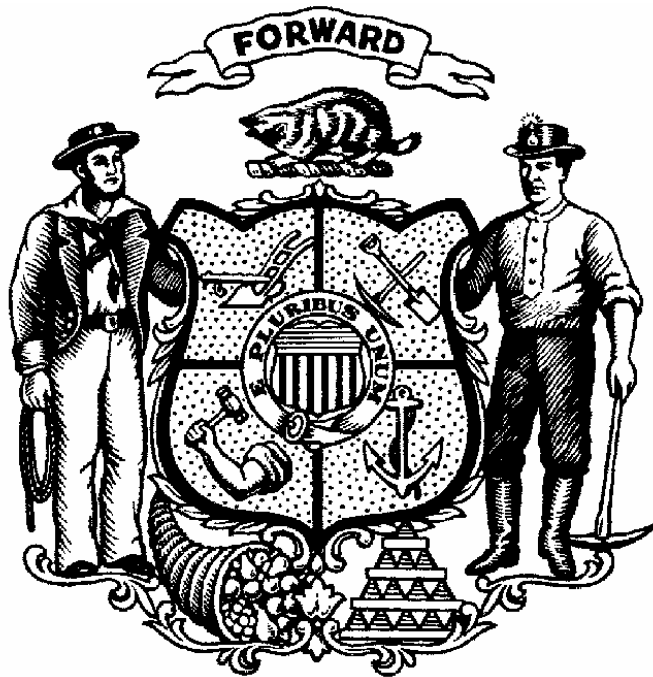


State of Wisconsin

Public Defender Board



Agency Budget Request
2013 – 2015 Biennium
September 17, 2012

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Wisconsin State Public Defender

315 N. Henry St. - 2nd Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wisspd.org

Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

September 17, 2012

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

Dear Secretary Huebsch:

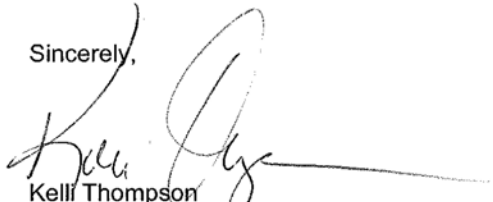
On behalf of the Public Defender Board, I am submitting the attached 2013-2015 biennial budget proposal. This budget proposal, which was approved by the board on August 31, 2012, addresses the agency's highest priority needs.

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. While our budget shows the requested reductions in GPR, we are concerned that this will increase our private bar reimbursement deficit in appropriation 20.550(1)(d), which currently is estimated at \$6.2 million.

We again propose effective criminal justice policies that maximize justice and the safety of the public and 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.

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

Sincerely,



Kelli Thompson
State Public Defender

Wisconsin Forward Award Mastery Recipient

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 indigents 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, Office of Training and Development, and Office of Information Technology.

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

2011 and 2012 Goals and Actuals

Program Number	Performance Measures	Goal 2011	Actual 2011	Goal 2012	Actual 2012
1	Court grants attorney withdrawals at client request as a percentage of total trial cases.	1.5%	2.3%	1.5%	2.1%
1	Number of educational contacts with children and youth.	3,100	3,614	4,000	2,587
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.	1,300	1,110	1,100	1,199

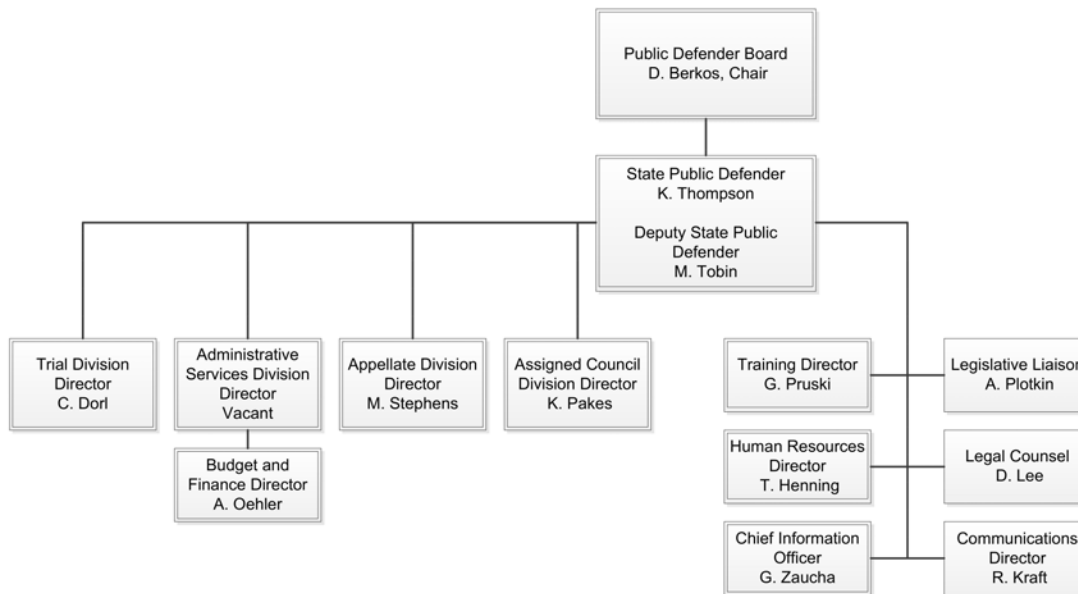
Note: Based on fiscal year.

2013, 2014 and 2015 Goals

Program Number	Performance Measures	Goal 2013	Goal 2014	Goal 2015
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.

Office of the State Public Defender



Sept. 2012

Agency Total by Fund Source

Public Defender Board

1315 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	\$88,672,613	\$82,116,100	\$89,159,900	\$83,900,400	585.85	585.85	\$164,232,200	\$173,060,300	\$8,828,100	5.4%
Total		\$88,672,613	\$82,116,100	\$89,159,900	\$83,900,400	585.85	585.85	\$164,232,200	\$173,060,300	\$8,828,100	5.4%
PR	S	\$1,919,301	\$1,289,500	\$1,350,500	\$1,354,500	6.00	6.00	\$2,579,000	\$2,705,000	\$126,000	4.9%
Total		\$1,919,301	\$1,289,500	\$1,350,500	\$1,354,500	6.00	6.00	\$2,579,000	\$2,705,000	\$126,000	4.9%
Grand Total		\$90,591,914	\$83,405,600	\$90,510,400	\$85,254,900	591.85	591.85	\$166,811,200	\$175,765,300	\$8,954,100	5.4%

Agency Total by Program

550 Public Defender Board

1315 Biennial Budget

		ANNUAL SUMMARY					BIENNIAL SUMMARY				
Source of Funds		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		\$0	\$82,116,100	\$89,159,900	\$83,900,400	585.85	585.85	\$164,232,200	\$173,060,300	\$8,828,100	5.38%
	S	\$0	\$82,116,100	\$89,159,900	\$83,900,400	585.85	585.85	\$164,232,200	\$173,060,300	\$8,828,100	5.38%
PR		\$0	\$1,289,500	\$1,350,500	\$1,354,500	6.00	6.00	\$2,579,000	\$2,705,000	\$126,000	4.89%
	S	\$0	\$1,289,500	\$1,350,500	\$1,354,500	6.00	6.00	\$2,579,000	\$2,705,000	\$126,000	4.89%
Total - Non Federal		\$0	\$83,405,600	\$90,510,400	\$85,254,900	591.85	591.85	\$166,811,200	\$175,765,300	\$8,954,100	5.37%
	S	\$0	\$83,405,600	\$90,510,400	\$85,254,900	591.85	591.85	\$166,811,200	\$175,765,300	\$8,954,100	5.37%
PGM 01 Total		\$0	\$83,405,600	\$90,510,400	\$85,254,900	591.85	591.85	\$166,811,200	\$175,765,300	\$8,954,100	5.37%
GPR		\$0	\$82,116,100	\$89,159,900	\$83,900,400	585.85	585.85	\$164,232,200	\$173,060,300	\$8,828,100	5.38%
	S	\$0	\$82,116,100	\$89,159,900	\$83,900,400	585.85	585.85	\$164,232,200	\$173,060,300	\$8,828,100	5.38%
PR		\$0	\$1,289,500	\$1,350,500	\$1,354,500	6.00	6.00	\$2,579,000	\$2,705,000	\$126,000	4.89%
	S	\$0	\$1,289,500	\$1,350,500	\$1,354,500	6.00	6.00	\$2,579,000	\$2,705,000	\$126,000	4.89%

Agency Total by Program

550 Public Defender Board

1315 Biennial Budget

TOTAL 01	\$0	\$83,405,600	\$90,510,400	\$85,254,900	591.85	591.85	\$166,811,200	\$175,765,300	\$8,954,100	5.37%
S	\$0	\$83,405,600	\$90,510,400	\$85,254,900	591.85	591.85	\$166,811,200	\$175,765,300	\$8,954,100	5.37%
Agency Total	\$0	\$83,405,600	\$90,510,400	\$85,254,900	591.85	591.85	\$166,811,200	\$175,765,300	\$8,954,100	5.37%

