3010 Full Funding of Lease and Directed Moves Costs	\$0	\$0	\$4,800	\$4,900
Health Insurance Reserves	\$0	\$0	\$3,200	\$6,200
Wisconsin Retirement System	\$0	\$0	\$0	\$0
Compensation Reserve	\$0	\$0	\$2,100	\$4,200
Total Expenditures	\$163,800	\$163,800	\$157,100	\$162,300
Closing Balance	\$0	\$0	\$0	\$0

Decision Item (DIN) - 2000

Decision Item (DIN) Title - Adjusted Base Funding Level

NARRATIVE

Adjusted Base Funding Level

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	2000	Adjusted Base Funding Level

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$38,369,100	\$38,369,100
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$122,800	\$122,800
05	Fringe Benefits	\$15,391,100	\$15,391,100
06	Supplies and Services	\$30,317,500	\$30,317,500
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$84,200,500	\$84,200,500
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	228.65	228.65
20	Unclassified Positions Authorized	351.20	351.20

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	2000	Adjusted Base Funding Level			
01	Legal assistance				
	01 Program administration	\$2,766,400	\$2,766,400	18.40	18.40
	02 Appellate representation	\$4,498,600	\$4,498,600	43.35	43.35
	03 Trial representation	\$48,534,900	\$48,534,900	507.85	507.85
	04 Private bar and investigator reimbursement	\$23,155,400	\$23,155,400	0.00	0.00
	05 Private bar and investigator payments; administration costs	\$594,900	\$594,900	5.25	5.25
	06 Transcripts, discovery and interpreters	\$1,325,700	\$1,325,700	0.00	0.00
	07 Salary adjustments	\$2,018,400	\$2,018,400	0.00	0.00
	35 Payments from clients; administrative costs	\$246,300	\$246,300	3.00	3.00
	36 Private bar and inv. reimbursement; payments for legal representation	\$913,000	\$913,000	0.00	0.00
	37 Conferences and training	\$146,900	\$146,900	2.00	2.00
	Legal assistance SubTotal	\$84,200,500	\$84,200,500	579.85	579.85
	Adjusted Base Funding Level SubTotal	\$84,200,500	\$84,200,500	579.85	579.85
	Agency Total	\$84,200,500	\$84,200,500	579.85	579.85

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	2000	Adjusted Base Funding Level				
	GPR	S	\$82,894,300	\$82,894,300	574.85	574.85
	PR	S	\$1,306,200	\$1,306,200	5.00	5.00
	Total		\$84,200,500	\$84,200,500	579.85	579.85
Agency Total			\$84,200,500	\$84,200,500	579.85	579.85

Decision Item (DIN) - 3003

Decision Item (DIN) Title - Full Funding of Continuing Position Salaries and Fringe Benefits

NARRATIVE

Standard Budget Adjustment - Full Funding of Continuing Position Salaries and Fringe Benefits

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	3003	Full Funding of Continuing Position Salaries and Fringe Benefits

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$535,500	\$535,500
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$672,700	\$672,700
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$1,208,200	\$1,208,200
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	3003	Full Funding of Continuing Position Salaries and Fringe Benefits			
01	Legal assistance				
	01 Program administration	(\$85,400)	(\$85,400)	0.00	0.00
	02 Appellate representation	(\$37,700)	(\$37,700)	0.00	0.00
	03 Trial representation	\$1,313,800	\$1,313,800	0.00	0.00
	05 Private bar and investigator payments; administration costs	(\$9,500)	(\$9,500)	0.00	0.00
	35 Payments from clients; administrative costs	\$26,900	\$26,900	0.00	0.00
	37 Conferences and training	\$100	\$100	0.00	0.00
	Legal assistance SubTotal	\$1,208,200	\$1,208,200	0.00	0.00
	Full Funding of Continuing Position Salaries and Fringe Benefits SubTotal	\$1,208,200	\$1,208,200	0.00	0.00
	Agency Total	\$1,208,200	\$1,208,200	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	3003	Full Funding of Continuing Position Salaries and Fringe Benefits				
	GPR	S	\$1,181,200	\$1,181,200	0.00	0.00
	PR	S	\$27,000	\$27,000	0.00	0.00
	Total		\$1,208,200	\$1,208,200	0.00	0.00
Agency Total			\$1,208,200	\$1,208,200	0.00	0.00

Decision Item (DIN) - 3005

Decision Item (DIN) Title - Reclassifications and Semiautomatic Pay Progression

NARRATIVE

Standard Budget Adjustment - Reclassifications and Semiautomatic Pay Progression

**OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper**

Topic: DIN 3005 – Reclassifications and Semiautomatic Pay Progressions: Pay Progression for Assistant State Public Defenders

Agency Request

The Public Defender Board requests \$880,300 GPR in FY16 and \$2,379,800 GPR in FY17 to provide a pay progression plan for assistant state public defender attorneys.

Problem Description

2013 Wisconsin Act 20 provided statutory authorization and funding to provide pay progression for assistant state public defender attorneys. The Office of the State Public Defender (SPD) requests funding in the 2015-2017 biennial budget to continue to progress attorneys up the compensation ladder provided for in Act 20.

Background

The SPD requests funding to retain the staff with the knowledge and expertise to not only take a large volume of complex case types, but also to mentor new attorneys and participate in criminal justice system initiatives such as the rapidly expanding Treatment Alternatives and Diversion (TAD) programs.

To maintain the historic pay equity that has existed between assistant district attorneys and assistant state public defenders, the SPD is requesting increased funding in the first year equivalent to placing attorneys on the next step of a pay progression ladder and in the second year equivalent to \$1.97 per hour per attorney. These calculations exclude any attorney already at classification maximum and, in the first year, any vacant attorney position.

Analysis

An adequate compensation structure helps to address staff retention issues. Retaining experienced attorneys, both as prosecutors and public defenders, benefits the entire criminal justice system. Attorneys with 7-17 years of experience, the group for which the retention issue is most acute, are able to ethically and competently handle a significant number of complex cases, such as homicides, other high-level felonies, and Ch. 980 sexually violent person commitments. They are also qualified to serve on work groups, such as treatment-court teams and justice coordinating councils, which advance cost-effective and evidence-based practices in the justice system.

Maintaining pay parity between assistant state public defenders and assistant district attorneys will also prevent the public defender's office from becoming a training ground for attorneys who gain trial skills but leave for higher pay scales offered by district attorneys. Although there is no inherent problem with individual attorneys deciding to enter a different area of public service, there could be significant practical and legal problems if public defenders are simultaneously representing clients while, due to financial pressures, seeking work with their legal adversaries in the local District Attorney's office (the attorney would have an ethical requirement to take a leave of absence from the public defender's office or to make full disclosure of the job application to all clients; either course of action would likely result in the need to reassign cases at significant agency expense).

Finally, federal funding of programs such as the John R. Justice Program and the Public Sector Loan Forgiveness Program has dramatically decreased in recent years. These programs provided limited assistance in reducing the burdens of student loan debts often carried by attorneys. Reduced relief in this area and stagnating wages will contribute to retention issues.

Cost Estimate

On July 27, 2014, SPD had 306 FTE positions not at class maximum and eligible for pay progression. For year one, to place these attorneys on the next step of the attorney pay progression ladder would require \$880,300 in FY16 for salary and fringe (assuming a 15.65% fringe rate). In year two, to provide an across the board increase of \$1.97 per hour for each eligible attorney would require \$2,379,800 in FY17 salary and fringe, which also includes covering the year one salary amount.

Summary

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$880,300	0.00	\$2,379,800	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$880,300	0.00	\$2,379,800	0.00

Prepared by:
 Adam Plotkin, Legislative Liaison
 608-264-8572

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	3005	Reclassifications and Semiautomatic Pay Progression

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$761,100	\$2,057,800
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$119,200	\$322,000
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$880,300	\$2,379,800
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	3005	Reclassifications and Semiautomatic Pay Progression			
01	Legal assistance				
	01 Program administration	\$400	\$5,100	0.00	0.00
	02 Appellate representation	\$66,000	\$170,200	0.00	0.00
	03 Trial representation	\$809,700	\$2,195,600	0.00	0.00
	05 Private bar and investigator payments; administration costs	\$4,200	\$8,900	0.00	0.00
	Legal assistance SubTotal	\$880,300	\$2,379,800	0.00	0.00
	Reclassifications and Semiautomatic Pay Progression SubTotal	\$880,300	\$2,379,800	0.00	0.00
	Agency Total	\$880,300	\$2,379,800	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	3005	Reclassifications and Semiautomatic Pay Progression				
	GPR	S	\$880,300	\$2,379,800	0.00	0.00
	Total		\$880,300	\$2,379,800	0.00	0.00
Agency Total			\$880,300	\$2,379,800	0.00	0.00

Decision Item (DIN) - 3007

Decision Item (DIN) Title - Overtime

NARRATIVE

Standard Budget Adjustment – Overtime

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	3007	Overtime

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$185,200	\$185,200
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$29,100	\$29,100
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$214,300	\$214,300
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	3007	Overtime			
01	Legal assistance				
	01 Program administration	\$9,600	\$9,600	0.00	0.00
	02 Appellate representation	\$25,300	\$25,300	0.00	0.00
	03 Trial representation	\$166,200	\$166,200	0.00	0.00
	05 Private bar and investigator payments; administration costs	\$10,400	\$10,400	0.00	0.00
	35 Payments from clients; administrative costs	\$2,800	\$2,800	0.00	0.00
	Legal assistance SubTotal	\$214,300	\$214,300	0.00	0.00
	Overtime SubTotal	\$214,300	\$214,300	0.00	0.00
	Agency Total	\$214,300	\$214,300	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	3007	Overtime				
	GPR	S	\$211,500	\$211,500	0.00	0.00
	PR	S	\$2,800	\$2,800	0.00	0.00
	Total		\$214,300	\$214,300	0.00	0.00
Agency Total			\$214,300	\$214,300	0.00	0.00

Decision Item (DIN) - 3010

Decision Item (DIN) Title - Full Funding of Lease and Directed Moves Costs

NARRATIVE

Standard Budget Adjustment - Full Funding of Lease and Directed Moves Costs

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	3010	Full Funding of Lease and Directed Moves Costs

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$436,200	\$488,100
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$436,200	\$488,100
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	3010	Full Funding of Lease and Directed Moves Costs			
01	Legal assistance				
	01 Program administration	\$38,200	\$42,800	0.00	0.00
	02 Appellate representation	\$42,400	\$47,600	0.00	0.00
	03 Trial representation	\$339,500	\$380,700	0.00	0.00
	05 Private bar and investigator payments; administration costs	\$4,200	\$4,800	0.00	0.00
	35 Payments from clients; administrative costs	\$7,100	\$7,300	0.00	0.00
	37 Conferences and training	\$4,800	\$4,900	0.00	0.00
	Legal assistance SubTotal	\$436,200	\$488,100	0.00	0.00
	Full Funding of Lease and Directed Moves Costs SubTotal	\$436,200	\$488,100	0.00	0.00
	Agency Total	\$436,200	\$488,100	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	3010	Full Funding of Lease and Directed Moves Costs				
	GPR	S	\$424,300	\$475,900	0.00	0.00
	PR	S	\$11,900	\$12,200	0.00	0.00
	Total		\$436,200	\$488,100	0.00	0.00
Agency Total			\$436,200	\$488,100	0.00	0.00

Decision Item (DIN) - 4001

Decision Item (DIN) Title - Private Bar Cost to Continue

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), a cost-to-continue funding adjustment of \$1,409,000 GPR in FY16, and \$1,409,000 GPR in FY17, in appropriation s. 20.550 (1) (d) (private bar and investigator reimbursement).

**Office of the State Public Defender
2015-2017 Biennial Budget
Issue Paper**

Topic: DIN 4001 – Private Bar Cost to Continue

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), a cost-to-continue funding adjustment of \$1,409,000 GPR in FY16, and \$1,409,000 GPR in FY17, in appropriation s. 20.550 (1) (d) (private bar and investigator reimbursement).

Problem Description

The SPD is responsible for the cost of private bar and investigator reimbursements and will go into a structural deficit if budget adjustments are not made as requested.

Background

The State Public Defender's Trial Division is authorized 317.60 FTE attorney and attorney supervisor positions, all but ten of which are budgeted to achieve statutorily defined annual caseloads per s. 977.08 (5) (bn) Wis. Stats. SPD attorneys at the trial level, on average, carry caseloads at approximately 125% of the recommended level based on national standards to provide ethical and competent representation. Additionally, the Appellate Division is authorized 27.75 FTE attorneys and attorney supervisors. In FY14, staff attorneys (Trial and Appellate) were assigned 81,940 of the 136,211 total cases in which the defendant qualified for SPD services.

Overflow cases and those in which staff attorneys may have a conflict of interest are appointed to private bar attorneys throughout the state, at statutory hourly rates of \$40 per hour [refer to DIN 5001 regarding an increase in the private bar reimbursement rate] for time in or out of court and \$25 per hour for travel. In fiscal year 2014, a total of 54,271 cases (39.8%) were appointed to private bar attorneys.

Analysis

The private bar appropriation was fully funded for the 2007-09 biennium. However, the SPD was subsequently required to lapse \$2.3 million to the General Fund from this appropriation in FY08. Cost to continue funding requested for the 2009-11 biennium was not included in the budget bill. Instead, the appropriation was further reduced in the 2009-11 biennial budget by \$727,800 beginning in FY10. Continued lapses and cuts in 2011-2013 biennium required the SPD to hold attorney positions vacant therefore resulting in the referral of more cases to the private bar at a much higher cost than staff. To address a recurring structural deficit, one-time funding of \$6.2 million was received in the 2013-15 biennium.

	FY16	FY17
Estimated Cost for Private Bar Assignments	\$25,519,400	\$25,519,400
Client Collections	-\$1,200,000	-\$1,200,000
Estimated Client Accounts Admin Costs	\$245,000	\$245,000
Funding Needed	\$24,564,400	\$24,564,400
FY15 GPR Base (appn. 104)	-\$23,155,400	-\$23,155,400
Additional GPR requested	\$1,409,000	\$1,409,000

The SPD provides constitutionally and statutorily guaranteed representation to people who meet the financial eligibility standards. The agency's overall workload is determined externally, by the number and severity of charges filed and by economic factors such as unemployment rates; when defendants qualify for a public defender, the agency must appoint counsel. While the \$6.2 million received in the 2013-15 biennium resolved the past structural deficit, the cost to continue for private bar remains driven by factors outside of the control of the agency. If this decision item is not approved or is reduced, the appropriation for private bar payments will again face a structural deficit, resulting in a significant payment delay. Such payment delays cause undue hardship to private bar attorneys – small business people in communities throughout the state – by forcing them to wait months for payment.