Agency Total by Decision Item

Public Defender Board

1315 Biennial Budget

Decision Item	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
2000 Adjusted Base Funding Level	\$83,405,600	\$83,405,600	579.85	579.85
3003 Full Funding of Continuing Position Salaries and Fringe Benefits	(\$2,066,100)	(\$2,066,100)	0.00	0.00
3005 Reclassifications and Semiautomatic Pay Progression	\$8,900	\$8,900	0.00	0.00
3007 Overtime	\$214,300	\$214,300	0.00	0.00
3010 Full Funding of Lease and Directed Moves Costs	\$215,200	\$266,600	0.00	0.00
3500 Permanent GPR Reductions	(\$820,400)	(\$820,400)	0.00	0.00
4001 Private Bar Cost to Continue	\$4,116,400	(\$2,033,700)	0.00	0.00
4002 Expert Cost to Continue	\$517,600	\$517,600	0.00	0.00
4003 Transcripts/Discovery/Interpreters Cost to Continue	\$772,700	\$772,700	0.00	0.00
4004 Restore 2009-2011 Across-the-Board Reductions	\$563,300	\$563,300	0.00	0.00
4501 Sentence Modifications	\$119,900	\$236,600	0.00	0.00
4502 Charging and Sentencing Alternatives	(\$2,569,200)	(\$5,138,300)	0.00	0.00
5001 Private Bar Rate	\$0	\$3,506,000	0.00	0.00
5002 Pay Progression for Assistant State Public Defenders	\$1,133,000	\$2,299,100	0.00	0.00
5003 Protective Occupation Status, SPD Investigators/Client Services Specialists	\$0	\$144,700	0.00	0.00
5004 Sentencing Specialists	\$136,300	\$155,900	3.00	3.00
5005 IT Hardware/Software and Network Upgrades	\$1,968,500	\$2,016,800	2.00	2.00
5006 Administrative Oversight in Regional Offices	\$226,100	\$270,200	3.00	3.00
5007 Administrative and Financial Span of Control	\$202,000	\$224,500	4.00	4.00
5008 Bilingual Add-On Pay	\$55,400	\$73,800	0.00	0.00
5009 Westlaw and Lexis Access	\$45,900	\$46,800	0.00	0.00

Agency Total by Decision Item

Public Defender Board

1315 Biennial Budget

5010 IT eOPD Replacement or Reengineering	\$1,910,000	\$410,000	0.00	0.00
5011 IT E-Records Management	\$355,000	\$180,000	0.00	0.00
TOTAL	\$90,510,400	\$85,254,900	591.85	591.85

GPR Earned

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal Assistance
DATE	September 14, 2012	

Revenue	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$0	\$0	\$0	\$0
PR Lapse	\$117,800	\$117,800	\$117,800	\$117,800
Refunds	\$400	\$400	\$400	\$400
Total	\$118,200	\$118,200	\$118,200	\$118,200

	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	\$21,500	\$42,900	\$34,900	\$36,900
Interagency Transfer (Collateral Cons DB - DOC)	\$10,000	\$0	\$0	\$0
Misc Sales	\$4,500	\$4,000	\$4,000	\$4,000
Total Revenue	\$36,000	\$46,900	\$38,900	\$40,900
Expenditures	(\$6,900)	\$12,000	\$0	\$0
Purchase of Sale Merchandise	\$0	\$0	\$2,000	\$2,000
Total Expenditures	(\$6,900)	\$12,000	\$2,000	\$2,000
<u>Closing Balance</u>	\$42,900	\$34,900	\$36,900	\$38,900

	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	\$168,600	\$128,100	\$80,100	\$39,100
Miscellaneous Revenues	\$15,300	\$4,000	\$4,000	\$4,000
Training Course Fees	\$147,100	\$153,000	\$160,000	\$165,000
Total Revenue	\$331,000	\$285,100	\$244,100	\$208,100
Expenditures	\$202,900	\$205,000	\$0	\$0
Training Expenditures	\$0	\$0	\$205,000	\$205,000
Total Expenditures	\$202,900	\$205,000	\$205,000	\$205,000
<u>Closing Balance</u>	\$128,100	\$80,100	\$39,100	\$3,100

	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	\$65,800	\$22,200	\$17,200	\$1,700
Transfer from 20.550(1)(fb)	\$183,900	\$200,000	\$235,000	\$253,500
Total Revenue	\$249,700	\$222,200	\$252,200	\$255,200
Expenditures	\$227,500	\$205,000	\$0	\$0
3010 Full Funding of Lease and Directed Moves Costs	\$0	\$0	\$200	\$300
4004 Restore 2009-2011 Across-the-Board Reductions	\$0	\$0	\$2,500	\$2,500
Health Insurance Reserves	\$0	\$0	\$1,800	\$3,600
Compensation Reserve	\$0	\$0	\$2,700	\$5,500
2000 Adjusted Base Funding Level	\$0	\$0	\$249,600	\$249,600
3003 Full Funding of Continuing Position Salaries and Fringe Benefits	\$0	\$0	(\$9,200)	(\$9,200)
3007 Overtime	\$0	\$0	\$2,900	\$2,900
Total Expenditures	\$227,500	\$205,000	\$250,500	\$255,200
Closing Balance	\$22,200	\$17,200	\$1,700	\$0

	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	\$168,100	\$225,000	\$392,700	\$676,000
Client Payments	\$804,600	\$814,600	\$814,600	\$814,600
DOA Contracted Collections (Net)	\$312,100	\$312,100	\$312,100	\$312,100
Court Ordered and Collected Atty Fees for Juveniles	\$369,700	\$369,700	\$369,700	\$369,700
Court Ordered and Collected Atty Fees for Commitment Cases	\$24,000	\$24,000	\$24,000	\$24,000
Court Ordered and Collected Atty Fees for Adult Cases	\$29,600	\$29,600	\$29,600	\$29,600
Total Revenue	\$1,708,100	\$1,775,000	\$1,942,700	\$2,226,000
Expenditures	\$1,365,300	\$1,382,300	\$0	\$0
Transfer from 20.550(1)(d)	\$0	\$0	\$0	\$850,000
PR Cash Lapse	\$0	\$0	\$118,700	\$118,700
2000 Adjusted Base Funding Level	\$0	\$0	\$913,000	\$913,000
Transfer to 20.550(1)(l)	\$0	\$0	\$235,000	\$253,500
Total Expenditures	\$1,365,300	\$1,382,300	\$1,266,700	\$2,135,200

Closing Balance

\$342,800

\$392,700

\$676,000

\$90,800

	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	\$50,700	\$0	\$0	\$0
Transfer from 20.455(2)(i)-Penalty Surcharge/DOJ	\$79,800	\$126,900	\$135,100	\$144,000
Pay Plan Supplement	\$0	\$8,200	\$12,800	\$6,800
Total Revenue	\$130,500	\$135,100	\$147,900	\$150,800
Expenditures	\$130,500	\$135,100	\$0	\$0
Compensation Reserve	\$0	\$0	\$300	\$600
Wisconsin Retirement System	\$0	\$0	\$0	\$0
Health Insurance Reserves	\$0	\$0	\$2,800	\$5,400
2000 Adjusted Base Funding Level	\$0	\$0	\$126,900	\$126,900
3003 Full Funding of Continuing Position Salaries and Fringe Benefits	\$0	\$0	\$13,300	\$13,300
3005 Reclassifications and Semiautomatic Pay Progression	\$0	\$0	\$4,600	\$4,600
Total Expenditures	\$130,500	\$135,100	\$147,900	\$150,800
Closing Balance	\$0	\$0	\$0	\$0

Decision Item (DIN) - 2000

Decision Item (DIN) Title - Adjusted Base Funding Level

NARRATIVE

Adjusted Base Funding Level

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

	Expenditure items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$37,752,000	\$37,752,000
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$122,800	\$122,800
05	Fringe Benefits	\$14,997,100	\$14,997,100
06	Supplies and Services	\$30,533,700	\$30,533,700
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	\$83,405,600	\$83,405,600
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	\$2,758,800	\$2,758,800	18.40	18.40
	02 Appellate representation	\$4,714,500	\$4,714,500	43.35	43.35
	03 Trial representation	\$49,445,000	\$49,445,000	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	\$716,700	\$716,700	5.25	5.25
	06 Transcripts, discovery and interpreters	\$1,325,700	\$1,325,700	0.00	0.00
	35 Payments from clients; administrative costs	\$249,600	\$249,600	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	\$126,900	\$126,900	2.00	2.00
	Legal assistance SubTotal	\$83,405,600	\$83,405,600	579.85	579.85
	Adjusted Base Funding Level SubTotal	\$83,405,600	\$83,405,600	579.85	579.85
	Agency Total	\$83,405,600	\$83,405,600	579.85	579.85

Decision Item by Fund Source

Public Defender Board

					1st Year FTE	2nd Year FTE
	Source of Funds		1st Year Total	2nd Year Total		
Decision Item	2000	Adjusted Base Funding Level				
	GPR	S	\$82,116,100	\$82,116,100	574.85	574.85
	PR	S	\$1,289,500	\$1,289,500	5.00	5.00
	Total		\$83,405,600	\$83,405,600	579.85	579.85
Agency Total			\$83,405,600	\$83,405,600	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

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

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	(\$2,042,500)	(\$2,042,500)
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	(\$23,600)	(\$23,600)
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	(\$2,066,100)	(\$2,066,100)
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
	3003	Full Funding of Continuing Position Salaries and Fringe Benefits			
01	Legal assistance				
	01 Program administration	(\$14,200)	(\$14,200)	0.00	0.00
	02 Appellate representation	(\$232,200)	(\$232,200)	0.00	0.00
	03 Trial representation	(\$1,760,600)	(\$1,760,600)	0.00	0.00
	05 Private bar and investigator payments; administration costs	(\$63,200)	(\$63,200)	0.00	0.00
	35 Payments from clients; administrative costs	(\$9,200)	(\$9,200)	0.00	0.00
	37 Conferences and training	\$13,300	\$13,300	0.00	0.00
	Legal assistance SubTotal	(\$2,066,100)	(\$2,066,100)	0.00	0.00
	Full Funding of Continuing Position Salaries and Fringe Benefits SubTotal	(\$2,066,100)	(\$2,066,100)	0.00	0.00
	Agency Total	(\$2,066,100)	(\$2,066,100)	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	3003	Full Funding of Continuing Position Salaries and Fringe Benefits				
	GPR	S	(\$2,070,200)	(\$2,070,200)	0.00	0.00
	PR	S	\$4,100	\$4,100	0.00	0.00
	Total		(\$2,066,100)	(\$2,066,100)	0.00	0.00
Agency Total			(\$2,066,100)	(\$2,066,100)	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

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

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$7,700	\$7,700
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$1,200	\$1,200
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	\$8,900	\$8,900
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
	3005	Reclassifications and Semiautomatic Pay Progression			
01	Legal assistance				
	01 Program administration	\$4,300	\$4,300	0.00	0.00
	37 Conferences and training	\$4,600	\$4,600	0.00	0.00
	Legal assistance SubTotal	\$8,900	\$8,900	0.00	0.00
	Reclassifications and Semiautomatic Pay Progression SubTotal	\$8,900	\$8,900	0.00	0.00
	Agency Total	\$8,900	\$8,900	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	3005	Reclassifications and Semiautomatic Pay Progression				
	GPR	S	\$4,300	\$4,300	0.00	0.00
	PR	S	\$4,600	\$4,600	0.00	0.00
	Total		\$8,900	\$8,900	0.00	0.00
Agency Total			\$8,900	\$8,900	0.00	0.00

Decision Item (DIN) - 3007

Decision Item (DIN) Title - Overtime

NARRATIVE

Standard Budget Adjustment - Overtime

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	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	\$215,200	\$266,600
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	\$215,200	\$266,600
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
	3010	Full Funding of Lease and Directed Moves Costs			
01	Legal assistance				
	01 Program administration	\$12,100	\$15,000	0.00	0.00
	02 Appellate representation	\$19,000	\$23,400	0.00	0.00
	03 Trial representation	\$180,400	\$223,500	0.00	0.00
	05 Private bar and investigator payments; administration costs	\$3,500	\$4,400	0.00	0.00
	35 Payments from clients; administrative costs	\$200	\$300	0.00	0.00
	Legal assistance SubTotal	\$215,200	\$266,600	0.00	0.00
	Full Funding of Lease and Directed Moves Costs SubTotal	\$215,200	\$266,600	0.00	0.00
	Agency Total	\$215,200	\$266,600	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	3010	Full Funding of Lease and Directed Moves Costs				
	GPR	S	\$215,000	\$266,300	0.00	0.00
	PR	S	\$200	\$300	0.00	0.00
	Total		\$215,200	\$266,600	0.00	0.00
Agency Total			\$215,200	\$266,600	0.00	0.00

Decision Item (DIN) - 3500

Decision Item (DIN) Title - Permanent GPR Reductions

NARRATIVE

Permanent GPR Reductions

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	3500	Permanent GPR Reductions

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	(\$820,400)	(\$820,400)
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	(\$820,400)	(\$820,400)
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
	3500	Permanent GPR Reductions			
01	Legal assistance				
	01 Program administration	(\$40,400)	(\$40,400)	0.00	0.00
	02 Appellate representation	(\$100,000)	(\$100,000)	0.00	0.00
	03 Trial representation	(\$600,000)	(\$600,000)	0.00	0.00
	05 Private bar and investigator payments; administration costs	(\$80,000)	(\$80,000)	0.00	0.00
	Legal assistance SubTotal	(\$820,400)	(\$820,400)	0.00	0.00
	Permanent GPR Reductions SubTotal	(\$820,400)	(\$820,400)	0.00	0.00
	Agency Total	(\$820,400)	(\$820,400)	0.00	0.00

Decision Item by Fund Source

Public Defender Board

					1st Year FTE	2nd Year FTE
	Source of Funds		1st Year Total	2nd Year Total		
Decision Item	3500	Permanent GPR Reductions				
	GPR	S	(\$820,400)	(\$820,400)	0.00	0.00
	Total		(\$820,400)	(\$820,400)	0.00	0.00
Agency Total			(\$820,400)	(\$820,400)	0.00	0.00

Decision Item (DIN) - 4001

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

NARRATIVE

The Public Defender Board requests a cost-to-continue funding adjustment of \$4,116,400 in Fiscal Year 2014 and \$-2,033,700 in Fiscal Year 2015 in the private bar appropriation for private bar and investigator reimbursement. This includes \$6,200,000 in the first year to fund the projected Fiscal Year 2013 shortfall in this appropriation that will be carried forward to Fiscal Year 2014 if supplemental funding is not provided in the current biennium.

**Office of the State Public Defender
2013-2015 Biennial Budget
Issue Paper**

Topic: DIN 4001 – Private Bar Cost to Continue

Agency Request

The Public Defender Board requests a cost-to-continue funding adjustments of \$4,116,400 in FY214, and \$-2,033,700 in FY15, in the appropriation for private bar and investigator reimbursement.

Problem Description

The SPD is responsible for the cost of private bar and investigator reimbursements. This appropriation is currently \$6.2 million in deficit.

Background

The State Public Defender's (SPD) Trial Division is authorized 317.60 FTE attorney and attorney supervisor positions, all but ten of which are budgeted to achieve annual caseloads that are set by statute at levels 23% higher than national standards. Additionally, the Appellate Division is authorized 27.75 FTE attorneys and attorney supervisors. In fiscal year 2012, staff attorneys were assigned 82,780 of the 138,799 total cases in which the defendant qualified for SPD services.

The SPD provides representation to people who are constitutionally and statutorily entitled to representation at public expense, and who meet the SPD's 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.

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 for time in or out of court, and \$25 per hour for travel. In fiscal year 2012, a total of 56,019 cases were appointed to private bar attorneys.

Analysis

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 (reduced in 1995 to \$40 per hour for time in or out of court, and \$25 per hour for travel). In fiscal year 2012, a total of 56,019 cases were appointed to private bar attorneys.

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 by

\$727,800 beginning in FY10. A funding shortfall of about \$6.2 million is projected in the current biennium, which will be the first draw on the FY14 appropriation.

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 by \$727,800 beginning in FY10. Continued lapses and cuts in 2011-2013 biennium and the upcoming 2013-2015 biennium could cause more cases to be assigned to the private bar at a much higher cost than staff. A funding shortfall of about \$6.2 million is projected in the current biennium, which will be the first draw on the FY14 appropriation.