Summary

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$1,409,000	0.00	\$1,409,000	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$1,409,000	0.00	\$1,409,000	0.00

Prepared by:
Anna Oehler, Budget Director
608-267-0311

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	4001	Private Bar Cost to Continue

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$1,409,000	\$1,409,000
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$1,409,000	\$1,409,000
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4001	Private Bar Cost to Continue			
01	Legal assistance				
	04 Private bar and investigator reimbursement	\$1,409,000	\$1,409,000	0.00	0.00
	Legal assistance SubTotal	\$1,409,000	\$1,409,000	0.00	0.00
	Private Bar Cost to Continue SubTotal	\$1,409,000	\$1,409,000	0.00	0.00
	Agency Total	\$1,409,000	\$1,409,000	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	4001	Private Bar Cost to Continue				
	GPR	S	\$1,409,000	\$1,409,000	0.00	0.00
	Total		\$1,409,000	\$1,409,000	0.00	0.00
Agency Total			\$1,409,000	\$1,409,000	0.00	0.00

Decision Item (DIN) - 4002

Decision Item (DIN) Title - Expert Services Cost to Continue

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), cost-to-continue funding of \$0 in FY16 and \$0 FY17 for the agency to contract with expert witnesses. The SPD received base funding in the 2013-15 biennial budget act for expert witnesses in the amount of \$675,200. The SPD is not requesting an increase in funding, but rather to continue the funding received in the 2013-15 biennial budget act.

**OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper**

Topic: DIN 4002 – Expert Services Cost to Continue

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), cost-to-continue funding of \$0 in FY16 and \$0 in FY17 for the agency to contract with expert witnesses.

Problem Description

The need for expert funding continues to ensure that the attorneys are providing quality representation.

Background

The SPD received base funding in the 2013 Wisconsin Act 20 (2013-2015 biennial budget act) for expert witnesses in the amount of \$675,200. The SPD is not requesting an increase in funding, but rather to continue the funding received in the 2013-2015 biennium.

Analysis

Experts are needed for various cases to counter prosecutorial evidence, identify psychological issues of the accused, and explore sentencing alternatives. Currently, expert costs are absorbed in the supply and service budgets of the Trial and Appellate divisions. In the 2013-15 biennium, the agency received an additional \$675,200 in base funding for experts in Ch. 980 cases. With this additional funding for Ch. 980 case types, the agency was able to meet expert requests and, at this time, is requesting the continued funding of the supplies and services budget but not requesting an increase in expert funds. If the supplies and services budgets are reduced for lapses or cuts, then we would again require additional funding for experts. For example, the agency’s supplies and services funding was permanently reduced five percent in the 2001-03 biennial budget, by one percent in the 2009-11 budget, by one percent in the 2011-13 budget, and by one percent in the 2013-15 budget. All of these reductions greatly impact the ability of the SPD to pay for experts.

Summary

The SPD requests continued base level funding for experts in FY16 and FY17.

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$0	0.00	\$0	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$0	0.00	\$0	0.00

Prepared By:
Kathy Smith, Budget & Policy Analyst
608-267-0974

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	4002	Expert Services Cost to Continue

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$0	\$0
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4002	Expert Services Cost to Continue			
01	Legal assistance				
	02 Appellate representation	\$0	\$0	0.00	0.00
	03 Trial representation	\$0	\$0	0.00	0.00
	Legal assistance SubTotal	\$0	\$0	0.00	0.00
	Expert Services Cost to Continue SubTotal	\$0	\$0	0.00	0.00
	Agency Total	\$0	\$0	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	4002	Expert Services Cost to Continue				
	GPR	S	\$0	\$0	0.00	0.00
	Total		\$0	\$0	0.00	0.00
Agency Total			\$0	\$0	0.00	0.00

Decision Item (DIN) - 4003

Decision Item (DIN) Title - Transcripts, Interpreters and Discovery Cost to Continue

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), increased funding of \$953,500 GPR, per year for the appropriation under §20.550(1)(f) for payments for transcripts, discovery, and interpreters, to reflect current needs.

**Office of the State Public Defender
2015-2017 Biennial Budget
Issue Paper**

Topic: DIN 4003 - Transcripts, Interpreters and Discovery Cost to Continue

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), increased funding of \$953,500 GPR, per year for the appropriation under §20.550(1)(f) for payments for transcripts, discovery, and interpreters, to reflect current needs.

Problem Description

The State Public Defender (SPD) is responsible for the cost of transcripts of court proceedings that SPD staff and private bar attorneys request from the courts, for copying costs incurred by counties and other parties to provide SPD attorneys with discovery materials, and for the cost of interpreters needed for attorney-client communication and other case preparation (the courts are responsible for the costs of in-court interpreters). These costs are funded by a single appropriation under §20.550(1)(f). Total funding and expenditure/commitment levels each year since FY02 are shown below:

	<u>Appropriated</u>	<u>Needed</u>	<u>Shortfall</u>
FY02	\$1,339,100	\$1,365,781	(\$ 26,681)
FY03	\$1,339,100	\$1,449,304	(\$110,204)
FY04	\$1,339,100	\$1,595,480	(\$256,380)
FY05	\$1,339,100	\$1,966,968	(\$627,868)
FY06	\$1,339,100	\$1,761,832	(\$422,732)
FY07	\$1,339,100	\$1,644,047	(\$304,947)
FY08	\$1,339,100	\$1,775,960	(\$436,860)
FY09	\$1,339,100	\$1,844,328	(\$505,228)
FY10	\$1,325,700	\$1,963,371	(\$637,671)
FY11	\$1,325,700	\$2,084,068	(\$758,368)
FY12	\$1,325,700	\$2,098,427	(\$772,727)
FY13	\$1,325,700	\$2,013,207	(\$687,507)
FY14	\$1,325,700	\$2,279,247	(\$953,547)

The amounts appropriated were sufficient in the 1999-01 biennium. Then, this appropriation was subjected to a five percent across the board “efficiency reduction” in 2001 Wisconsin Act 16, the 2001-2003 biennial budget act. However, as discussed below, these expenses are largely driven by the volume and complexity of SPD appointments, which at the same time have increased. For example, SPD appointments in FY14 were 6.3% above the FY05 level.

The SPD’s request for a base funding increase in FY09-11, FY11-13, and FY13-15 to address this shortfall was not included in the biennial budget.

Background

Beginning in FY02, the SPD has ended each fiscal year with a growing amount of pending and unpaid bills relating to that fiscal year which, until FY05, were instead paid in the following fiscal year due to a funding shortfall. In FY03-04, this appropriation was depleted by the end of May 2004. This depletion resulted in delayed payments to numerous court reporters, interpreters, and counties. It also resulted in the SPD incurring interest costs on payments made after thirty days. This has again happened in FY14 where payments were delayed and some costs were moved to the following fiscal year.

At the end of each fiscal year beginning in FY02, significant delays in payments to court reporters, interpreters, and counties were avoided by transferring available expenditure authority from the salary, fringe benefit, and LTE budget lines. Although these transfers prevented funding deficits and payment backlogs from being compounded each year, they did not increase the base level of funding going forward and did not allow the agency to utilize the money in other areas where the need was significant such as information technology upgrades. The SPD has a structural deficit in this appropriation of approximately \$953,500 at the end of FY14.

In addition, 2009 Wisconsin Act 164 added 45 FTE to the agency, bringing the total FTE to 579.85, with no increase in funding for the additional transcripts, interpreters and discovery for the additional cases appointed to these attorneys.

Transcript Payments

The FY14 base budget for transcripts was \$786,469; however, total expenses for transcripts in FY14 were \$1,339,579 with an additional \$125,848 of expenses moved to FY15. The need for transcripts is a function of the number of type of cases appointed, their complexity, the number and duration of court appearances and trials, and the number of cases in which defendants seek post-conviction (appellate) representation from SPD. The SPD has attempted to mitigate the effect of the increased expenditures for transcripts by urging staff attorneys to carefully determine when transcripts are needed and when they are not. Transcript expenditures are reviewed on a monthly basis, and higher than average expenditure levels are further reviewed to determine which individual attorneys are incurring high transcript costs and why.

Transcript requests have become more numerous and complex as more items have become electronic such as video surveillance, audio and video recordings and interrogations. Audio and video files take significant time to transcribe since people sometimes are talking at the same time or the quality of the audio and video increases the difficulty of an accurate transcription. Also, courts increasingly require attorneys to produce transcripts of recordings before the recordings are played in open court.

Discovery Payments

Defendants have a constitutional right to "discovery"; that is, the disclosure of the prosecutor's evidence. Prosecutors comply with this discovery obligation by making available copies of reports, recordings, and other pertinent investigative materials. Since FY94, the SPD has been responsible for reimbursing counties for copying costs associated with providing discovery materials to SPD attorneys. At first, many counties did not submit bills for discovery; however, as county budgets became tighter in recent years, they began doing so. Now, all counties bill the SPD for discovery.

The SPD was initially provided \$60,000 in the 1995 Budget Adjustment Bill for discovery payments. The appropriation was increased to \$150,000 in the 1999-2001 biennial budget, but was then

reduced to \$141,100 by across-the-board reduction in the 2001-03 and 2009-11 biennial budget acts.

Discovery payments from this appropriation are driven by the number of cases appointed. Appointments in FY14 were as high as 6.3% in fiscal years after the first across-the-board reduction in 2001-03. In FY14, the SPD incurred costs totaling \$643,510 for discovery with an additional \$56,038 in expenses moved to FY15.

A portion of the rising discovery costs is attributable to 2005 Wisconsin Act 60, which was enacted in December 2005. Act 60 “codifies the *Jerrell* recording requirement,” as described in the analysis of the bill by the Legislative Reference Bureau. It “requires that law enforcement agencies make an audio or (audio/visual) recording of a custodial interrogation of a juvenile who is suspected of committing a crime if the interrogation is conducted at a place of detention. (It) also requires law enforcement agencies to make a recording, if feasible, of a custodial interrogation of a juvenile suspected of committing a crime if the interrogation is conducted at a place other than a place of detention” with some exceptions.

Further, 2005 Wis Act 60 provides that custodial interrogations of adult felony defendants should be recorded and admitted into evidence at trial, and that, barring good cause not to do so, the judge may instruct the jury that they may consider the absence of a recording when weighing the evidence. These recordings are subject to discovery. The SPD experienced an eight-fold increase in payments for video recordings since FY05 (from \$12,184 in FY05 to \$146,707 in FY14). Squad-car recordings and security-camera recordings also contribute to the increased costs in this appropriation. As noted above, recordings also entail transcription costs because of the need to present the court with an accurate record of the recorded statement, interrogation, or other conversation.

Interpreter Payments

Even before the SPD’s \$10,000 budget in FY01 for interpreter payments was permanently reduced by the five percent across-the-board “efficiency reduction,” the funding was insufficient to meet the growing need for interpreters. The current allocation is \$44,979. The number of defendants who are not able to communicate effectively with their attorney without such assistance has grown. In FY14, the SPD incurred costs totaling \$108,657 for interpreters with an additional \$5,615 of expenses moved to FY15. The agency has attempted to mitigate costs for interpreters through language line services; however, that option is not always available when meetings or interviews occur in jails, courthouses, and other non-office settings.

Like discovery payments, interpreter payments from this appropriation are driven by the number of cases appointed.

The SPD is not the only participant in the criminal justice system to see an increase in interpreter costs. The 2007-09 biennial budget act provided a base funding increase to the Circuit Courts of \$298,000 per year to increase state reimbursement to counties for in-court interpreter services.

Analysis

The Public Defender Board requests that additional funding be provided for transcript, discovery and interpreter payments as follows:

Full funding of transcript payments	\$1,465,427 annually
Full funding of discovery payments	\$ 699,548 annually
Full funding of interpreter payments	<u>\$ 114,272 annually</u>
Total Projected Annual Need in 2015-17	\$2,279,247
Appn. 106 Adjusted 2013 Base Funding	<u>\$1,325,700</u>
Annual increase needed	\$ 953,547

Summary

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$953,500	0.00	\$953,500	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$953,500	0.00	\$953,500	0.00

Prepared by:
Kathy Smith, Budget & Policy Analyst
608-267-0974

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	4003	Transcripts, Interpreters and Discovery Cost to Continue

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$953,500	\$953,500
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$953,500	\$953,500
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4003	Transcripts, Interpreters and Discovery Cost to Continue			
01	Legal assistance				
	06 Transcripts, discovery and interpreters	\$953,500	\$953,500	0.00	0.00
	Legal assistance SubTotal	\$953,500	\$953,500	0.00	0.00
	Transcripts, Interpreters and Discovery Cost to Continue SubTotal	\$953,500	\$953,500	0.00	0.00
	Agency Total	\$953,500	\$953,500	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	4003	Transcripts, Interpreters and Discovery Cost to Continue				
	GPR	S	\$953,500	\$953,500	0.00	0.00
	Total		\$953,500	\$953,500	0.00	0.00
Agency Total			\$953,500	\$953,500	0.00	0.00

Decision Item (DIN) - 4501

Decision Item (DIN) Title - Sentence Modifications

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$236,600 GPR in FY16 and \$236,600 in FY17 to provide legal representation for sentence modification and sentence adjustment cases, which could result in overall savings for the criminal justice system.

OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper

Topic: DIN 4501– Sentence Modifications

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$236,600 GPR in FY16 and \$236,600 in FY17 to provide legal representation for sentence modification and sentence adjustment cases, which could result in overall savings for the criminal justice system.

Problem Description

The SPD's discretion to provide legal services or assign counsel to modify a sentence, except in specific circumstances, is limited by state statute. This statutory limitation has resulted in increased criminal justice system costs and inefficiencies.

Statutory Language

Modify § 977.05 (4) (j): "Subject to sub. (6) ~~(e)~~ and (f)"; and repeal § 977.05 (6) (e).