	FY14	FY15
Estimated Cost for Private Bar Assignments	\$22,421,700	\$22,421,700
FY13 deficit carried forward	\$6,200,100	\$0
Projected Client Collections in 2013-15	-\$1,300,000	-\$1,300,000
Funding Needed	\$27,321,800	\$21,121,700
FY13 GPR Base (appn. 104)	\$23,155,400	\$23,155,400
Additional GPR requested	\$4,166,400	-\$2,033,700

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. If this decision item is not approved or is reduced, the appropriation for private bar payments will again face a shortfall 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

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$4,116,400	.00	\$-2,033,700	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$4,116,400	.00	\$-2,033,700	0.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	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	\$4,116,400	(\$2,033,700)
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	\$4,116,400	(\$2,033,700)
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	\$4,116,400	(\$2,033,700)	0.00	0.00
	Legal assistance SubTotal	\$4,116,400	(\$2,033,700)	0.00	0.00
	Private Bar Cost to Continue SubTotal	\$4,116,400	(\$2,033,700)	0.00	0.00
	Agency Total	\$4,116,400	(\$2,033,700)	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	\$4,116,400	(\$2,033,700)	0.00	0.00
	Total		\$4,116,400	(\$2,033,700)	0.00	0.00
Agency Total			\$4,116,400	(\$2,033,700)	0.00	0.00

Decision Item (DIN) - 4002

Decision Item (DIN) Title - Expert Cost to Continue

NARRATIVE

The Public Defender Board requests a base funding increase of \$517,600 in each year of the biennium for expert witnesses for the growing number of Sexually Violent Person Commitment Cases under Chapter 980 and to reflect the increased need for conducting risk assessments in sexual assault cases.

OFFICE OF THE STATE PUBLIC DEFENDER
2013-2015 Biennial Budget
Issue Paper

Topic: DIN 4002 – Expert Services

Agency Request

The Office of the State Public Defender (SPD) requests a base funding increase of \$517,600 in FY14 and FY15 for the agency to contract with expert witnesses in Chapter 980 and sexual assault cases.

Problem Description

Caseloads for Chapter 980 (Sexually Violent Persons) and sexual assaults have increased significantly, causing an increased cost for experts and risk assessments that cannot be absorbed within existing fiscal constraints. In addition, the number of cases in general assigned to staff attorneys has increased over 10%, from 68,247 in FY07 to 75,400 cases in FY12.

Background

The SPD received base funding in the 1997-99 biennial budget act for staff and private bar attorneys to handle a projected thirty-five Chapter 980 commitment cases per year, including funding for expert witnesses at an average cost of \$2,400 per case. The amount that a mental health expert witness, such as a psychologist, bills for an evaluation varies depending on the volume of records to review and on whether the expert testifies at a court hearing. For cases in which an expert testifies in court, a cost of \$5,000 is common. In FY12, the average payment for an expert was \$3,100.

As result of the increase in Chapter 980 original petitions being filed, it has become necessary to retain psychologists for risk assessments on defendants charged with sexual assault. These assessments also often facilitate pretrial negotiations and settlements, which in turn reduce costs of litigation and incarceration. The average cost for these assessments is \$1,500.

Analysis

Chapter 980 Cases

Chapter 980 proceedings are extremely complex. For the purpose of establishing annual budgeted caseloads for assistant state public defenders under § 977.08(5), 980s are treated the same as first-degree intentional homicide cases, with an annual caseload standard of fifteen. This complexity stems in large part from three important differences between a Chapter 980 case and a typical criminal case:

- 1) In a Chapter 980 case, the focus at trial is on the subject's entire life history, as opposed to a discrete act allegedly committed on a certain date.
- 2) Because of the indefinite duration of Chapter 980 commitment order (it may last for the life of the person committed), the likelihood of a trial is much greater than in criminal cases, as plea agreements are rarely a viable option.
- 3) Because of the need to predict the probability of future sexually violent conduct, the testimony of mental health professionals and familiarity with ever-increasing and ever-changing scientific literature play a major role in every Chapter 980 case.

When Chapter 980 was proposed and became law, it was widely assumed that only a few individuals - "the worst of the worst" - would be subject to Sexually Violent Person commitment proceedings in a given year. However, the number of individuals under commitment orders has steadily increased, with more new commitments than releases from commitment. Therefore, the number of individuals eligible for review hearings now greatly surpasses the number of new petitions each year. In FY12, the SPD appointed counsel for 24 original petition cases, and 215 post-commitment proceedings.

In the 1997-99 biennial budget act, the SPD received base funding of \$249,600 for Chapter 980 commitment cases. This amount included funds for 35 Chapter 980 cases projected to be assigned to private bar attorneys each year, as well as funding for other cases that would be assigned to private bar attorneys as a result of the new Chapter 980 staff caseload standard.

The following demonstrates the funding shortfall for original commitments and review hearings appointed to staff in FY12, compared to the estimated 35 appointments to staff assumed in the 1997-99 budget bill when \$84,000 (average cost of \$2,400 per case) was provided annually for Chapter 980 experts. Current expert costs for Chapter 980 cases have increased to \$3,100 per case¹ and caseloads have far exceeded the original 35 funded in 1997-99.

FY12 Staff Appointments	Approximate Expert Costs	Base Funds authorized in 1997-99 biennium	Shortfall
136	\$421,600	\$84,000	\$337,600

Risk Assessments

Attorneys often conclude that a risk assessment may be helpful in representing a client in a sexual assault case. Risk assessments are increasingly used and relied upon in

¹ This average is likely to increase; attorneys who provide representation in chapter 980 cases report difficulty in retaining qualified experts at the rates authorized by the SPD.

the justice system, for purposes including decisions about release on bond, decisions about sentencing, and decisions about conditions and length of supervision. In a sexual assault case, risk assessment results, identifying the risk for a future offense, can be shared with the prosecutor to assist in achieving a negotiated settlement. When warranted, a risk assessment can also help to reassure the court that lengthy incarceration is not required to ensure public safety. Finally, even if a prison sentence is imposed, the risk assessment may help to convince prosecutors not to seek a civil commitment of Wis. Stats. Ch. 980.

The SPD estimates an increase in the need for risk assessments to determine the likelihood of reoffending and for appropriate placement decisions. The SPD estimates that in FY12, they represented approximately 500 sexual assault cases which would have benefited from a risk assessment. If experts were hired to perform risk assessments on a minimum of 120 cases, the cost, estimated at \$1,500 each, would be approximately \$180,000.

Increase in Caseloads

The number of cases assigned to staff attorneys has increased approximately 10% since FY07.

Fiscal Year	Number of Cases to Staff
2007	68,247
2012	75,400

Summary

The increased cost of expert witnesses can no longer be absorbed. 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. Since then, the SPD has experienced unbudgeted increases in many other expenditure categories.

The SPD estimates the increased costs for experts in Chapter 980 cases to be \$337,600 and for risk assessments in sexual assault cases to be \$180,000 for an increase of \$517,600 annually.

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$517,600	0.00	\$517,600	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$517,600	0.00	\$517,600	0.00

Prepared By:

Kathy Smith, Budget & Policy Analyst
608-267-0974

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	4002	Expert 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	\$517,600	\$517,600
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	\$517,600	\$517,600
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
	4002	Expert Cost to Continue			
01	Legal assistance				
	03 Trial representation	\$517,600	\$517,600	0.00	0.00
	Legal assistance SubTotal	\$517,600	\$517,600	0.00	0.00
	Expert Cost to Continue SubTotal	\$517,600	\$517,600	0.00	0.00
	Agency Total	\$517,600	\$517,600	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	4002	Expert Cost to Continue					
	GPR	S		\$517,600	\$517,600	0.00	0.00
	Total			\$517,600	\$517,600	0.00	0.00
Agency Total				\$517,600	\$517,600	0.00	0.00

Decision Item (DIN) - 4003

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

NARRATIVE

The Public Defender Board requests a base funding increase of \$772,700 in each year of the biennium to support payments for transcripts, discovery and interpreters to reflect current needs.

**Office of the State Public Defender
2013-2015 Biennial Budget
Issue Paper**

Topic: DIN 4003 - Transcript, Discovery and Interpreter Appropriation
Cost to Continue

Agency Request

The Public Defender Board proposes increasing the funding level for the appropriation under §20.550(1)(f) for payments for transcripts, discovery, and interpreters, to reflect current needs.

Problem Description

The 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. These costs are funded by a single appropriation under §20.550(1)(f). Total funding and expenditure/commitment levels each year since FY02-02 are:

	<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

The amounts appropriated were sufficient through FY01-02. 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 partly driven by the volume of SPD appointments, which at the same time have increased, peaking at 17.4% above the FY01 level in FY06, and in FY12 at 13.5% above FY01.

The SPD’s request for a base funding increase in FY09-11 to address this shortfall was not included in the Governor’s biennial budget proposal, nor was it considered during the legislative phase of the budget process. Instead, this appropriation was subjected to a one-percent across-the-board cut and reduced by \$13,400.

Background

Beginning in FY02, the SPD has ended each fiscal year with a growing amount of bills for payments 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 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.

At the end of the each fiscal year since then, significant delays in payments to court reporters, interpreters and counties were avoided only by transferring available expenditure authority from the salary, fringe benefit and LTE lines. Although these transfers prevented funding deficits and payment backlogs being compounded each year, they did not increase the base level of funding going forward.

Appropriation 106 Funding Shortfalls -

	<u>Transcripts</u>	<u>Discovery</u>	<u>Interpreters</u>	<u>Total Shortfall</u>
FY02	\$ 19,231	\$ 5,541	\$ 809	\$ 26,681
FY03	\$101,721	\$ 7,457	\$ 1,026	\$110,204
FY04	\$169,261	\$ 81,606	\$ 5,513	\$256,380
FY05	\$228,553	\$384,530	\$14,785	\$627,868
FY06	-\$ 21,320	\$424,614	\$19,438	\$422,732
FY07	\$ 59,189	\$216,776	\$28,982	\$304,947
FY08	\$112,733	\$288,604	\$35,523	\$436,860
FY09	\$116,059	\$335,956	\$53,213	\$505,228
FY10	\$288,655	\$299,341	\$49,675	\$637,671
FY11	\$369,638	\$353,151	\$35,579	\$758,368
FY12	\$635,011	\$122,057	\$15,659	\$772,727

Transcript Payments – The FY13 base budget for transcripts is \$786,469. The need for transcripts is a function of how many cases are appointed, their complexity, and the number and duration of court appearances and trials. The SPD has attempted to ameliorate 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.

Discovery Payments – Defendants have a constitutional right to “discovery”; that is, to receive copies of the prosecutor’s evidence. 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 (including some of the larger ones) 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 are 13.5% higher than they were in the year before the first ATB reduction in 2001-03.

A portion of the rising discovery costs is attributable to 2005 Wisconsin Act 60, which was enacted at the end of December of 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. In addition to paying the county or municipality for the discs or tapes, the SPD often needs to pay court reporters to transcribe them. The SPD experienced a eight-fold increase in payments for video recordings since FY05 (from \$12,184 in FY05 to \$103,121 in FY10).

Interpreter Payments – Even before the SPD’s \$10,000 budget for interpreter payments was permanently reduced by the five percent across the board “efficiency reduction” in 2001, 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.

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 then Circuit Courts of \$298,000 per year to increase state reimbursement to counties for interpreter services. Like discovery payments, interpreter payments from this appropriation are driven by the number of cases appointed to staff, rather than to private bar attorneys, as the latter are reimbursed for discovery costs from the private bar appropriation under § 20.550(1)(d). As noted above, staff attorney appointments have increased 13.5% since FY01, and are expected to be higher yet in FY13 and in the upcoming biennium.

Analysis

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

Annual funding needed for transcript payments	\$1,461,000
Annual funding needed for discovery payments	\$ 562,600
Annual funding needed for interpreter payments	<u>\$ 74,800</u>
Total Projected Annual Need in 2013-15	\$2,098,400
Appn. 106 Adjusted 2013 Base Funding	<u>\$1,325,700</u>
Annual increase needed	\$ 772,700

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$772,700	.00	\$772,700	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$772,700	0.00	\$772,700	0.00

Prepared by:

Kathy Smith, Budget & Policy Analyst
608-267-0974

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	4003	Transcripts/Discovery/Interpreters 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	\$772,700	\$772,700
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	\$772,700	\$772,700
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/Discovery/Interpreters Cost to Continue			
01	Legal assistance				
	06 Transcripts, discovery and interpreters	\$772,700	\$772,700	0.00	0.00
	Legal assistance SubTotal	\$772,700	\$772,700	0.00	0.00
	Transcripts/Discovery/Interpreters Cost to Continue SubTotal	\$772,700	\$772,700	0.00	0.00
	Agency Total	\$772,700	\$772,700	0.00	0.00

Decision Item by Fund Source

Public Defender Board

					1st Year FTE	2nd Year FTE
	Source of Funds		1st Year Total	2nd Year Total		
Decision Item	4003	Transcripts/Discovery/Interpreters Cost to Continue				
	GPR	S	\$772,700	\$772,700	0.00	0.00
	Total		\$772,700	\$772,700	0.00	0.00
Agency Total			\$772,700	\$772,700	0.00	0.00

Decision Item (DIN) - 4004

Decision Item (DIN) Title - Restore 2009-2011 Across-the-Board Reductions

NARRATIVE

The Public Defender Board requests restoration of across-the-board one-percent budget reductions in 2009 Wis Act 28, the 2009-2011 biennial budget act. The amount requested is \$563,300 in each year of the 2013-2015 biennium.

**Office of the State Public Defender
2013-2015 Biennial Budget Request
Issue Paper**

Topic: DIN 4004 - Restore 2009-2011 Across the Board Reduction

Agency Request

The Public Defender Board requests restoration of across-the-board one-percent budget reductions in 2009 Wis Act 28, the 2009-11 biennial budget act. The amount requested is \$563,300 in each year of the 2013-15 biennium (\$559,400 GPR and \$3,900 PR).

Problem Description

The 2009-11 biennial budget, 2009 Wis. Act 28, included one-percent base reductions to most appropriations, including all State Public Defender (SPD) appropriations under § 20.550, as follows:

<u>Appropriation</u>	<u>1% Base Reduction</u>
1a (101) - Program administration	\$ 26,000
1b (102) - Appellate representation	\$ 51,200
1c (103) - Trial representation	\$475,200
1d (1) 04 - Private bar & investigator reimbursement	\$227,800
1e (105) - Private bar & investigator pmts; admin. costs	\$ 7,000
1f (106) - Transcripts, discovery & interpreters	\$ 13,400
1fb (135) - Payments from clients; admin. costs	\$ 2,500
1l (136) - Pr. Bar & investig. pmts; pmts for legal repres.	\$ 10,200
1kj (137) - Conferences & training	<u>\$ 1,400</u>
Total	\$814,700

The agency does not have discretionary funding that can be eliminated to absorb these permanent base cuts. Restoration of the GPR reductions to the appropriation for private bar and investigator reimbursement (1d, numeric 104) and transcripts, discovery and interpreters (1f, numeric 106) are included in the cost-to-continue decision items, DI 4001 and DI 4003, respectively. The appropriation under § 20.550(1l) (numeric 136) is also excluded from this request as it is a program revenue continuing appropriation. Restoration of the base reductions to the remaining six SPD appropriations is requested in this decision item.

Background

The SPD is a large law office that serves clients in every county in Wisconsin, and thus is very labor-intensive. Nearly 92% of the SPD's adjusted base budget comprises staff salaries and fringe benefits, and private bar payments. Ninety-five percent of the agency's authorized staffing level of 579.85 FTE are assigned to local offices and provide direct services to clients. The remaining staff provide centralized management and infrastructure (eg., fiscal, payroll, HR, IT, training and client accounts) for the agency at the administrative headquarters in Madison.

Achieving a one percent base reduction by permanently reducing staff is not a viable option. Reducing the number of staff in the field would increase appointments to the private bar and increase the deficit in that appropriation. Several biennia ago, the administrative appropriation was forced to give up several positions, including its purchasing agent and one IT professional. The remaining administrative FTE are quite possibly the leanest infrastructure for a state agency of this size.

The remaining alternative, absorbing the one-percent reduction on the supplies and services line, has also proved to be unviable. Absorbing the one-percent appropriation reduction on the supplies and services line resulted in the following reductions in S&S funding:

Appropriation	Appropriation Base	Required 1% Cut	S&S portion of Base	Cut as % of S&S Base
101 Admin	\$2,598,500	-\$26,000	\$627,200	-4.15%
102 Appellate	\$5,124,300	-\$51,200	\$453,800	-11.28%
103 Trial Division	\$47,518,200	-\$475,200	\$4,028,300	-11.80%
104 Pr Bar	\$22,777,900	-\$227,800	\$22,777,900	-1.00%
105 ACD Admin	\$695,200	-\$7,000	\$297,700	-2.35%
106 Trans/Discover/Interp	\$1,339,100	-\$13,400	\$1,339,100	-1.00%
135 Client Accts Admin. Pr Bar Pmts -	\$250,800	-\$2,500	\$66,800	-3.74%
136 Collections	\$1,024,700	-\$10,200	\$1,024,700	-1.00%
137 Conferences & Training	<u>\$143,700</u>	<u>-\$1,400</u>	<u>\$26,400</u>	<u>-5.30%</u>
	\$81,472,400	-\$814,700	\$30,641,900	-2.66%

Analysis

The SPD's FY13 adjusted base has approximately \$5.1 million GPR annually to spend on agency supplies expenditures, excluding funds for transcript, discovery, interpreter and private bar payments. Nearly \$2.7 million of that amount was spent for rent for the agency's 39 offices around the state in FY12. Assuming an average 2.5% for lease increases will increase rent by \$67,500 for FY13. In FY12, required travel cost approximately \$350,000 and phones cost an additional \$140,000. That leaves less than \$2 million for all other supplies and services. These include IT services and network,

general and financial services payments to DOA, expert witness fees, legal resources (law books and Lexis), office supplies, copiers, fax machines, etc.