Background

Statutory authority for the SPD to provide legal representation at its discretion in these matters when "the case should be pursued" is contained in § 977.05 (4) (j). However, the SPD's general discretion is limited by other provisions.

An SPD attorney may only represent a prisoner seeking a sentence adjustment - a reduction of the confinement portion of a Truth in Sentencing Act (TIS) sentence - due to age, infirmity, disability or a need for unavailable treatment or services under § 302.113 (9g).ⁱ These grounds typically occur at or near the end of a term of incarceration.

An SPD attorney may represent a prisoner seeking a sentence modification – a reduction in the entire sentence - only if it is 1) filed as part of a direct appeal initiated within 20 days of sentencing under § 809.30, or 2) filed in lieu of a direct appeal within 20 days of sentencing under § 973.19.ⁱⁱ A prisoner has not had sufficient time to demonstrate rehabilitation in a proceeding that occurs so soon after sentencing.

Analysis

Authorizing the SPD to provide legal representation in any meritorious sentence modification or sentence adjustment case will 1) create several efficiencies within the justice system, 2) allow the SPD to be responsive to changes in sentencing statutes, 3) assist the courts in implementing evidence-based sentencing, and 4) realize cost savings for other criminal justice system entities.

To determine if the cost savings identified in this request are realized, the SPD suggests creating this as a sunset pilot program to represent clients for sentence modifications. To allow for the pilot to commence, realize cases to disposition and have multiple data sets for comparison, the pilot program is recommended to sunset on January 1, 2018. We also recommend annual reporting requirements be established with the first report due to designees by December 31, 2016 and

annually thereafter. The report would include information such as the number of appointments made, the number and type of resolution in those cases, the number of days of adjusted sentence, and the estimated cost savings as a result in each case.

Incarceration Cost Savings

When a defendant can demonstrate to the satisfaction of the sentencing court that he or she is rehabilitated and can be released without presenting a danger to the community, then the state has no legitimate interest in continued incarceration. The daily cost to incarcerate an individual in a state institution was \$86.42 (\$32,583 per year) in FY13. Significant cost savings could be achieved by modifying appropriate prison sentences to instead require community supervision, at a FY13 cost of \$7.47 per day (\$2,727 per year) per offender.

Although the SPD cannot precisely predict the number of incarceration years that will be saved, the following example is instructive. If the SPD successfully represented 10 clients a year by obtaining modifications that converted one year of incarceration per client to community supervision, the state would avoid \$298,560 in overall criminal justice system costs.

The SPD would screen requests for representation to ensure that only those prospective clients with strong cases would have attorneys assigned to seek sentence relief. The chances of winning a meritorious motion are increased when defendants have the assistance of counsel in developing the facts and arguing the law and equities.

Meritorious groundsⁱⁱⁱ for sentence modification can develop throughout the time that a defendant is serving a sentence, and sentence modification motions may be filed at any time during the sentence.^{iv} To achieve the incarceration cost savings that a meritorious sentence modification motion offers, the SPD must be able to screen requests for counsel and appoint counsel at any stage of a sentence.

Decreasing Pro Se Sentence Motion Filings

An SPD screening process has an additional benefit. The SPD can dissuade defendants from filing *pro se* sentence motions by 1) taking the time to listen to the defendant's claim, reviewing applicable law, the sentencing court record, and the evidence of any new factors, rehabilitation, or other grounds for modification under § 973.195; and then 2) explaining to a defendant the reason why he or she does *not* have a meritorious sentence modification claim. Although some defendants will nonetheless persist with a *pro se* motion, others will accept the explanation and elect not to submit such a motion.

Pro se motions are almost always denied, but they utilize significant court and prosecution resources. For each case in which the SPD assists a person and either persuades him or her not to file a motion (or presents a meritorious claim to the court in an effective manner), the SPD will save staff time for the court, the prosecutor, and the clerk of court.

Responding to Changes and Disparities in Sentencing Law

Under Truth in Sentencing (TIS), parole has been eliminated. By setting or modifying the terms of the sentence, the courts control release dates and dates of inmate eligibility for pre-release rehabilitation programming.

The Criminal Penalties Study Committee recognized that some TIS inmates could be imprisoned longer than necessary to protect the public, and the Committee recommended a sentence

adjustment statute that included the right to SPD representation. The Legislature responded with § 302.113 (9g)^v and other sentence adjustment statutes that allow the release of some classes of TIS inmates who successfully complete rehabilitation programs.^{vi} In each instance, it is the fact of rehabilitation that justifies release from prison. Yet only those prisoners seeking a modification under § 302.113 (9g) may be represented by the SPD.

Under either sentencing scheme (indeterminate or determinate/TIS), the rule of law requires that a sentence be the least amount of confinement consistent with the character of the defendant, the seriousness of the offense, and the protection of the public.^{vii} Restoration of SPD sentence modification jurisdiction is a safety valve that will ensure competent presentation to the court of cases in which a strong basis exists to modify the sentence.

Consistency with Increased Use of Risk Assessment Tools and Evidence-Based Decision-Making in Sentencing

Actuarial risk assessments are increasingly used for decision making within the field of criminal justice. The Department of Corrections (DOC) has adopted an assessment instrument (COMPAS) to use with all persons in DOC custody or under DOC supervision. DOC has incorporated this instrument into the presentence investigation reports referenced by the court at sentencing. The COMPAS instrument allows for assessment of risk over time informed by (for example) the programming that inmates complete to address criminogenic needs.^{viii} Prisoners who were sentenced without the benefit of information from these tools, or who complete the programs recommended by these tools, may have grounds for sentence revision.

Reducing the Number of Appeals

When an appointed appellate attorney determines that a person has no meritorious issues for appeal, the attorney confers with the person and presents these choices: 1) close the attorney's file with no further court action; 2) have the attorney file a no merit report; or 3) discharge the attorney and advise (or have?) the client to appeal *pro se*. See Wis. Stat. § (Rule) 809.32. Before 1995, the first option included an offer to file a sentence modification motion at any time in the future *if* the person had legal grounds to do so. Since the enactment of § 977.05 (6)(e) in the 1995-97 biennial budget, appointed attorneys are no longer able to make that offer, and the SPD Appellate Division has seen an increase in the number of requests for no merit reports and in the number of defendants who choose to handle their own appeals *pro se*.

When SPD attorneys offered to represent a client on a sentence modification motion in the future, more clients opted to close their file without taking any court action. After the file was closed, few defendants ever asked the SPD attorneys to file a sentence modification motion, and fewer still presented any meritorious ground for sentence modification.

Cases that can be closed without further court action are less costly for the SPD. In addition, both no merit appeals and *pro se* appeals pass work and costs on to the circuit courts, the courts of appeals, state prosecutors, and the Department of Justice. Restoration of SPD sentence modification jurisdiction will decrease the number and costs of no merit and *pro se* appeals for all of these criminal justice system partners.

Cost Estimate

The SPD budget was reduced in the 1995-1997 budget (see 1995-1997 LFB paper #758) by \$119,900 in the first year and \$236,600 in the second year (and ongoing), when the agency's

jurisdiction to pursue meritorious sentence modifications was eliminated. We request funding be restored at \$236,600 in each year of the biennium.

Because of the annual caseloads for staff attorney positions specified for budgeting purposes under § 977.08(5), Stats., it could alternatively be more cost effective to add staff attorney positions to account for the number of additional SPD appellate cases resulted from this request. If 2.0 FTE attorney positions were added to cover the additional caseload for sentence modifications, the cost is estimated at \$143,600 in FY16 and \$167,400 in FY17.

Similarly, recommendations for staffing could also be 1.0 FTE attorney in the Appellate Division and 1.0 FTE Client Services Specialist to assist the attorney in creating sentence recommendation reports, calculating sentence credit under the various initial incarceration schema (i.e., Truth in Sentencing, Truth in Sentencing 2, Earned Release, etc.), and tracking criminal justice cost savings. The estimated cost for 1.0 FTE attorney and 1.0 FTE Client Services Specialist is \$122,300 in FY16 and \$142,300 in FY17.

Summary

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$236,600	0.00	\$236,600	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$236,600	0.00	\$236,600	0.00

Prepared by:
 Kathy Smith, Budget & Policy Analyst
 608-267-0974

End Notes

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- ⁱ Sec. 302.113 (9g) provides that, when an inmate reaches a certain age or has extraordinary health circumstances, and when the inmate demonstrates rehabilitation, the court may substitute a term of extended supervision for continued incarceration.
- ⁱⁱ See § 977.05 (6) (e), created by 1095 Act 77 (the 1995-97 Biennial Budget)
- ⁱⁱⁱ A defendant has a due process right “to be sentenced on the basis of true and correct information,” and is entitled to resentencing whenever it is possible that the sentence imposed may have been enhanced on the basis of erroneous information. *Bruneau v. State*, 77 Wis. 2d 166, 175-75, 252 N.W.2d 347 (1977). A trial court may modify a criminal sentence based on a showing of a new factor. A new factor is a fact or set of facts highly relevant to the imposition of sentence, not known to the trial court at the time of the original sentencing, either because it was not then in existence or because it was unknowingly overlooked by all of the parties. *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69, 73 (1975). A change in parole eligibility can be a new factor. *Kutchera v. State*, 69 Wis. 2d 534, 553, 230 N.W.2d 750 (1975). A defendant is entitled to sentence modification if the trial court misuses its discretion at sentencing. A trial court misuses its discretion when it makes an error of law or if it imposes an excessive sentence. *State v. Harris*, 119 Wis. 2d 612, 625, 350 N.W.2d 633, 640 (1984); *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975). A trial court may modify a sentence if it determines that the sentence originally imposed was unduly harsh or unconscionable. *Cresci v. State*, 89 Wis. 2d 495, 504, 278 N.W.2d 850, 854 (1979).
- ^{iv} Trial court has inherent power to amend, modify or correct judgment of sentencing within 90 days, and thereafter a trial court may entertain motion in exercise of its discretion. *Krueger v. State*, 86 Wis. 2d 435, 272 N.W.2d 847 (1979). Wis. Stat. §§ 302.113 (9g) and 973.195 (1g) require service of a required percentage of the confinement portion of a determinate “TIS” sentence before an inmate is eligible to file a request for a sentence adjustment.
- ^v See n. 1 supra.
- ^{vi} See Wis. Stat. §§ 302.043 (risk reduction sentence), 302.045 (Challenge Incarceration Program), 302.05 (Substance Abuse Earned Release Program), and 302.114 (petition for release to extended supervision for inmates serving life sentences).
- ^{vii} Wis. Stat. § 973.195 (1r) (b) establishes the following grounds for sentence adjustment in “TIS” cases if an inmate has served a required percentage (75% or 85%) of the term of confinement portion of a Class C to I felony sentence: “1. The inmate’s conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment or other correctional programs since he or she was sentenced. 3. A change in law or procedure related to sentencing or revocation of extended supervision effective after the inmate was sentenced that would have resulted in a shorter term of confinement in prison or, if the inmate was returned to prison upon revocation of extended supervision, a shorter period of confinement upon revocation, if the change had been applicable when the inmate was sentenced. 4. The inmate is subject to a sentence of confinement in another state or the inmate is in the United States illegally and may be deported. 5. Sentence adjustment is otherwise in the interests of justice.”
- ^{viii} Wis. Stat. § 973.198 (positive adjustment time earned between October 1, 2009 and August 3, 2011) also allows adjustments to TIS sentences.
- ^{ix} *McCleary v. State*, 49 Wis. 2d 263, 182 N.W.2d 512 (1971); *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197.
- ^x Although some factors pertinent to risk assessment are fixed, such as age at time of first arrest, other factors are subject to change over time.

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	4501	Sentence Modifications

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$236,600	\$236,600
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$236,600	\$236,600
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4501	Sentence Modifications			
01	Legal assistance				
	04 Private bar and investigator reimbursement	\$236,600	\$236,600	0.00	0.00
	Legal assistance SubTotal	\$236,600	\$236,600	0.00	0.00
	Sentence Modifications SubTotal	\$236,600	\$236,600	0.00	0.00
	Agency Total	\$236,600	\$236,600	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	4501	Sentence Modifications				
	GPR	S	\$236,600	\$236,600	0.00	0.00
	Total		\$236,600	\$236,600	0.00	0.00
Agency Total			\$236,600	\$236,600	0.00	0.00

Decision Item (DIN) - 4502

Decision Item (DIN) Title - Charging and Sentencing Alternatives

NARRATIVE

The Public Defender Board, for the Office of the State Public Defender (SPD), proposes statutory changes to the penalty surcharge and/or charging process for certain offenses (juvenile and adult), in order to reduce the number of cases in which the SPD must appoint an attorney. This request would save (\$2,510,500) GPR in FY16 and (\$5,021,000) GPR in FY17 in agency-wide savings. There would also be collateral savings for other criminal justice system entities.

**OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper**

Topic: DIN 4502 – Charging and Sentencing Alternatives

Agency Request

The Public Defender Board, for the Office of the State Public Defender (SPD), proposes statutory changes to the penalty surcharge and/or charging process for certain offenses (juvenile and adult), in order to reduce the number of cases in which the SPD must appoint an attorney. This request would save \$2,510,500 GPR in FY16 and \$5,021,000 GPR in FY17 in agency-wide savings. There would also be collateral savings for other criminal justice system entities.

Problem Description

Many criminal charges are settled before trial, reduced to a conforming municipal ordinance, or addressed with an alternative to incarceration; however, when a criminal statute is originally charged, these alleged offenders can qualify for representation by the SPD. This disparity between the criminal statute and case resolution significantly increases costs overall to the criminal justice system.

Background

The SPD has the statutory responsibility to appoint counsel for financially eligible defendants in criminal and juvenile delinquency cases, sec. 977.05(4)(i), Stats. The SPD does not provide representation to persons whose charges are classified as non-criminal forfeitures (such as city and county ordinance cases). Thus, to the extent that cases are diverted from the formal criminal and delinquency court processes, the SPD will have fewer cases in which it is required to appoint counsel. Also, to the extent that remaining SPD cases are charged as misdemeanors, rather than as felonies, the average cost per case will decrease.

Analysis

The right to counsel in a criminal proceeding is contained in both a statute and in the United States and Wisconsin Constitutions as well as federal and state case-law and statute. Therefore, the SPD cannot unilaterally reduce the number of cases in which the agency appoints counsel. To realize a potential caseload reduction requires that fewer criminal charges are filed against financially-eligible defendants, which can be accomplished with the statutory changes contained in this request. Criminal charges identified in this request include both adult and juvenile charges.

Provide a Diversion/Restitution Alternative

The SPD requests a change to the procedure for charging an adult or a juvenile with misdemeanor violations of various criminal statutes (see Appendix A), when the alleged offender has not been convicted of a felony offense and has not been convicted of any similar offense in the previous three years.

Before issuing a criminal charge under either of these misdemeanor statutes, the District Attorney would be required to offer the alleged first offender the opportunity to either 1) complete a diversion program by satisfying all conditions of the program, including restitution when applicable; or 2) pay a forfeiture under a stipulated finding of guilt of a non-criminal ordinance violation.

Defendants in these cases are currently eligible for representation by the State Public Defender's office because a conviction for either of these misdemeanors can result in incarceration. In

practice, however, most of these cases do not result in jail time; they are ultimately dismissed (on the prosecutor's motions or following an acquittal at trial), reduced to a conforming ordinance, or addressed with one or more alternatives to incarceration.

Under current law, § 943.245 and § 943.51 provide for civil liability for bad checks and retail theft respectively, and these sections expressly permit the recovery of exemplary damages and/or attorney fees of up to \$500 per violation. Also, § 800.093 allows municipal court judges to order restitution in ordinance cases. These statutes provide more cost-effective remedies than does potential jail time for these kinds of cases.

We estimate that approximately half of the SPD's 667 worthless checks cases and the 3,481 retail theft cases could have been diverted if this proposed provision had been in effect during FY14 (the numbers represent the numbers of SPD appointments for these case types during the fiscal year).

Reclassify Offenses

Many counties and municipalities issue non-criminal citations for possession of drug paraphernalia and for possession of marijuana. When criminal charges are filed, they are often resolved with dispositions that do not include incarceration. Thus, the proposed reclassification of these offenses to non-criminal forfeitures is a reasonable component of reducing the cost to provide SPD representation.

For charges of possession of drug paraphernalia § 961.573, except that used for methamphetamines, we recommend that the offense be reclassified as an ordinance rather than a criminal charge.

The reclassification of the crime of possessing drug paraphernalia is related to drug users rather than those who intend to manufacture or distribute the drugs.

Consistent with the recommendation regarding possession of drug paraphernalia, the SPD also recommends the reclassification of drug possession for marijuana, expanding the ability for first and second offense drug charges to be prosecuted as forfeitures as allowed under 2013 Wisconsin Act 293 if there are no allegations that the individual was manufacturing, distributing or delivering the controlled substance. We further recommend that the 3rd offense be considered a misdemeanor. Additional savings could be realized if municipalities expanded the drugs allowable for forfeiture or placed individuals of controlled substances into diversion programs.

In FY14, the SPD represented clients in almost 7,300 related to possession of drugs and drug paraphernalia. If 33% of these cases would not have qualified for representation due to the suggested reclassification to ordinances, then the SPD would have saved just over \$1 million dollars.

Similarly, violations for forgery under § 943.38 valued at less than \$2,500 should be reclassified to a misdemeanor and identify theft for the use of personal identifying information under § 943.201 and 943.203 should be reclassified to a misdemeanor when the use of the personally identifying information is clarified within 24 hours. For example, an individual who provides a false identity to law enforcement can be charged with a crime under current statute. This change would allow a person to rectify the situation within a certain time and not be criminally charged.

In many states, the criminal statutes differentiate between consensual sexual contact between young people close in age and similar contact between persons of significantly different ages. A 2004 study of state laws reported that "[i]n 27 states, the legality of engaging in sexual intercourse with minors is, at least in some circumstances, based on the difference in age between the two

parties.” Levin Group, Statutory Rape: A Guide to State Laws and Reporting Requirements, p. 8 (2004). The proposal to decriminalize consensual sexual conduct, when the age difference is less than 3 years, is consistent with this approach. Wisconsin has already recognized, in the context of sex-offender registration, the wisdom of differentiating cases of this nature from other cases of sexual assault. See § 301.45(1m), Stats.

In FY14, the SPD represented clients charged in 461 cases with the following crimes:

- Sex with a child age 16 or older, § 948.09
- Exposing genitals to a child, § 948.1
- 2nd Degree sexual assault of a child, § 948.02

If 15% of those cases were only due to the age of the parties involved and involved young persons close in age, then the SPD would have avoided almost \$85,000 in costs if a minimum age difference were included in these statutes. This estimate does not include any reduction of costs for other criminal justice system entities such as the circuit courts, Department of Corrections and county jails.

Violations of fish and game statutes under Chapter 29 and Disorderly Conduct violations under § 947.01 rarely result in jail time for a convicted defendant, because the cases are either reduced to ordinances or resolved by payment of a fine. However, because defendants face the possibility of incarceration inherent in the original charge, they are entitled to counsel.

Summary

These cases are represented by staff attorneys as well as private bar attorneys.

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$(2,510,500)	0.00	\$(5,021,000)	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$(2,510,500)	0.00	\$(5,021,000)	0.00

Prepared by:
 Anna Oehler, Budget Director
 608-267-0311

Appendix A: SPD Recommendation for Sentencing Alternatives

Recommendation	Statute	Description
Diversion		
	943.01	Criminal Damage to Property
	943.11	Entry into Locked Vehicle
	943.14	Criminal Trespass to Dwelling
	943.15	Entry into/onto Bldg/Construct.Site/Room
	943.2	Theft
	943.21	Fraud on Innkeeper or Taxicab Operator
	943.23	Operating Motor Vehicle w/o Consent
	943.24	Issue of Worthless Checks
	943.34	Receiving Stolen Property
	943.41	Credit Card Crimes
	943.5	Retail Theft
	944.2	Lewd, Lascivious Behavior
	944.3	Prostitution
No Criminal Penalty		
	948.09	Sex with Child Age 16 or Older
	948.1	Exposing Genitals to Child
	948.02-2	2nd Degree Sexual Assault of Child
Ordinance		
	29	Other DNR Violations
	29.314	Illegal shining of Deer or Bears
	29.951	Resist Conservation Warden
	29.971	Hunting deer during closed season
	941.23	Carrying a Concealed Weapon
	946.41	Obstructing Officer
Reclass to Misdemeanor		
	943.38	Forgery
	943.41	Credit Card Crimes
Diversion - 1st Offense		
	947.01	Disorderly Conduct
Ordinance (1st and 2nd Offense) to Misdemeanor (3rd Offense)		
	961.41-P	Drug Offenses-Possession
	943.201	Use of Personally Identifying Information
	943.203	Use of Personally Identifying Information

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	4502	Charging and Sentencing Alternatives

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	(\$2,510,500)	(\$5,021,000)
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	(\$2,510,500)	(\$5,021,000)
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4502	Charging and Sentencing Alternatives			
01	Legal assistance				
	04 Private bar and investigator reimbursement	(\$2,510,500)	(\$5,021,000)	0.00	0.00
	Legal assistance SubTotal	(\$2,510,500)	(\$5,021,000)	0.00	0.00
	Charging and Sentencing Alternatives SubTotal	(\$2,510,500)	(\$5,021,000)	0.00	0.00
	Agency Total	(\$2,510,500)	(\$5,021,000)	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	4502	Charging and Sentencing Alternatives				
	GPR	S	(\$2,510,500)	(\$5,021,000)	0.00	0.00
	Total		(\$2,510,500)	(\$5,021,000)	0.00	0.00
Agency Total			(\$2,510,500)	(\$5,021,000)	0.00	0.00

Decision Item (DIN) - 5001

Decision Item (DIN) Title - Private Bar Rate

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$930,000 GPR in FY16 and \$7,627,900 GPR in FY17 to increase the \$40 per hour reimbursement rate for private bar attorneys to a tiered payment rate of \$45 to \$60 per hour. The new rates would apply to cases assigned on or after July 1, 2016. The SPD requests modification of the statutory reimbursement rate for in-court and out-of-court work, repeal of limitations on reimbursement for travel that are based on office location, and creation of an annual administrative overhead reimbursement, in Wis. Stat. s. 977.08 (4m).

**OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper**

Topic: DIN 5001 – Private Bar Rate Increase

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$930,000 GPR in FY16 and \$7,627,900 GPR in FY17 to increase the \$40 per hour reimbursement rate for private bar attorneys to a tiered payment rate of \$45 to \$60 per hour. The new rates would apply to cases assigned on or after July 1, 2016. The Office of the SPD requests modification of the statutory reimbursement rate for in-court and out-of-court work, repeal of limitations on reimbursement for travel that are based on office location, and creation of an annual administrative overhead reimbursement, in Wis. Stats. s. 977.08 (4m).

Problem Description

The hourly rate paid to the private bar attorneys who accept appointments to provide legal representation in Public Defender cases is impeding the SPD's ability to recruit and retain private bar attorneys who consistently accept and provide quality representation.

Background

When the Legislature created the SPD in 1977, it established the hourly rate paid to private bar attorneys at \$35 per hour for time spent out of court and \$45 for time spent in court. See s. 977.08 (4m) (a). Travel time was, and continues to be, reimbursed at \$25 per hour. In 1992, the Legislature raised private bar rates to \$50 per hour for in-court and \$40 per hour for out-of-court work. See s. 977.08 (4m) (b). However, in 1995, the private bar rate was reduced to \$40 per hour for in-court work. See s. 977.08 (4m) (c). This \$40 hourly rate remains the current rate at which private bar attorneys are paid for work on Public Defender cases, for both in-court and out-of-court work.

The \$40 hourly reimbursement rate, unchanged since 1995, is now unreasonably below market rate. Attorneys in private practice set their hourly rates so that overhead is covered and the attorney is paid at a rate commensurate with experience, knowledge, and skills. As small business operational costs increased, the median hourly rate that attorneys charge clients has increased. According to the State Bar of Wisconsin's study, *2013 Economics of Law Practice in Wisconsin*, by all measures the current SPD rate is far below industry standards. The report shows the following:

- The median gross annual salary for an attorney in private practice is \$108,000.
- The median hourly billing rate for a private practitioner is \$210.
- The median hourly billing rate for a criminal law private practitioner is \$145.
- The mean hourly billing rate for a legal associate with no experience is \$166.

If the \$35 out-of-court and the \$45 in-court hourly rates established for public defender cases in 1977 were indexed for inflation, those rates would be \$127.26 and \$163.62, respectively, in 2014.

Analysis

The SPD proposes significant changes to the structure of the reimbursement rates for private bar attorneys appointed cases by the SPD, as well as a modest rate increase. If implemented, these changes would coincide with program and policy changes designed to ensure that the quality of representation becomes more consistent with that provided by SPD staff attorneys.

Private Bar In and Out of Court Reimbursement Rate

The SPD appoints cases to the private bar attorneys when SPD staff is unavailable due to vacancies or full caseloads. Some appointments to the private bar are necessitated by conflicts of interest, such as when multiple SPD clients are co-defendants in the same case. The assigned cases vary greatly in complexity, from simple misdemeanors to serious felonies. These cases require different levels of attorney skill, knowledge, and experience. To recognize these factors, the SPD is proposing a trifurcated hourly rate for cases assigned to the private bar that is based on case type. The private bar reimbursement rate would be set at \$45-\$60 per hour for in-court and out-court work based on the case type. Appendix A details the case types identified with each rate structure. The proposed rates for each case type are intended to reflect the expertise and specialization ordinarily required for the respective case types, the risk of imprisonment or other significant consequences for the client, and/or the difficulty that some SPD offices experience in appointing the cases to qualified private attorneys.

The current \$40 per hour rate, applicable regardless of the complexity of the case, has been cited by private bar attorneys as the main factor in their decisions to no longer accept or too infrequently accept SPD case appointments. Most attorneys are small-business owners who must make sound economic decisions in order to remain in business. Experienced attorneys who have paying clients lose a significant amount of money for every hour they spend on an SPD case. Experienced attorneys who have paying clients cannot justify or afford to take more than a few SPD cases. Another key finding of the State Bar's *Economics of Law Practice in Wisconsin* is that the median overhead rate to operate a law practice is 38% of gross income. Given the median income for attorneys, the SPD payment rate is inadequate to meet overhead requirements, and is a disincentive for many attorneys to accept SPD appointments.

In any local small business, inability to cover overhead costs reduces the ability to rent office space and hire staff. If the reimbursement for work on SPD cases is increased to better offset overhead costs, the attorneys accepting SPD appointments will likely increase their contributions to the local economy through office rentals and hiring of support staff.

In comparison, other attorneys retained by federal, state and local government are paid substantially more than \$40 per hour. Defense attorneys are paid \$110 per hour for non-capital federal cases. The Office of Lawyer Regulation uses outside counsel in some disciplinary matters and pays them \$70 per hour. Other state agencies charge-back for their in-house attorney services. For example, the prior Department of Regulation and Licensing charged back attorney time to license holders who committed misconduct at the rate of \$61.00 per hour. The disparities among state agencies in attorney reimbursement rates is continually identified by the private bar attorneys as another reason why they will take cases for some state agencies, but not the SPD. According to a Legislative Fiscal Bureau memo dated October 17, 2013, nearly every service for which the state contracts at an hourly rate is higher than the SPD private bar rate. Some overall findings include:

- The median rate of hourly pay ranges from \$50-\$90.
- The median rate of hourly pay in legal professions ranges from \$50-\$120.
- Out of 99 different job titles, only 10 paid a maximum hourly rate *lower* than \$40 per hour.
- Attorneys received an hourly rate as high as \$509.
- *Paralegal* services were contracted for at a minimum hourly rate of \$70 and went as high as \$248 an hour.

The low rate makes it increasingly difficult to find competent lawyers to take SPD appointments. Although there are currently about 1,200 lawyers on the appointment lists, about 25% of them take fewer than five cases per year and about 10% take one or fewer cases per year. These numbers demonstrate the difficulties in appointing cases that have been reported by field staff. The SPD local offices report that one reason lawyers who used to accept appointments now take fewer appointments – or none at all - is because counties and federal courts can pay substantially higher rates.