In summary, the SPD supplies line does not have funds to absorb this permanent base reduction. The services provided by the SPD are all constitutionally and statutorily required. Due to this, there is very little discretion in the supporting expenditures on supplies.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$559,400	0.00	\$559,400	0.00
PR	\$3,900	0.00	\$3,900	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$563,300	0.00	\$563,300	0.00

Prepared by:

Kathy Smith, Budget & Policy Analyst
608-267-0974

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	4004	Restore 2009-2011 Across-the-Board Reductions

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	\$563,300	\$563,300
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	\$563,300	\$563,300
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
	4004	Restore 2009-2011 Across-the-Board Reductions			
01	Legal assistance				
	01 Program administration	\$26,000	\$26,000	0.00	0.00
	02 Appellate representation	\$51,200	\$51,200	0.00	0.00
	03 Trial representation	\$475,200	\$475,200	0.00	0.00
	05 Private bar and investigator payments; administration costs	\$7,000	\$7,000	0.00	0.00
	35 Payments from clients; administrative costs	\$2,500	\$2,500	0.00	0.00
	37 Conferences and training	\$1,400	\$1,400	0.00	0.00
	Legal assistance SubTotal	\$563,300	\$563,300	0.00	0.00
	Restore 2009-2011 Across-the-Board Reductions SubTotal	\$563,300	\$563,300	0.00	0.00
	Agency Total	\$563,300	\$563,300	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	4004	Restore 2009-2011 Across-the-Board Reductions				
	GPR	S	\$559,400	\$559,400	0.00	0.00
	PR	S	\$3,900	\$3,900	0.00	0.00
	Total		\$563,300	\$563,300	0.00	0.00
Agency Total			\$563,300	\$563,300	0.00	0.00

Decision Item (DIN) - 4501

Decision Item (DIN) Title - Sentence Modifications

NARRATIVE

The Public Defender Board recommends modification of Wis. Stat. 977.05(4)(j) and repeal of Wis. Stat. 977.05(6)(e), to allow the Office of the State Public Defender (SPD) to provide legal services or assign counsel for a motion to modify a sentence. The requested amount is \$119,900 in FY14 and \$236,600 in FY15, which was the amount reduced in Wis. Act 77 (the 1995-1997 biennial budget act).

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget Issue Paper

Topic: DIN 4501 – Sentence Modifications, Jurisdiction

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender, \$119,900 GPR in FY14 and \$236,600 GPR in FY15 to provide legal representation for sentence modification cases, which could result in overall savings for the criminal justice system.

Problem Description

The SPD's discretion to provide legal services or assigning counsel for a motion to modify a sentence, except in specific circumstances, is severely limited. This statutory limitation has increased criminal justice system costs and reduced efficiencies within the justice system.

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 *discretionarily* provide legal representation in these matters when "the case should be pursued" is contained in § 977.05 (4) (j). However, the SPD's discretion was severely limited by 1995 Act 77 (the 1995-97 biennial budget) in § 977.05 (6) (e), prohibiting the SPD from providing legal services or assigning counsel for a motion to modify a sentence unless the motion is: 1) part of a direct appeal, or 2) filed in lieu of a direct appeal within 20 days of sentencing. Since 2002, the Legislature has granted the SPD limited authority to provide representation to some prisoners seeking an adjustment of the confinement portion of their Truth in Sentencing Act (TIS) sentences.ⁱ

Analysis

Authorizing the SPD to provide legal representation in meritorious sentence modification cases will 1) create several efficiencies within the justice system, 2) allow the SPD to be responsive to changes in sentencing statutes, and 3) pass cost savings on to other criminal justice system entities.

Incarceration Cost Savings

Some requests to modify sentences *are* meritorious. 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 public, then the state has no legitimate interest in continued incarceration. Such a defendant needlessly occupies prison bed space. The daily cost to incarcerate an individual in a state institution was \$91.84 (\$33,523 per year) in FY 11. Significant cost savings could be achieved by modifying appropriate prison sentences to instead require community supervision, at a FY 11 cost of \$7.85 per day (\$2,864 per year) per offender.

If the SPD successfully represented 10 clients a year by obtaining modifications that converted incarceration to community supervision, the state would avoid \$306,590 in overall criminal justice system costs.

The SPD would perform a screening function to distinguish weak and strong cases. This process would ensure that only those prospective clients with strong cases would have attorneys assigned to seek sentence modification. 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 groundsⁱⁱ for sentence modification can arise at any time while a defendant is serving a sentence, and sentence modification motions can be brought at any time during the sentenceⁱⁱⁱ. 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* Motion Filings

The SPD screening process has an additional benefit. The SPD can dissuade defendants from filing *pro se* 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.

A decrease in the number of *pro se* motions would conserve a considerable amount of court and prosecution resources. A *pro se* sentence modification motion is written by a defendant who does not have the benefit of legal training or the constraints of the attorney's code of ethics. These motions have been described by courts and prosecutors as difficult to understand, incomprehensible, lacking any citation to legal authority, misstating the facts, misstating the legal authority, and so on. The courts often forward the motion to the prosecution with directions to identify or restate, and then respond to, the *pro se* litigant's legal claim. When incarcerated *pro se* defendants fail to follow procedural rules, the courts place the burden on court staff, or sometimes the prosecution, to assist them with serving the correct number of copies, serving the right opposing party, and so on.

Pro se motions are almost always denied, but they utilize more than their fair share of 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. This time of the justice professionals will be better spent on more serious and valid court proceedings.

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, including the right to SPD representation. The Legislature responded in § 302.113 (9g): 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. More recently, the Legislature created programs that allow the release of some classes of TIS inmates who successfully complete rehabilitation programs.^{iv} 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 appointed counsel.

All prisoners should be afforded counsel to demonstrate meritorious claims of rehabilitation to the sentencing court. 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.^v When a defendant demonstrates rehabilitation, circumstances have changed, and sentences should too. Restoration of SPD sentence modification jurisdiction is a safety valve that will ensure the sentences that should be modified are competently presented to the court for decision.

Consistency with Increased Use of Risk Assessment

Actuarial risk assessments are increasingly used for decision making within the field of criminal justice. The Department of Corrections (DOC) has recently adopted an assessment instrument (COMPAS) to use with all persons in DOC custody or under DOC supervision. The instrument allows for assessment of risk over time, informed by (for example) the programming that inmates complete to address criminogenic needs.^{vi}

Improving the Appellate Process

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 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 enactment of 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 projected cost of increased cases to the private bar is \$119,900 in the first year and \$236,600 in the second year (and ongoing). This was the amount by which the SPD budget was reduced in the 1995-97 budget (see 1995-1997 LFB paper #758), when the agency lost unlimited jurisdiction for sentence modifications.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$119,900	0.00	\$236,600	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$119,900	0.00	\$236,600	0.00

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

¹ 2001 Act 109 (the 2001-03 Budget Reform Act) granted the SPD limited authority to provide representation to some geriatric prisoners seeking modification of the confinement portion of their Truth in Sentencing Act (TIS) sentences in §§ 302.113 (9g) and 977.05 (4) (jm). 2009 Act 28 (the 2010-11 Biennial Budget) granted the SPD limited authority to provide representation to some prisoners with extraordinary health conditions seeking modification of the confinement portion of their Truth in Sentencing Act (TIS) sentences in §§ 302.1135 (10) and 977.05 (4) (jm). 2011 Act 38 combined both provisions in current § 302.113 (9g) (inmates age 65 who served 5 years, age 60 who served 10 years, or who have an extraordinary health condition – age, infirmity, disability or need for treatment or services unavailable in institution).

¹ 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). 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.” Wis. Stat. §§ 302.043, .045, .05, .113, .114 and 973.198 also specify grounds for adjustments to TIS sentences.

¹ 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.

¹ See Wis. Stat. §§ 302.043 (Risk Reduction Sentences), 302.045 (Challenge Incarceration Program), and 302.05 (Substance Abuse Earned Release Program). Wis. Stat. §§ 302.114 (inmates serving life sentences); 973.195 (inmates serving 75% or 85% of confinement portion of sentence) and 973.198 (inmates earning positive adjustment time under prior law) also allow adjustments to TIS sentences.

¹ *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.

^{vi} 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. Therefore, success in programming while incarcerated may reduce the risk of a person engaging in future criminal behavior.