The SPD is experiencing difficulty in making appointments to the private bar, especially in sexual assault cases, which has consequences for the justice system. Many offices serving counties outside of Milwaukee and Dane must routinely appoint attorneys from other counties, increasing travel time and mileage expenses.

Private Bar Travel Reimbursement Differential

Wis. Stat. s. 977.08(4m)(c) sets a travel reimbursement differential for SPD-appointed private attorneys for their travel time to attend court or interview their clients and witnesses. To qualify for reimbursement at \$25 per hour, the attorney must either travel outside the county in which his or her office is located, or travel more than 30 miles one way from his or her office. As a result, some attorneys are reimbursed for travel and some are not, and not always in a way that is fair. An attorney can be paid for travel because the trip is outside the county, even if it is only 5 miles. Another attorney traveling almost 30 miles one way within their county cannot be reimbursed. This causes a disparity based on a geographic designation that unfairly penalizes attorneys in large counties from qualifying for travel differentials.

Private Bar Overhead Reimbursement

As noted above, a significant disincentive for private bar attorneys to accept SPD appointments is that the \$40 hourly rate does not cover office overhead. In effect, they are losing money by taking our cases. To reduce this disincentive, and to encourage attorneys to regularly accept SPD appointments, the SPD proposes an annual overhead reimbursement of \$1,000 (when 26 cases are completed) or \$2,000 (when 50 cases are completed). In CY 2013, of the 1,200 active attorneys on the SPD appointment list, fewer than 5% took zero case appointments, 49% took less than 26 appointments, 18% took 26-50 appointments and 33% took more than 50 appointments. About 52% regularly accept SPD appointments (26 or more in a year). Creating an overhead payment will allow private bar attorneys to take a consistent number of SPD appointments without causing undue hardship on their private practice.

Cost Estimate

Private Bar In and Out of Court Reimbursement Rate

Appendix A identifies the case types and the requested new rate structure per case type. Case types at the lowest rate of \$45 per hour are those that are generally more routine in nature. Case types at the middle rate of \$50 per hour are those that require more specialization or complex

knowledge of legal theory, practice and strategy. The case types at the highest level of \$60 per hour require significant subject matter expertise and deal with the most severe criminal penalties. The Appellate case type rates would be allocated based on the underlying trial level case type. This ensures that the skills, knowledge and competencies we require at the trial level would be required at the Appellate level as well. Estimates are based on actual payments by case type for FY14. Using the average in-court and out-of-court time and dividing by the number of cases, we estimate the average hours spent per case type and multiply that first by the number of cases and then by the low, medium or high reimbursement rate.

Formula: In- and out-of-court average case cost/\$40 reimbursement rate = average hours spent per case type X number of cases X reimbursement rate = estimated cost per case type.

Example: Chapter 55 Case Type: $(\$44.89 + \$244.80) / \$40 = 7.24$ hours per case X 885 cases X \$50 = \$320,470 estimated increase in a fiscal year.

The cost to increase the private bar rate would not be realized until October of 2016, due to a three month lag between the opening and closing of a case by the private bar. The annual cost is \$8,388,500. Partial year costs would first occur in FY17, estimated at \$6,291,400.

Private Bar Travel Differentials

In FY14, the SPD reimbursed private bar attorneys \$1.23 million in hourly travel. Assuming that one-third of the private bar do not currently qualify under the travel differential, the SPD estimates that the requested change to the statutory references would increase costs by \$406,500. The SPD requests that this change apply to all travel that occurs on or after July 1, 2016.

Private Bar Overhead Reimbursement

The cost to create of an overhead reimbursement would impact both fiscal years of the biennium. The annual cost of the overhead reimbursement is estimated at \$930,000 per year. Using case data in FY13, the SPD estimates that 200 attorneys would qualify for the overhead reimbursement of \$1,000 and 365 attorneys would qualify for the overhead reimbursement of \$2,000. Attorneys would only receive one of the overhead reimbursements and not a reimbursement at each appointment level reached.

Statutory Changes (Appendix B)

Amend s. §977.08(4m) to increase the statutory reimbursement rate for in-court and out-of-court work to \$45-\$60 per hour based on case type, for cases assigned on or after July 1, 2016.

Amend s. §977.08(4m) to remove the one-way and out of county travel distinction for private bar attorneys.

Amend s. §977.02 to provide the SPD with rule making authority to create an overhead reimbursement of \$1,000 or \$2,000 depending on how many cases are completed by private bar attorneys, and to establish and define case types for each one of three hourly rate.

Summary

	FY16		FY17	
	Funding	FTE	Funding	FTE
Rate Increase	\$0	0.00	6,291,400	0.00
Travel Differential	\$0	0.00	\$406,500	0.00
Overhead Reimbursement	\$930,000	0.00	\$930,000	0.00
GPR	\$930,000	0.00	\$7,627,900	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$930,000	0.00	\$7,627,900	0.00

Prepared by:
Anna Oehler, Budget Director
608-267-0311

Appendix A – Trifurcated Reimbursement Rate by Case Type

CASE TYPE	NO OF CASES	Appellate Distribution (underlying charge)	AVG IN COURT	AVG OUT COURT	AVG HOURS PER CASE				
						\$40	\$45	\$50	\$60
Appellate Plea	2,075	0.0%	\$ 14.09	\$ 908.71	23.07	\$ 1,914,810	\$1,077,107	\$1,071,250	\$150,572
Appellate Trial	1,086	0.0%	\$ 24.58	\$1,835.28	46.50	\$ 2,019,808	\$1,136,170	\$1,129,992	\$158,829
Class A/B/C Felony	2,918	3.5%	\$ 223.51	\$1,008.19	30.79	\$ 3,594,101			\$5,391,151
Other Life Sentence	20	0.02%	\$ 188.60	\$1,251.40	36.00	\$ 28,800			\$43,200
Homicide	134	0.2%	\$ 441.66	\$3,215.37	91.43	\$ 490,042			\$735,063
Juvenile Waiver	154	0.2%	\$ 61.81	\$ 204.32	6.65	\$ 40,984			\$61,476
Sexual Predator (original)	19	0.0%	\$ 386.95	\$1,246.74	40.84	\$ 31,040			\$46,560
Sexual Predator	145	0.2%	\$ 81.23	\$ 463.18	13.61	\$ 78,939			\$118,409
TPR	923	1.1%	\$ 228.86	\$ 927.23	28.90	\$ 1,067,071			\$1,600,607
Chapter 55	885	1.1%	\$ 44.89	\$ 244.80	7.24	\$ 256,376		\$320,470	
Delinquency - Felony	1,649	2.0%	\$ 96.85	\$ 274.67	9.29	\$ 612,636		\$765,796	
Felony	27,571	33.5%	\$ 92.40	\$ 384.98	11.93	\$13,161,844		\$16,452,305	
Revocation	6,717	8.2%	\$ 24.03	\$ 242.75	6.67	\$ 1,791,961		\$2,239,952	
Commitment	4,021	4.9%	\$ 29.07	\$ 109.61	3.47	\$ 557,632	\$627,336		
Intake	117	0.1%	\$ 57.11	\$ 40.17	2.43	\$ 11,382	\$12,804		
Juvenile	7,134	8.7%	\$ 52.13	\$ 136.56	4.72	\$ 1,346,114	\$1,514,379		
Misdemeanor	20,549	25.0%	\$ 39.32	\$ 174.10	5.34	\$ 4,385,568	\$4,933,764		
Misdemeanor Traffic	3,450	4.2%	\$ 40.67	\$ 162.48	5.08	\$ 700,868	\$788,476		
Special	5,866	7.1%	\$ 27.29	\$ 132.52	4.00	\$ 937,445	\$1,054,626		

Appendix B – Statutory Changes

Create 977.08(4m) (d) to remove travel distinctions.

Proposed language:

Unless otherwise provided by a rule promulgated under s. 977.02(7r) or by a contract authorized under sub. (3)(f), for cases assigned on or after July 1, 2015, private local attorneys shall be \$25 per hour for time spent in travel related to a case if any portion of the trip requires traveling a distance of more than 30 miles from the attorney's principal office.

Create 977.08(4m) (e) for a trifurcated hourly rate.

Proposed language:

Unless otherwise provided by a rule promulgated under s. 977.02(7r) or by a contract authorized under sub. (3)(f), for cases assigned on or after July 1, 2016, private local attorneys shall be paid \$45 to \$60 per hour, based upon the case type, for time spent related to a case, excluding travel.

Amend 977.02 to allow for Rule Making Authority

Proposed language:

(7x) Promulgate rules establishing and defining the case types to which each one of three hourly rates will apply.

(7y) Promulgate rules creating an annual overhead reimbursement of \$1,000 or \$2,000 depending on the number of cases completed.

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	5001	Private Bar Rate

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$930,000	\$7,627,900
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$930,000	\$7,627,900
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5001	Private Bar Rate			
01	Legal assistance				
	04 Private bar and investigator reimbursement	\$930,000	\$7,627,900	0.00	0.00
	Legal assistance SubTotal	\$930,000	\$7,627,900	0.00	0.00
	Private Bar Rate SubTotal	\$930,000	\$7,627,900	0.00	0.00
	Agency Total	\$930,000	\$7,627,900	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	5001	Private Bar Rate				
	GPR	S	\$930,000	\$7,627,900	0.00	0.00
	Total		\$930,000	\$7,627,900	0.00	0.00
Agency Total			\$930,000	\$7,627,900	0.00	0.00

Decision Item (DIN) - 5003

Decision Item (DIN) Title - Protective Occupation Status for SPD Investigators and Client Services Specialists

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$90,000 GPR in FY17 for the purpose of designating Public Defender Investigator and Client Services Specialist positions as protective occupation participants.

**Office of the State Public Defender
2015-2017 Biennial Budget Request
Issue Paper**

Topic: DIN 5003 - Protective Occupation Status for SPD Investigators and Client Services Specialists

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$90,000 in FY17 for the purpose of designating Public Defender Investigator and Client Services Specialist positions as protective occupation participants.

Problem Description

The Public Defender Board requests that the Public Defender Investigator and Client Services Specialist positions be determined comparable to police officers, probation and parole agents, firefighters, etc., for retirement purposes, in recognition of the hazardous duties required of these employees.

Background

Current law designates certain employees as protective occupation participants under the Wisconsin Retirement System (WRS). Under WRS, the normal retirement age for a protective occupation participant is lower than that for other participants, and the percentage multiplier used to calculate retirement annuities is higher for protective occupation participants than for other participants.

Wisconsin Statutes sec. 40.02(48)(a) defines “protective occupation participant” to mean “any participant whose principal duties are determined by the participating employer ... to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.”

Analysis

Public Defender Investigator (PDI) and Client Services Specialist (CSS) duties require frequent exposure to a high degree of danger or peril. Specifically, these employees regularly seek out and question witnesses and defendants in dangerous neighborhoods, remote and isolated rural locations, bars, drug houses, low-rent hotels, and back alleys. Many witnesses and potential witnesses are reluctant to talk to the State Public Defender (SPD) employees, some are suspicious, and some are hostile for a variety of reasons. Several agency Investigators who are former law enforcement officers report that as PDIs, they are exposed to comparable or greater danger than they had been as police officers.

The PDI role is generally to investigate facts related to the alleged criminal charges. Examples of investigation activities include locating and interviewing witnesses to the crime, suspects, or witnesses to the arrest of the client. The CSS role is to assist the assigned attorney with a sentencing plan or other dispositional plan, such as a request for the client to enter into a treatment

program. Despite the difference in the roles, the day-to-day work of both classes of employees involves interviewing similar witnesses and visiting similar neighborhoods and types of locations.

Police officers, deputy sheriffs, Department of Corrections (DOC) probation and parole agents, and Department of Justice (DOJ) special agents (all currently protective occupation participants), PDIs, and CSSs often investigate the same fact situations in the same cases. A difference in responsibilities is that the police officer, deputy sheriff, and DOJ special agent generally investigate a suspected crime before formal charges have been brought, and the PDI and CSS do their work after the filing of charges. All these professionals, however, play a critical role in our adversarial system of criminal justice by locating witnesses and other pertinent evidence.

Finally, because of the limited number of PDI's and CSS's in comparison to traditional law enforcement personnel – 67 FTE cover the entire state for the SPD - they generally travel alone while conducting investigations. They do not have partners traveling with them or real-time radio access to a law enforcement headquarters for emergency assistance.

The protective service fringe rate for FY14 is 2.83%. The estimated cost to determine that CSSs and PDIs are protective service classifications is \$90,000 annually. We request that the protective service designation begin July 1, 2016.

Summary

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$0	0.00	\$90,000	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$0	0.00	\$90,000	0.00

Prepared By:
 Kathy Smith, Budget & Policy Analyst
 608-267-0974

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	5003	Protective Occupation Status for SPD Investigators and Client Services Specialists

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$90,000
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$0	\$90,000
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5003	Protective Occupation Status for SPD Investigators and Client Services Specialists			
01	Legal assistance				
	02 Appellate representation	\$0	\$4,400	0.00	0.00
	03 Trial representation	\$0	\$85,600	0.00	0.00
	Legal assistance SubTotal	\$0	\$90,000	0.00	0.00
	Protective Occupation Status for SPD Investigators and Client Services Specialists SubTotal	\$0	\$90,000	0.00	0.00
	Agency Total	\$0	\$90,000	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	5003	Protective Occupation Status for SPD Investigators and Client Services Specialists				
	GPR	S	\$0	\$90,000	0.00	0.00
	Total		\$0	\$90,000	0.00	0.00
Agency Total			\$0	\$90,000	0.00	0.00

Decision Item (DIN) - 5004

Decision Item (DIN) Title - Treatment and Diversion Expansion Infrastructure Support

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$553,400 GPR and 9.0 GPR FTE in FY16 and \$639,700 GPR and 9.0 GPR FTE in FY17 to increase staffing commensurate with increases in funding and expansion of Treatment Alternatives and Diversions programs in the 2015-2017 biennium.

OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper

Topic: DIN 5004 – Treatment and Diversion Expansion Infrastructure Support

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$553,400 GPR and 9.0 GPR FTE in FY16 and \$639,700 GPR and 9.0 GPR FTE in FY17 to increase staffing commensurate with increases in funding and expansion of Treatment Alternatives and Diversions (TAD) programs in the 2015-2017 biennium.

Problem Description

During the 2013-2015 biennium and legislative session, funding for TAD grants was increased from an annual appropriation of \$1,085,900 to \$4,085,900 as a result of 2013 Wisconsin Act 20 and 2013 Wisconsin Act 197. The Department of Justice has increased the number of local TAD projects from 9 counties and 3 tribes to 35 counties and 4 tribes. These local programs include the involvement of the State Public Defender pursuant to s. 165.95(5)(a).

Background

The TAD program was first established through 2005 Wisconsin Act 25 and was initially administered by the Office of Justice Assistance before being transferred to the Department of Justice as a result of 2013 Wisconsin Act 20. Seven initial programs in nine counties were established and subsequently supported, monitored, and evaluated. A cost-benefit analysis conducted after the first five years of operation showed a \$1.93 return for every \$1 invested in the programs. A more recent cost-benefit analysis conducted by the University of Wisconsin's Population Health Institute has revised and updated that number to reflect a \$1.96 return for every \$1 invested.

Analysis

The expansion of evidence-based practices, including treatment courts and other initiatives supported by the TAD program, has significantly changed and expanded the type of work required of public defenders. Participation in justice coordinating councils and treatment-court teams now supplements traditional case-by-case client advocacy. Although the SPD amended administrative code (PD 3 and PD 6) to allow for a felony diversion case type, this case type does not address the non-case workload required to effectively participate in TAD programs, alternative treatment courts, and local criminal justice coordinating councils.

Attorney Positions

SPD Attorneys are involved in local Criminal Justice Coordinating Councils, Treatment Alternatives and Diversion programs, and various types of problem-solving courts throughout Wisconsin. This participation is vital in ensuring that TAD programs provide an alternative to incarceration that operates according to research and evidence-based principle while effectively ensuring public safety. The savings to the criminal justice system through these diversion programs is substantial.

Statewide, SPD attorneys spend an average of 10.12 hours per month, above and beyond their caseload, in service to TAD programs and other criminal justice system initiatives.

With approximately 11,300 total hours per year, an equivalent of 5.43 FTE attorney positions are estimated to be utilized on a non-traditional workload related to TAD programming.

Section 977.08(5)(br) allows the State Public Defender to exempt up to 10 full-time assistant state public defenders within the trial division from an annual caseload standard based on their need to perform other assigned duties. These 10 FTE positions do not fully offset the supervisory and administrative duties of supervising attorneys in the SPD's 37 field offices, and the additional non-caseload duties associated with TAD programs necessitates this budget request.

Given the nature of SPD involvement in TAD programs outside of annual caseload standards and the reported total of 11,300 hours per year spent in these areas, SPD requests an additional 5.0 FTE assistant state public defender attorney positions and \$358,700 for salary, fringe benefits and supplies and services in FY16 and \$418,400 in FY17. In addition, SPD requests a statutory rule change to allow that these positions be exempt from an annual caseload standard pursuant to s. 977.08(5)(br). The amended language would read as follows:

(br) Beginning on July 1, 2000, the state public defender may exempt up to ~~40~~15 full-time assistant state public defenders in the subunit responsible for trials from the annual caseload standards under par. (bn) based on their need to perform other assigned duties.

Non-attorney Positions

In addition to SPD attorney positions, non-attorney staff provide direct support for attorneys and clients participating in TAD funded problem solving courts. SPD currently employs 18.5 FTE Client Services Specialist (CSS) positions. A CSS is a professional who has a social work background with specialized knowledge and skill in assisting SPD clients. The major responsibilities of a CSS are as follows: gathering pertinent information about individual clients; investigating placement, treatment, and educational opportunities; and preparing written recommendations for use at sentencing or revocation hearings. SPD attorneys rely heavily upon CSS staff to prepare sentencing plans that offer reasonable alternatives to long prison sentences.

In 2007, Milwaukee County started an intensive deferred prosecution program, which is now called the Early Intervention Program. One of our CSS staff works solely with this program. She currently has over 160 Deferred Prosecution Cases open, consisting of both misdemeanors and felonies. Participants remain in the program for a minimum of six (6) months, though most require additional time to complete the required AODA, community service, or other program conditions. The project saves taxpayers thousands of dollars in costly jail or correctional sentences and provides clients with a chance at rehabilitation. Most participants receive a reduced charge or dismissal of their charges for successful completion of the program.

In FY14, the Office of the State Public Defender staff attorneys provided representation in more than 81,000 cases, including more than 18,000 adult felony cases and more than 3,800 revocation cases. The agency is able to assign a CSS to work on only a small percentage of these cases.

The daily cost to incarcerate an individual in a state institution was \$86.42 (\$32,583 per year) in FY13. Significant cost savings can be achieved by instead developing and implementing appropriate alternatives to incarceration. Appendix A highlights just some recent examples of

cases in which the Client Services Specialist’s work resulted in savings to the criminal justice system. The cases highlighted in Appendix A resulted in \$2,856,044 in savings for costs of incarceration (estimate based on average cost per inmate per year).

SPD requests an additional 3.0 FTE CSS positions and \$142,700 GPR in FY 16 and 3.0 FTE CSS positions and \$164,000 GPR in FY17. The reduction of client sentences by a total of five years of prison would equate to the cost of the 3.0 FTE CSS positions (estimate based on average cost per inmate per year). CSS may help achieve other savings by helping with client placement and client success in evidence-based programs that effectively address clients’ criminogenic needs. Effective programming, as shown by national studies of treatment courts, reduces recidivism and thereby saves money by reducing costs of prosecution and imprisonment.

Finally, to remain consistent and current with evidence and research-based standards for defense counsel participation in TAD type programs, SPD requests the authorization of 1.0 FTE and \$51,800 GPR in FY16 and \$57,300 GPR in FY 17 for a program and policy analyst position. Aside from ensuring that SPD provides adequate deployment of resources statewide for TAD programs, this position could provide internal research support for various case types such as Chapter 980 civil commitments for sex offenders, sexual assaults, and Internet Crimes against Children, which are resource intensive. Currently, the significant cost to the agency limits the SPD’s capacity to conduct in-depth research or to collect data that might help to demonstrate best practices in addressing the criminogenic needs of SPD clients in these serious case types.

Cost Estimate

The agency estimates the total cost for the above 9.0 FTE positions to be \$553,400 in FY16 and \$639,700 in FY17 to add 5.0 assistant state public defender attorney positions, 3.0 client services specialist positions, and 1.0 program analyst position.

Summary

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$553,400	9.00	\$639,700	9.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$553,400	9.00	\$639,700	9.00

Prepared by:
 Adam Plotkin, Legislative Liaison
 608-264-8572

Appendix A: Sentencing Impact Data

Sentencing Impact Data (Calendar Year 2012)					
County	Charge(s)	Type of Work	District Attorney (DA)/Department of Corrections (DOC) Recommendation	Sentence	Sentence Impact
Brown	1st Degree Sexual Assault.	Sentencing Memorandum	Sentencing after revocation: DOC recommended 7 years of Initial Confinement and 7 years of Extended Supervision	3 years of Initial Confinement and 13 years of Extended Supervision	Reduced confinement time increased supervision in the community. Savings: \$113,970
Chippewa	Original charge 2nd Degree Sexual Assault-3rd Degree Sexual Assault	Sentencing Memorandum, including research on the Sexual Offender Registry	DA recommended 2-3 years of Initial Confinement and 5 years of Extended Supervision. DOC recommended prison, then revised its recommendation to not include prison.	5 years of probation, 12 months of jail and registry on the Sexual Offender Registry for 20 years.	Addressed Sexual Offender Registry concerns, utilized community based treatment resources. Savings: \$97,749
Columbia	2nd Degree Recklessly Endangering Safety, hit and Run, Repeater, Disorderly Conduct, Resisting and Obstructing	Sentencing Memorandum, worked with Veteran's Affairs and arranged for treatment	6 years of Initial Confinement, 3 years of Extended Supervision	Sentence withheld, placed on probation for 3 years.	Client was offered an opportunity for community based treatment. Avoided incarceration. Client returned to college and will graduate with her social work degree in May of 2014. Savings: \$195,498
Dane	2nd Degree Recklessly Endangering Safety (4 counts)	Sentencing Memorandum	DA recommended 10 years Initial Confinement, 20 years Extended Supervision	4 years of Initial Confinement and 5 years of Extended Supervision	Providing additional information to Court reduced sentence by 6 years of Confinement and 15 years of Extended Supervision. Savings: \$236,403
Dodge	Repeated Sexual Assault of Same Child	Sentencing Memorandum, expert request, and located community-based Sexual Offender Treatment (SOT) programming	10 years of Initial Confinement and 10 years of Extended Supervision	10 years of probation, stayed and imposed 10 years of Initial Confinement and 10 years of Extended Supervision	Client utilized community-based treatment instead of incarceration. Client continues with community-based SOT. Savings: \$298,560
Dunn	Armed Burglary, Party to a Crime (PTAC), Arson, PTAC	Alternative Presentence Investigation (PSI)	5 years of probation, 12 months in jail	5 years of probation, 9 months in jail	Reduced jail sentence by 3 months.

County	Charge(s)	Type of Work	District Attorney (DA)/Department of Corrections (DOC) Recommendation	Sentence	Sentence Impact
Eau Claire	Forgery-Uttering	Alternative PSI	4 years of Initial Confinement and 4 years of Extended Supervision	5 years of probation, 6 months in jail with Huber. Up to 4 months stayed pending good faith payment of restitution	Providing additional information to the Court saved the client from being sentenced to an 8-year bifurcated sentence; community based resources were utilized instead. Savings: \$127,605
Kenosha	Operating While Intoxicated (OWI) 5th	Alternative PSI	prison	Withheld sentence, 3 years of probation with one year in jail	Reduced sentence and opportunity for community based treatment.
LaCrosse	Forgery	Alternative PSI	3-6 years of prison	Sentence withheld, placed on probation for 4 years.	Utilized community supervision instead of prison. Savings: \$184,590
Manitowoc	2nd Degree Reckless Injury--use of a Weapon, Strangulation and Suffocation	Sentencing Memorandum	10 years of Initial Confinement and 10 years of Extended Supervision	5 years of Initial Confinement and 5 years of Extended Supervision	Saved 5 years of incarceration time and 5 years of Extended Supervision. Savings: \$176,550
Marathon	Armed Robbery, Carrying a Concealed Weapon	Sentencing Memorandum	DA recommended maximum sentence -- 10 years Initial Confinement and 5 years of Extended Supervision	5 years of Initial Confinement and 5 years of Extended Supervision	Saved 5 years of incarceration. Savings: \$162,915
Milwaukee	1st Degree Intentional Homicide-- Amended down to 1st Degree Reckless Homicide	Sentencing Memorandum	DA recommended 17 years of Initial Confinement and 10 years of Extended Supervision	12 years of Initial Confinement and 10 years of Extended Supervision	Saved 5 years of incarceration. Savings: \$162,915
Oneida	1st Degree Reckless Homicide/Deliver Drugs	Sentencing Memorandum	DA recommended 6 years of Initial Confinement and 9 years of Extended Supervision, DOC recommended 203 years IC and 5-6 years of ES	4 years of Initial Confinement and 6 years of Extended Supervision	Saved 2 years of incarceration. Savings: \$73,347
Outagamie	Possession of THC, Delivery of Schedule I or II Narcotics, 2nd and Subsequent Offense	Alternative PSI	3 years of Initial Confinement and 3 years and Extended Supervision	3 years of prison, Imposed and stayed; 4 months of jail	Saved 2 years, 8 months of confinement time Savings: \$97,749
Polk	2nd Degree Reckless Endangerment, Bail Jumping, Possession of	Sentencing Memorandum	5-6 year of Initial Confinement	Imposed and Stayed 3 years of Initial Confinement and 3 years of Extended Supervision, 6 years	Decreased prison exposure. Savings: \$73,206

County	Charge(s)	Type of Work	District Attorney (DA)/Department of Corrections (DOC) Recommendation	Sentence	Sentence Impact
Portage	OVI 10th, Possession of THC, Possession of Drug Paraphernalia, Bail Jumping	Alternative PSI	DA recommended 7 years of Initial Confinement and 5 years of Extended Supervision	5 years of Initial Confinement and 5 years of Extended Supervision	Saved 2 years of incarceration and costs. Savings: \$65,166
St. Croix	2nd Degree Sexual Assault. Client plead to Exposing Genitals to a child	Alternative PSI	18 months of Initial Confinement and 24 months of Extended Supervision	3 years of probation, 12 months in jail	Utilized community supervision and treatment available in the community. Savings: \$46,147
Vilas	Substantial Battery-- Domestic Abuse, Repeater	Alternative PSI	DA recommended 3 years of Initial Confinement and 2 years of Extended Supervision. DOC recommended 18 months Initial Confinement and 2 years of Extended Supervision	Imposed and stayed sentence: 18 months Confinement and 2 years Extended Supervision, placed on probation for 3 years with 10 months of conditional jail time.	Reduced sentence. Savings: \$95,022
Walworth	2nd Degree Sexual Assault of a Child	Sentencing Memorandum	10-12 years of prison	5 years of probation, 2 years imposed and stayed sentence and 6 months of jail with Huber	Client was given an opportunity to be supervised in the community, saving on the extra costs of 10-12 years of incarceration. Savings: \$377,361
Wood	1st Degree Sexual Assault of a Child (2 counts)	Alternative PSI	DA recommended 10 years of prison	20 years of probation, one year in jail as a condition	Saved 10 years of prison, utilized community based treatment/supervision. Savings: \$271,290

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	5004	Treatment and Diversion Expansion Infrastructure Support

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$286,800	\$382,400
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$121,800	\$162,400
06	Supplies and Services	\$94,900	\$94,900
07	Permanent Property	\$0	\$0
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$49,900	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$553,400	\$639,700
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	4.00	4.00
20	Unclassified Positions Authorized	5.00	5.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5004	Treatment and Diversion Expansion Infrastructure Support			
01	Legal assistance				
	03 Trial representation	\$553,400	\$639,700	9.00	9.00
	Legal assistance SubTotal	\$553,400	\$639,700	9.00	9.00
	Treatment and Diversion Expansion Infrastructure Support SubTotal	\$553,400	\$639,700	9.00	9.00
	Agency Total	\$553,400	\$639,700	9.00	9.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	5004	Treatment and Diversion Expansion Infrastructure Support				
	GPR	S	\$553,400	\$639,700	9.00	9.00
	Total		\$553,400	\$639,700	9.00	9.00
Agency Total			\$553,400	\$639,700	9.00	9.00

Decision Item (DIN) - 5005

Decision Item (DIN) Title - IT Mobile Technology

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$742,800 GPR in FY17 to begin transitioning from desktop computers to mobile-equipped laptops for SPD trial attorneys, investigators and client services specialists who spend the majority of their time working at remote sites (i.e., courthouses, jails/prisons, investigative locations, client homes, etc.) or traveling to sites great distances from their offices.

OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper

Topic: DIN 5005 – IT Mobile Technology

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$742,800 GPR in FY17 to begin transitioning from desktop computers to mobile-equipped laptops for SPD trial attorneys, investigators and client services specialists that spend the majority of their time working at remote sites (i.e., courthouses, jails/prisons, investigative locations, client homes, etc.) or traveling to sites great distances from their offices.

Problem Description

SPD staff have limited mobile access to electronic data while outside the office. While many staff utilize personal electronic devices such as cell phones to access e-mail and their calendars, the agency is not able to directly support those devices or provide mobile equipment that would allow access to electronic work files and client/case related information. With 37 Trial Division offices covering all 72 counties, there are a significant number of staff who spend a majority of their work week away from their home office and therefore away from their computers. Increased connectivity from agency supported devices would dramatically increase the productivity of staff, particularly in the Trial Division.

Specifically, the lack of mobile technology:

- Limits productivity and impacts client representation because staff, particularly attorneys, cannot remotely access their work documents or key legal resources (e.g., state statutes, Circuit Court Automation Project (CCAP) data, case files, previous court rulings, Department of Justice (DOJ) Criminal Information Bureau (CIB) system, court calendars, legal research sites, etc.), at remote locations (e.g., court rooms, intake locations, county jails, etc.).
- Results in lost productivity particularly for attorneys who travel great distances from their offices to courthouses, jails and prisons since they are not able to easily return to their offices to work during unforeseen court delays and other unforeseen down times or access work files remotely during such times.
- Results in a paper-based environment for attorneys, investigators and support staff as intake forms are filled out on paper for entry into the case management system at a later time, paper client files are carried back and forth to court instead of having ready access to the case management system and investigators are unable to access key case file documents when away from the office.
- May prevent the SPD from adhering to the planned Supreme Court Rule requiring e-filing of court documents.
- Is contrary to Lean Government concepts; results in wasted taxpayer dollars due to the duplication created by having to enter data from paper forms into the case management system and due to the amount of “dead time” experienced by attorneys, investigators and

client services specialists whose productivity is limited without access to client files and legal resources while away from their home office.

- Will result in the underutilization of any new case management system procured by the SPD since such a system will be a unified client based system containing all information pertaining to each client; information that will be entered at the source, in real time, not after-the-fact.

Background

The SPD currently deploys 670 desktop computers at 41 sites statewide. The SPD represents clients in all 72 counties often requiring significant attorney travel from SPD local offices to county courthouses, jails and prisons. With expanded access to the internet and the move away from paper-based operations, there has been an increasing demand for the SPD to respond to the technological advances of its criminal justice partners who increasingly share information, data and case-related material electronically; information that is available to SPD staff on desktop computers located at their local office.

The SPD's current desktop inventory was last purchased as follows: 362 desktops purchased in 2011 and 308 purchased in 2012. By FY17, 100% of the SPD's Office desktop computers will have exceeded their useful life based on the DET recommended and industry standard 4-year replacement cycle. To gain efficiencies, increase productivity, better serve clients and maximize the use of taxpayer resources, the SPD proposes replacing slightly more than half (388) of its computer inventory (670) with mobile equipped laptops for use by the following positions in the Trial Division: Attorneys (323), Investigators (46) and Client Services Specialists (19). These positions spend the majority of their time out of the office or travel great distances away from their offices for court appearances resulting in the lack of computer resources and files for most of each day. The SPD has no funds budgeted for IT equipment replacement and therefore no funds available to implement mobile technology.

The SPD does not have funds appropriated for the replacement of IT permanent property funding. The 1999-2001 biennial budget (1999 Wisconsin Act 9) established the supplies and services budget for the SPD Office of Information Technology at \$93,700 annually for "*software licenses, equipment maintenance agreements and parts*". Permanent property funding for equipment was not provided. Funding for equipment replacements and upgrades has been sporadic and dependent upon the availability of year-end salary savings resulting from agency retirements, vacancy levels, etc. Using agency supplies and services funding for agency IT equipment needs has become increasingly more difficult as the agency's supplies and services budget has been repeatedly reduced in the recent biennia due to unanticipated cuts and required lapses. Specifically, the SPD has had to absorb the following base cuts and lapses further limiting the agency's ability to make investments that would greatly increase productivity and maximize staff's use of valuable time.

Required Supplies and Services Base Cuts and Lapses

2001-03	\$ 537,000 annually
2005-07	\$ 201,400 annually
2011-13	\$1,013,500 annually
2013-15	\$1,013,500 annually

The lack of base funding for IT permanent property and diminishing supplies and services funding prevents the agency from replacing desktops on a regular replacement cycle and has prevented the SPD from adopting mobile computing that would allow staff such as attorneys, client service specialists and investigators to conduct work away from their offices where they spend the majority of their time.

Analysis

Enterprise standards established by the Department of Administration in 2004 recommended a four-year replacement cycle for personal computers. The SPD’s successful conversion to state standard hardware and software in CY 1998 replaced an outmoded collection of Macintosh computers. It also provided the basic IT infrastructure for the agency to conduct its business efficiently and to continue to improve agency management and communications through implementation of a comprehensive management information system and a wide area network. However, the funding that the SPD was provided to convert the Mactintosh computers to IBM PCs was one-time, not base-building. The SPD has not been appropriated any base funds to replace hardware and software. When the SPD recently updated its strategic plan for information technology, establishing and implementing a hardware and software replacement schedule again emerged as a high, although unfunded, priority.

Cost Estimate

The SPD is requesting \$551,352 in permanent property funding for the purchase of 388 laptop computers and \$191,373 in ongoing supplies and services to cover the DET charges for the VPN connections and to cover the monthly wireless connection for each laptop. Since the laptops are replacing desktops (i.e., are not in addition to desktops), the request does not include additional funding for software, antivirus licenses, etc; existing desktop software will be transferred from the desktop to the laptop prior to the desktop being decommissioned. The cost per device includes:

Cost Per Device:

Laptop Computer (including office docking station)	\$1,421.01
DET VPN Per Device Per Year	\$ 10.80
Wireless Service (\$40 per month per device)	\$ 480.00
Symantec Endpoint Protection software per device per year)	<u>\$ 2.43</u>
 Total Per Device	 \$1,914.24

Calculation: \$1,914.24 x 388 Mobile Devices = \$742,725 (\$551,352 permanent property; \$191,373 ongoing supplies and services).

Information Technology Management Strategic Plan

The above is consistent with the SPD 2015 Annual Information Technology Plan as submitted to the Department of Administration in April, 2014.

Return on Investment

The Return on Investment (ROI) will be realized in efficiency savings for attorneys who travel considerably and are currently unable to access case files or legal research tools remotely or review or file briefs and motions electronically. This allows attorneys to work on case files electronically rather than only being able to work on paper case files that they happened to bring with them. This efficiency is the most significant impact on the ROI.

	2016	2017	Total
Cost of Investment: Purchase of equipment and wireless service	\$(685,298)	\$(176,576)	\$(861,877)
Gain from investment: Mobility	\$2,651,830	\$2,651,830	\$5,303,661
Net Benefit	\$1,966,532	\$2,475,251	\$4,441,784

The calculated ROI is 5.15 in efficiency measures:

ROI Calculation: $(\$5,303,661 - \$861,877) / \$861,877 = 5.15$ over a two year period.

Summary

By FY17, 100% of the SPD's desktops will have exceeded their useful life; will be without warranties and without vendor support. Instead of replacing all of these desktops with new desktops, the SPD proposes replacing slightly more than half of the current desktop inventory with mobile-equipped laptops; laptops that can be used both remotely and within the office. This strategy not only addresses the issues arising from aging equipment (e.g., computer downtime, frequent Information Technology staff travel, difficulty in finding replacement parts, the cost of repairs exceeding the value of the machine, etc.) but also provides the means to greatly increase the productivity of the Trial Division staff and attorneys that frequently work away from their offices and therefore away from their computers.

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$0	0.00	\$742,800	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$0	0.00	\$742,800	0.00

Prepared by:

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Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	5005	IT Mobile Technology

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$0	\$191,400
07	Permanent Property	\$0	\$551,400
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$0	\$742,800
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5005	IT Mobile Technology			
01	Legal assistance				
	03 Trial representation	\$0	\$742,800	0.00	0.00
	Legal assistance SubTotal	\$0	\$742,800	0.00	0.00
	IT Mobile Technology SubTotal	\$0	\$742,800	0.00	0.00
	Agency Total	\$0	\$742,800	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	5005	IT Mobile Technology				
	GPR	S	\$0	\$742,800	0.00	0.00
	Total		\$0	\$742,800	0.00	0.00
Agency Total			\$0	\$742,800	0.00	0.00

Decision Item (DIN) - 5010

Decision Item (DIN) Title - IT Case Management System

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$950,000 GPR in FY16 and \$600,000 GPR in FY17 to replace the current case management system, eOPD.

OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Issue Paper

Topic: DIN 5010 – IT Case Management System

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$950,000 GPR in FY16 and \$600,000 GPR in FY17 to replace the current case management system, eOPD.

Problem Description

Budget cuts and lack of funding for Information Technology resources within the SPD have made it difficult for the agency to maintain adequate information technology to meet the existing business needs of the agency, including the replacement of our case management system.

Background

The SPD has 579.85 FTE headquartered in 38 locations statewide. The Information Technology (IT) unit is staffed by 6.0 FTE, including 3.0 FTE for help desk and IT support, 1.0 FTE database administrator, 1.0 FTE systems programmer/developer, and 1.0 FTE Chief Information Officer.

The SPD implemented a web-based case management system in 2002 (eOPD), which also serves as the billing system for private bar attorneys assigned SPD cases. Because clients are assessed a payment fee for legal representation, a client accounts and verification module is included in the system. Since eOPD was implemented, over 1.5 million cases have been entered in the system. This system is not sophisticated enough to ensure the reliability and accuracy of the data, and users have reported discrepancies when performing conflict of interest checks and entering or searching for other data in the system.

A significant disparity exists between resources and funding of IT resources for the defense and prosecution. Since the existing eOPD case management system was originally developed, the SPD has received no additional funding for updates. In contrast, Wisconsin prosecutors utilize the PROTECT case management system, which is biennially funded at \$8.8 million – a significant difference in funding between defense and prosecution IT resources.

In addition, 2013 Wisconsin Act 323 required the Department of Administration to maintain and provide a case management system to track and report incidents of domestic abuse and domestic violence.

A modern case management system will not only assist agency staff with accurate and timely data entry and retrieval, but will also allow the agency to better assess the effectiveness and/or the cost of changes in the justice system. For example, although the current eOPD system cannot be readily modified to track outcomes of clients in treatment courts and diversion programs, a new system could generate that data. A new system could also more effectively allow the SPD to receive and maintain records from other agencies, such as risk assessments generated by the Department of Corrections and court records generated through the automated CCAP system.

The Director of State Courts' office reports that they hope to be able to accept and require the electronic filing of all criminal complaints within the next 12-18 months. To either realize the efficiency this presents or to be able to communicate with this electronic filing system at all could be severely limited by the current system.

Analysis

The SPD's legacy case management system (eOPD) needs significant overhaul to fix coding issues related to conflict of interest checks, management reports, and case entry and management. The system is over ten years old, is built on an archaic platform and runs on software that is no longer supported by the vendor; maintenance and upgrades, including security patches, are no longer available. Furthermore, today's developers do not possess the skill sets required to work on the outdated technology that supports the case management system making it difficult to recruit and retain developers capable of making the required changes to the system. Finally, the system can run only a limited number of ad-hoc reports resulting in staff having to rely on the SPD's one programmer to extract the most basic data and statistics required for management reports, legislative inquiries and fiscal information. Newer case management systems have interfaces that allow for the easy access and manipulation of data by non-IT staff.

To continue to support the mission of our agency as well as meet the ethical and legal requirements for our attorneys, the agency must replace the existing case management system. It is critical to the agency's success that this system be replaced.

Replacement System

The decision to build or buy a software solution is always a consideration. In general, it is a better practice to consider buying a solution for the following reasons:

- Public Defender/Law Office requirements are fairly standard, so the SPD can likely consider mature products in the market that will address the agency's business needs.
- Vendors have the benefit of working with multiple agencies and law offices, which allows them to adapt products to meet industry best practices.
- Vendors plan to continue to sell their product, so they are likely to continue to invest in enhancing and improving their product.
- Vendor user groups provide an outstanding forum to get input from peers on how to best make use of the application.
- IT developers in an organization may move to the next project after this one, potentially resulting in a gap in technical knowledge. The vendors will continue to have qualified personal supporting the application.
- The agency can identify vendors and systems that can potentially meet all of the business requirements and can ensure that they offer the functionality required, have a proven track record, and can provide ongoing support.

There are several off-the-shelf (requiring minimal customization) software options available on the market today. Many of them are specifically designed for public defender case management. Many states, such as Louisiana and Maine, as well as the U.S. Federal Defender Offices have implemented system-wide case management systems for their public defender offices.

A review of the agency business requirements would need to be completed to develop a Request for Proposal to purchase a case management solution; however, some of our criminal justice partners have recently completed Requests for Proposals for case management systems, which we

would utilize. Some options available include products offered by Justice Works, Legal Edge, and Info Share. This list is not inclusive, and every option would need significant review and demonstration to make sure the system would meet all requirements of the SPD case management, conflict of interest checks, private bar billing, and client accounts and verification processing.