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	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	\$119,900	\$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	\$119,900	\$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	\$119,900	\$236,600	0.00	0.00
	Legal assistance SubTotal	\$119,900	\$236,600	0.00	0.00
	Sentence Modifications SubTotal	\$119,900	\$236,600	0.00	0.00
	Agency Total	\$119,900	\$236,600	0.00	0.00

Decision Item by Fund Source

Public Defender Board

					1st Year FTE	2nd Year FTE
	Source of Funds		1st Year Total	2nd Year Total		
Decision Item	4501	Sentence Modifications				
	GPR	S	\$119,900	\$236,600	0.00	0.00
	Total		\$119,900	\$236,600	0.00	0.00
Agency Total			\$119,900	\$236,600	0.00	0.00

Decision Item (DIN) - 4502

Decision Item (DIN) Title - Charging and Sentencing Alternatives

NARRATIVE

The Public Defender Board proposes statutory changes to the classification 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. The estimated cost avoidance would be \$-2,569,200 in FY14 and \$-5,138,300 in FY15.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 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, 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 \$-2,569,200 GPR in FY14 and \$-5,138,300 GPR in FY15 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, due to the criminal statutes these alleged offenders could 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. 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 at the misdemeanor, rather than felony level, the cost per case will decrease.

Analysis

The right to counsel is contained in both a statute and the United States and Wisconsin Constitutions requirement, the SPD cannot reduce the number of cases in which the agency appoints counsel. Any 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.

No Prior Conviction then Reclassify to an Ordinance or Provide a Diversion Option

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 required by the court; or 2) pay a forfeiture under a stipulated finding of guilt under a non-criminal municipal ordinance.

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. For example, the Legislative Fiscal Bureau noted in 2005-07 Budget Paper #590 that over 93% of the misdemeanor worthless check cases closed by the SPD in FY04 resulted in no jail time for the defendant.

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 attorneys 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 732 worthless checks cases and the 3,036 retail theft cases could have been diverted if this proposed provision had been in effect during FY12 (the numbers represent the numbers of SPD appointments for these case types during the fiscal year).

Similarly, 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, as they are either plead down to ordinances or sentenced to pay a fine, yet because defendants are exposed to the possibility of incarceration they are entitled to counsel.

Crimes Related to Drug Possession or Paraphernalia

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:

- 1st offense be reclassified to a municipal ordinance or have no criminal charge.
- 2nd offense, the charge be reclassified to a municipal ordinance, and
- 3rd offense classified as a misdemeanor or placed in a diversion option encouraging drug treatment rather than institutionalized.

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, consistent with the proposed 2011 Assembly Bill 702, which recommended that the possession of marijuana in the lowest category under current law be reclassified to a ordinance for 1st and 2nd offenses. The SPD recommends expanding the reclassification of all 1st and 2nd drug possession charges under § 961.41 when the quantities are 25 grams or less, with the exception of methamphetamines, and if there is reasonable doubt that the individual was manufacturing, distributing or delivering the controlled substance. We further recommend that the 3rd offense be considered a misdemeanor.

In FY12, the SPD represented clients in almost 7,000 cases. If half of these cases would not have qualified for representation due to the suggested reclassification to ordinances, then the SPD would have saved just over \$1.4 million dollars.

Consensual Sex Acts

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.

- 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

The SPD represented clients in 568 cases relating to the above-mentioned crimes. If 15% of those cases were only due to the age of the parties involved, then the SPD would have avoided almost \$100,000 in costs. This estimate does not include any reduction of costs for other criminal justice system entities such as the circuit courts, Department of Corrections and municipal jails.

Summary

These cases are represented by staff attorneys as well as private bar attorneys. The current private bar appropriation has projected deficit of \$5.8 million.

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$-2,569,200	0.00	\$-	0.00
			5,138,300	
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$-2,569,200	0.00	\$-	0.00
			5,138,300	

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

Appendix A: SPD Recommendation for Sentencing Alternatives

Recommendation Description	Statute	Statute Title
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/Constuct.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	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	Drug Offenses-Possession

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	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	(\$2,569,200)	(\$5,138,300)
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	(\$2,569,200)	(\$5,138,300)
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
	4502	Charging and Sentencing Alternatives			
01	Legal assistance				
	04 Private bar and investigator reimbursement	(\$2,569,200)	(\$5,138,300)	0.00	0.00
	Legal assistance SubTotal	(\$2,569,200)	(\$5,138,300)	0.00	0.00
	Charging and Sentencing Alternatives SubTotal	(\$2,569,200)	(\$5,138,300)	0.00	0.00
	Agency Total	(\$2,569,200)	(\$5,138,300)	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	4502	Charging and Sentencing Alternatives				
	GPR	S	(\$2,569,200)	(\$5,138,300)	0.00	0.00
	Total		(\$2,569,200)	(\$5,138,300)	0.00	0.00
Agency Total			(\$2,569,200)	(\$5,138,300)	0.00	0.00

Decision Item (DIN) - 5001

Decision Item (DIN) Title - Private Bar Rate

NARRATIVE

The Public Defender Board requests to increase the statutory reimbursement rate for private bar attorneys to \$50 per hour for cases assigned on or after July 1, 2014, by modifying the statutory reimbursement rate in s. 977.08 (4m) (c) for in-court and out-of-court work. The estimated increase is \$3,506,000 in FY15.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget

Issue Paper

Topic: DIN 5001 – Private Bar Rate Increase

Agency Request

The Office of the State Public Defender requests \$0 GPR in FY14 and \$3,506,000 GPR in FY15 to increase the statutory reimbursement rate for private bar attorneys to \$50 per hour for cases assigned on or after July 1, 2014, by modifying the statutory reimbursement rate in s. 977.08 (4m) (c) for in-court and out-of-court work .

Problem Description

The hourly rate paid to the private bar attorneys who accept appointments for Public Defender cases is impeding the ability to recruit and retain private bar attorneys who consistently accept cases for the State Public Defender's Office.

Background

When the Legislature created the State Public Defender in 1978, the hourly rate paid to private bar attorneys who accepted appointment of Public Defender cases was \$35 per hour for time spent out of court, and \$45 for time spent in court [Wis. Stats. Sec. 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 [Wis. Stats. Sec. 977.08 (4m) (b)]. However, in 1995, private bar rates were reduced to \$40 per hour for both in-court and out-of-court work [Wis. Stats. Sec. 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.

Analysis

The \$40 hourly reimbursement rate for the private bar has remained unchanged since 1992 and 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. As small business operational costs for everything have increased, the average hourly rate that attorneys charge clients has increased. According to surveys conducted by the State Bar of Wisconsin the average hourly rate charged by attorneys in Wisconsin has increased as follows:

1992 Average hourly rate	\$116
1998 Average hourly rate	\$139
2001 Average hourly rate	\$146
2005 Average hourly rate	\$171
2007 Average hourly rate	\$188

2009 Average hourly rate \$200

If the \$35 out-of-court and the \$45 in-court hourly rates established for public defender cases in 1978 had been indexed for inflation, those rates would have been \$123.19 and \$158.38, respectively, in 2012, instead of the current \$40 rate.

Most attorneys are small business people who must make sound economic decisions when running their 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. Attorneys leaving the SPD appointment lists have consistently cited the low hourly rate as the primary reason for leaving.

Other attorneys retained by federal, state and local government are paid substantially more than \$40/hour. Wisconsin counties pay private attorneys at the Supreme Court rate – currently \$70 per hour – to take court appointments or to serve as guardians ad litem. Defense attorneys are paid \$125 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 charges back attorney time to those license holders who are found to have committed misconduct at the rate of \$61.00 per hour.

Private attorneys on the SPD appointment list appear to be the only group of private sector professionals whose compensation is set by statute, and the compensation rate does not cover their overhead. Some state procurement contracts for professional services on the VendorNet system include hourly rates (e.g. Accountant - \$63-\$94, Facilitation Consultant - \$100, Auditor - \$77-\$133, Project Implementation Coordinator (non-IT) - \$89-\$112, IT Network Specialists - \$35-\$80, Court Reports - \$25-\$60, Environmental Consulting Services-Senior Consultant - \$56). Many of these positions do not require similar schooling and continuing education requirements as an attorney; however, they are contracted at a significantly higher pay than attorneys representing clients for the Public Defender.

The low rate makes it increasingly difficult to find lawyers to take SPD appointments. Although there are currently about 1,100 lawyers on the appointment lists, about 25% of them take less than five cases per year and more than 10% take one or less cases per year. These numbers demonstrate the difficulties in appointing cases that have been reported by field staff. Local offices report that one reason lawyers who used to accept SPD appointments now take fewer appointments – or none at all - is because counties and federal courts can pay substantially higher rates.

The SPD is beginning to have difficulty in making appointments to the private bar, especially in sexual assault cases, which has consequences for the justice system. There have been newspaper articles about delays and postponements because no private bar attorney was available. The delays and postponements also inconvenience

victims, police officers, and courts. Local SPD offices have received complaints from judges about the delays caused by the lack of sufficient private bar attorneys. Many offices serving counties outside of Milwaukee and Dane routinely must appoint attorneys from other counties, increasing travel time and mileage expenses.

Cost Estimate

The private bar represented clients in approximately 85,000 cases in FY12. The average case cost for a rotational case was \$330.99 in FY12 with a \$40 hourly rate. The average rotational case cost would increase approximately \$83 per case if the rate was increased to \$50 per hour. The average contractual case cost would increase approximately \$77 per case with the increase in the hourly rate.