The potential cost of an off-the-shelf solution is estimated at \$350,000 in one-time costs and \$600,000 in ongoing annual costs. This estimate includes a per case entry fee per case, customization costs, and conversion of one year of open case data.

Task	Per Case	# of Cases	Total	Year 1	Year 2	BIENNIAL TOTAL
Case Entry/Mgmt	\$ 2.50	140,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 700,000
	Hourly	# of Hours	Total	Year 1	Year 2	BIENNIAL TOTAL
Customization	\$ 125	2,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 500,000
				\$ 600,000	\$ 600,000	\$ 1,200,000
Task	Per Case	# of Cases	Total	Year 1	Year 2	BIENNIAL TOTAL
Data Conversion	\$ 2.50	140,000	\$ 350,000	\$ 350,000	\$ -	\$ 350,000
				Year 1	Year 2	BIENNIAL TOTAL
				\$ 950,000	\$ 600,000	\$ 1,550,000

The agency's new system would need to be accessible from multiple locations and would require data storage to be managed off site, lessening network upkeep and costs. The system would also need to be able to fully complete all internal case management needs and to import CCAP data fields. The system would also have to be accessible and understandable to the SPD users who would enter and retrieve data. Training of current staff would be required as would conversion of the current system data. The agency would expect to see efficiencies through automated workflow, information access and linkage, efficient user interfaces that require as little as possible data entry, ability to extract data in formats that allow sharing with external partners, provide data analysis for the most efficient deployment of staff resources and standardization of case management processes and procedures.

Reengineering of Current System

Legacy systems generally consist of invaluable assets with embedded business logic representing many years of coding, developments, enhancements, and modifications. However, they are often undocumented, tightly coupled, and relatively closed, and inflexible. In most cases, they were developed independently without a consistent underlying architecture, resulting in overlapping and redundant functionality and data. Re-engineering the legacy system would require a full decommissioning of the existing system and then a full rebuild - and only then the addition of any new functionality. This sequence ensures that the system will complete the existing processes but allows for a significant reduction and simplification in coding, a fix of current erroneous coding and a clear understanding of the needed improvements in system design.

The current eOPD case management system would require significant upgrades to the software, programming and reporting abilities to fix significant deficiencies within the system. These upgrades would require contractors to complete ongoing maintenance of the system. The agency estimates that to adequately re-engineer the current case management system would require that

7-15 contractor positions over the biennium be utilized to cover project management, business analytics, database architecture, and programming hours. SPD would also need to purchase the hardware and software required to support the data storage needs. The estimated cost would be \$2,220,072 in the first year of the biennium, which would be needed to complete the upgrades and enhancements to the system, and \$1,040,072 in the second year of the biennium to maintain the reengineered system. The table below identifies the contractors needed to fully design, build, and implement the reengineered case management system. Additionally, the costs identified in year 2 would be needed annually through 2021 when the system would need substantial work to upgrade the technology to the current generation.

Reengineer Legacy System	Year 1	Year 2	BIENNIAL TOTAL
Contractor Costs	\$ 2,084,000	\$ 904,000	\$ 2,988,000
Hardware/Software Costs	\$ 136,072	\$ 136,072	\$ 272,145
TOTAL	\$ 2,220,072	\$ 1,040,072	\$ 3,260,145

Information Technology Management Strategic Plan

This request is consistent with the SPD 2015 Annual Information Technology Plan as submitted to the Department of Administration in April, 2014.

This project also meets several of the key strategic goals identified in the Division of Enterprise Technology 2010 Strategic Plan. Specifically,

- The project enhances service delivery by aligning the service delivery method more closely with current business requirements.
- The project expands utilization of technology to improve efficiencies and reduce costs.
- The reengineering or replacement of a legacy system is crucial to allow for mobile technology accessibility and according to the Strategic Plan, more efficient and cost effective.
- Depending on the solution funded, the use of cloud computing and server virtualization would also be implemented.

Return on Investment

The Return on Investment (ROI) will be realized in efficiency savings that improve data validity and improve service delivery. For staff who complete conflict checks they would be able to accurately determine if staff attorneys can take a case. Being able to confidently determine whether a conflict exists is significant to meet the ethical requirements of the legal profession. Also, there will be efficiency savings that a new case management system would reduce or fully eliminate the need for duplicative entries of data allowing for improved service delivery.

	2016	2017	2 Year Total
Project Cost	\$ (950,000)	\$ (600,000)	\$ (1,550,000)
Improved Data Validity		\$ 1,237,180	\$ 1,237,180
Improved Service Delivery		\$ 1,134,325	\$ 1,134,325
			\$ -
Net Benefit	\$ (950,000)	\$ 1,771,505	\$ 821,505

The calculated ROI is 0.53 in efficiency measures over a two year period.
 ROI Calculation: $(\$2,371,505 - \$1,550,000) / \$1,550,000 = 0.53$ over a two year period.

Summary

Replacing a legacy system will have a beneficial impact on the agency, by addressing the need to correct and redefine essential business processes. The antiquated architecture of the agency’s legacy system has limited the ability to improve system capabilities, the associated business processes, and staff communications. The agency is committed to replacement of our legacy system as the least expensive and best decision to strengthen operational capabilities, adapt to changes in the criminal justice field, and meet increasing staff and client expectations.

	FY16		FY17	
	Funding	FTE	Funding	FTE
GPR	\$950,000	0.00	\$600,000	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$950,000	0.00	\$600,000	0.00

Prepared by:
 Anna Oehler, Budget Director
 608-267-0311

Decision Item by Line

1517 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
	CODES	TITLES
DECISION ITEM	5010	IT Case Management System

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$600,000	\$250,000
07	Permanent Property	\$350,000	\$350,000
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$0	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$950,000	\$600,000
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5010	IT Case Management System			
01	Legal assistance				
	01 Program administration	\$950,000	\$600,000	0.00	0.00
	Legal assistance SubTotal	\$950,000	\$600,000	0.00	0.00
	IT Case Management System SubTotal	\$950,000	\$600,000	0.00	0.00
	Agency Total	\$950,000	\$600,000	0.00	0.00

Decision Item by Fund Source

Public Defender Board

	Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
Decision Item	5010	IT Case Management System				
	GPR	S	\$950,000	\$600,000	0.00	0.00
	Total		\$950,000	\$600,000	0.00	0.00
Agency Total			\$950,000	\$600,000	0.00	0.00

Decision Item (DIN) - 5013

Decision Item (DIN) Title - Income Eligibility Indexing

NARRATIVE

The Public Defender Board requests a change to § 977.02(3)(b) and § 977.02(3)(c) related to the eligibility standards to qualify for public defender representation.

**OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Statutory Language Change**

Topic: DIN 5013 - Income Eligibility Indexing

Agency Request

The Public Defender Board requests a change to § 977.02(3)(b) and § 977.02(3)(c) related to the eligibility standards to qualify for public defender representation.

Background and Analysis

2009 Wisconsin Act 164 updated the eligibility standards to qualify for public defender representation. Before Act 164, income eligibility limits were determined with reference to the defunct 1987 Aid to Families with Dependent Children guidelines. Over time, the lack of any adjustment for changes in the cost of living created a gap whereby defendants did not statutorily qualify for public defender representation, but were still financially unable to afford an adequate defense. Courts frequently found that these defendants were constitutionally entitled to appointment of an attorney, and these judicial appointments at county expense resulted in a total cost to counties of \$7 million a year.

Act 164 incorporated many of the financial criteria of the Wisconsin Works (W2) program into the Office of State Public Defender (SPD) eligibility criteria. The new criteria specifically referenced the federal poverty guidelines (FPL), which are reviewed and updated annually to account for changes in the cost of living. However, 2009 Act 164 was amended as part of 2011 Wisconsin Act 32 by linking the State Public Defender income criteria to the 2011 federal poverty guidelines, without an indexing provision.

Act 164 in effect transferred to the jurisdiction of the State Public Defender over 12,000 cases in Fiscal Year 2012 that would otherwise have received county-appointed defense counsel. The total case numbers for the State Public Defender have remained stable in Fiscal Years 2013 and 2014, with a total of over 136,000 cases in FY 14.

The following table details the annual gap in income between the indexed federal poverty limit and the SPD income eligibility limits which are frozen at the 2011 guidelines:

Family Size	2011 115% of FPL	2014 115% of FPL	Annual Eligibility Gap
1	\$12,524	\$13,421	\$897
2	\$16,917	\$18,090	\$1173
3	\$21,310	\$22,759	\$1449
4	\$25,703	\$27,428	\$1725
5	\$30,096	\$32,097	\$2001
6	\$34,489	\$36,766	\$2277
7	\$38,882	\$41,435	\$2553
8	\$43,275	\$46,104	\$2829

As this gap continues to widen over time, the same issue that led to the need for the changes in 2009 Act 164 will recur. The State Public Defender will be required to deny services to defendants

living at or below the current federal poverty guideline, which will place more burden back on counties to appoint attorneys at county expense. A return to this two-tiered system of indigent defense would decrease the ability of Wisconsin's justice system to provide uniform, cost-effective representation for indigent defendants. Restoring the Act 164 indexing provision now will allow the State Public Defender to absorb these cases without additional staff or funding. In the future, as the monetary gap depicted in the table above continues to grow, indexing might result in additional costs to provide legal representation to the increased number of applicants eligible for services.

Current Language

Sections 3559d and 3559h of 2011 Wisconsin Act 32, the biennial budget, removed a provision from 2009 Act 164 that indexed the income eligibility guidelines to 115% of the federal poverty guidelines. Although the short-term effect is negligible, over time the lack of an indexing provision for the income eligibility limit will create a gap between public defender and county-appointed representation similar to the gap that was addressed by 2009 Act 164.

§ 977.02(3)(b) Subject to par. (d), treat assets as available to the person to pay the costs of legal representation if the assets exceed \$2,500 in combined equity value. In determining the combined equity value of assets, the representative of the state public defender shall exclude the equity value of vehicles up to a total equity value of \$10,000 and shall exclude the first \$30,000 of the equity value of the home that serves as the individual's homestead.

§ 977.02(3)(c) Subject to par. (d), treat income as available to the person to pay the costs of legal representation only if the gross income exceeds 115 percent of the federal poverty guideline, as defined in 42 USC 9902 (2) (2011). In calculating gross income under this paragraph, the representative of the state public defender shall include all earned and unearned income of the person, except any amount received under section 32 of the Internal Revenue Code, as defined in s. 71.01 (6), any amount received under s. 71.07 (9e), any payment made by an employer under section 3507 of the Internal Revenue Code, as defined in s. 71.01 (6), any student financial aid received under any federal or state program, any scholarship used for tuition and books, and any assistance received under s. 49.148. In determining the earned and unearned income of the individual, the representative of the state public defender may not include income earned by a dependent child of the person.

Suggested Language

§977.02(3)(b) Subject to par. (d), consider assets in the manner described in s. 49.145(3)(a) and treat assets as available to the person to pay the costs of legal representation if the assets exceed the resource limitations under s. 49.145(3)(a), except that ~~\$2,500 in combined equity value.~~ In determining the combined equity value of assets, the representative of the state public defender shall exclude only the equity value of vehicles up to a total equity value of \$10,000 and shall ~~exclude the first \$30,000 of the equity value of the home that serves as the individual's homestead.~~

§977.02(3)(c) Subject to par. (d), treat income as available to the person to pay the costs of legal representation only if the ~~gross income exceeds~~ the income limitations in s. 49.145(3)(b) ~~115 percent of the federal poverty guideline, as defined in 42 USC 9902 (2) (2011).~~ In calculating gross income under this paragraph, the representative of the state public defender shall include all earned and unearned income of the person, except any amount received under section 32 of the Internal Revenue Code, as defined in s. 71.01 (6), any amount received under s. 71.07 (9e), any payment

~~made by an employer under section 3507 of the Internal Revenue Code, as defined in s. 71.01 (6), any student financial aid received under any federal or state program, any scholarship used for tuition and books, and any assistance received under s. 49.148. In determining the earned and unearned income of the individual, the representative of the state public defender may not include income earned by a dependent child of the person.~~

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Decision Item (DIN) - 5020

Decision Item (DIN) Title - Transcript Preparation Reimbursement for Handling

NARRATIVE

The Public Defender Board requests, a change to §967.06(3) to remove “handling” as a reimbursable cost for transcript preparation and delivery.

**OFFICE OF THE STATE PUBLIC DEFENDER
2015-2017 Biennial Budget
Statutory Language Change**

Topic: DIN 5020 - Transcript Preparation Reimbursement for Handling

Agency Request

The Public Defender Board requests a change to §967.06(3) to remove “handling” as a reimbursable cost for transcript preparation and delivery.

Background and Analysis

The reimbursement amounts for transcript preparation are set in Wis. Stat. § 814.69 at \$1.50 per page for original transcripts and \$0.50 for duplicate copies. While this language is very clear and understandable, the statutory language in § 967.06(3) includes the ability for court reporters or clerks of circuit courts to be reimbursed for handling charges. “Handling” is not defined in the statute, and a limited number of court reporters have billed the Office of the State Public Defender (SPD) for time spent to travel to and from the post office and for time standing in line at the post office to mail the transcript. Some reporters have billed the agency \$25 per hour for these “handling” charges. Although this charging practice is presently used by a very limited number of court reporters, the inclusion of “handling” in § 967.06(3) causes undue cost to the agency from an appropriation that currently has a structural deficit.

To simplify what transcript preparation and delivery costs can be reimbursed by the State Public Defender, we request that “handling” be deleted from s. 967.06(3).

Current Language

§ 967.06(3) In any case in which the state public defender provides representation to an indigent person, the public defender may request that the applicable court reporter or clerk of circuit court prepare and transmit any transcript or court record. The request shall be complied with. The state public defender shall, from the appropriation under s.20.550 (1) (f), compensate the court reporter or clerk of circuit court for the cost of preparing, handling, duplicating, and mailing the documents.

Suggested Language

§ 967.06(3) In any case in which the state public defender provides representation to an indigent person, the public defender may request that the applicable court reporter or clerk of circuit court prepare and transmit any transcript or court record. The request shall be complied with. The state public defender shall, from the appropriation under s.20.550 (1) (f), compensate the court reporter or clerk of circuit court for the cost of preparing, ~~handling~~, duplicating, and mailing the documents.

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