The cost to increase the private bar rate would not be realized until January 2015 due to a six month lag between the opening of a case and closure of a case by the private bar. So the annual cost of \$7,012,000 would impact FY15 at half the rate - \$3,506,000.

Statutory Changes

Modify s.977.08(4m)(c) to increase the statutory reimbursement rate for in-court and out-of-court work to \$50, effective with cases assigned on or after July 1, 2014.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$0	0.00	\$3,506,000	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$0	0.00	\$3,506,000	0.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	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	\$0	\$3,506,000
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	\$0	\$3,506,000
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
	5001	Private Bar Rate			
01	Legal assistance				
	04 Private bar and investigator reimbursement	\$0	\$3,506,000	0.00	0.00
	Legal assistance SubTotal	\$0	\$3,506,000	0.00	0.00
	Private Bar Rate SubTotal	\$0	\$3,506,000	0.00	0.00
	Agency Total	\$0	\$3,506,000	0.00	0.00

Decision Item by Fund Source

Public Defender Board

					1st Year FTE	2nd Year FTE
	Source of Funds		1st Year Total	2nd Year Total		
Decision Item	5001	Private Bar Rate				
	GPR	S	\$0	\$3,506,000	0.00	0.00
	Total		\$0	\$3,506,000	0.00	0.00
Agency Total			\$0	\$3,506,000	0.00	0.00

Decision Item (DIN) - 5002

Decision Item (DIN) Title - Pay Progression for Assistant State Public Defenders

NARRATIVE

The Public Defender Board requests \$1,133,000 in FY14 and \$2,299,100 in FY15 to establish a pay progression plan for Assistant State Public Defenders.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget

Issue Paper

Topic: DIN 5002 – Pay Progression for Assistant State Public Defenders

Agency Request

The Office of the State Public Defender requests \$1,133,000 GPR in FY14 and \$2,299,100 GPR in FY15 to provide a pay progression plan for assistant state public defender attorneys.

Problem Description

2011 Wisconsin Act 238 created a pay progression plan for assistant district attorneys. Assistant state public defenders face many of the same challenges as assistant district attorneys that result in experienced attorneys leaving for more lucrative private sector positions at a time when they are most efficient and of highest benefit to the state.

Background

Historically, assistant district attorneys and assistant public defenders had equity in pay scales. Act 238 had the effect of removing that pay equity. Public defender staff attorneys have a starting salary of \$49,429, and attorneys with 12 years of agency experience earn only \$5000 more (roughly 10% more than the starting salary). Approximately 150 attorneys, nearly half of the total attorney staff, make \$55,000 or less per year. An attorney in that pay range has an average of 3.7 years of service. In 1996, the starting salary for an attorney was \$17.76 per hour. Today, it is \$23.67 per hour, an average annual increase of 2.1%. During the same time frame, recipients of social security received an average of a 2.5% annual increase in benefits.

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, Class A, B, and C felonies, and Ch. 980 sexually violent person commitments.

Maintaining pay parity between assistant 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 for the public defender 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).

Costs

Assuming the structure for assistant public defender pay progression is similar to 2011 Act 238, the cost estimate is based on 374.20 authorized FTE positions that would be eligible for an increase equal to 1/17 of the difference between the lowest hourly salary rate and the highest hourly salary rate, approximately \$1.973 per hour.

In FY14, the cost in salary to provide one step increase (1/17) for all attorneys with 12 months of continuous service and who are not at the maximum for the pay range would be \$979,552. This is calculated by determining the difference between each assistant public defender's hourly pay rate and the closest but higher pay step, then multiplying this amount by 2080 hours times 348.20 authorized FTE positions.

In addition, the variable fringe rate of 15.75% (retirement, Social Security/Medicare, and sick leave conversion) must be included in the estimate. $\$979,552 \times 15.75\% = \$154,279$. The total estimated cost for FY14 is then \$1,133,000.

In FY15, the salary and fringe benefits cost to continue the increases granted in FY14 equates to an amount equal to that of FY14, or \$1,133,000 plus a discretionary merit award not to exceed 10% of the assistant public defender's hourly pay rate per year and not be increased above the classification maximum pay range. The discretionary merit award is estimated at \$1,008,032 for a total FY15 cost of \$2,299,100 including fringe.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$1,133,000	0.00	\$2,299,100	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$1,133,000	0.00	\$2,299,100	0.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5002	Pay Progression for Assistant State Public Defenders

Expenditure items		1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$978,900	\$1,986,300
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$154,100	\$312,800
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	\$1,133,000	\$2,299,100
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 2nd Year			
		1st Year Total	2nd Year Total	FTE	FTE
	5002	Pay Progression for Assistant State Public Defenders			
01	Legal assistance				
	01 Program administration	\$4,500	\$10,600	0.00	0.00
	02 Appellate representation	\$76,500	\$178,400	0.00	0.00
	03 Trial representation	\$1,048,300	\$2,099,600	0.00	0.00
	05 Private bar and investigator payments; administration costs	\$3,700	\$10,500	0.00	0.00
	Legal assistance SubTotal	\$1,133,000	\$2,299,100	0.00	0.00
	Pay Progression for Assistant State Public Defenders SubTotal	\$1,133,000	\$2,299,100	0.00	0.00
	Agency Total	\$1,133,000	\$2,299,100	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	5002	Pay Progression for Assistant State Public Defenders				
	GPR	S	\$1,133,000	\$2,299,100	0.00	0.00
	Total		\$1,133,000	\$2,299,100	0.00	0.00
Agency Total			\$1,133,000	\$2,299,100	0.00	0.00

Decision Item (DIN) - 5003

Decision Item (DIN) Title - Protective Occupation Status, SPD Investigators/Client Services Specialists

NARRATIVE

The Public Defender Board proposes designating Public Defender investigators and client services specialist positions as protective occupation participants, comparable to police officers, probation and parole agents, firefighters, etc. for retirement purposes, in recognition of the hazardous duties required of these employees. The estimated cost would be \$144,700 in FY15.

**Office of the State Public Defender
2013-2015 Biennial Budget Request
Issue Paper**

Topic: Din 5003 - Protective Occupational Status for SPD Investigators and Client Services Specialists

Agency Request

The Public Defender Board requests \$0 in FY14 and \$144,700 in FY15 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 the 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 and a high degree of physical conditioning. Specifically, they 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 of these people are reluctant to talk to the 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.

In addition, CSS and PDI duties require a high degree of physical conditioning. Because they do not carry badges or guns or have the authority to arrest, they must be in excellent physical condition in order to protect themselves from attack or injury in the dangerous situations described above.

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 very 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 PDIs and CSSs in comparison to traditional law enforcement personnel – 65 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 FY15 is 4.7%. The estimated cost to determine that CSSs and PDIs are protective service classifications is \$144,700 annually. We request that the protective service designation begin July 1, 2014.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$0	0.00	\$144,700	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$0	0.00	\$144,700	0.00

Prepared By:

Kathy Smith

Budget & Policy Analyst

608-267-0974

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5003	Protective Occupation Status, SPD Investigators/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	\$144,700
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	\$0	\$144,700
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, SPD Investigators/Client Services Specialists			
01	Legal assistance				
	02 Appellate representation	\$0	\$5,500	0.00	0.00
	03 Trial representation	\$0	\$139,200	0.00	0.00
	Legal assistance SubTotal	\$0	\$144,700	0.00	0.00
	Protective Occupation Status, SPD Investigators/Client Services Specialists SubTotal	\$0	\$144,700	0.00	0.00
	Agency Total	\$0	\$144,700	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, SPD Investigators/Client Services Specialists				
	GPR	S	\$0	\$144,700	0.00	0.00
	Total		\$0	\$144,700	0.00	0.00
Agency Total			\$0	\$144,700	0.00	0.00

Decision Item (DIN) - 5004

Decision Item (DIN) Title - Sentencing Specialists

NARRATIVE

The Public Defender Board requests funding of \$136,300 in FY14 and \$155,900 in FY15 and 3.0 FTE in each year of the biennium to prepare alternative-to-revocation (ATR) and sentencing plans with the goal of diverting more clients from incarceration by locating and advocating for appropriate alternatives.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget

Issue Paper

Topic: DIN 5004 – Sentencing Specialists

Agency Request

The Office of the State Public Defender requests \$136,300 GPR and 3.00 GPR FTE in FY14 and \$155,900 GPR and 3.00 GPR FTE in FY15 to prepare alternative-to-revocation (ATR) and sentencing plans with the goal of diverting more clients from incarceration by locating and advocating for appropriate alternatives.

Problem Description

Due to limited services available, clients are serving long prison sentences instead of reasonable alternatives. The overall criminal justice costs could be greatly reduced with the development of sentence alternative plans.

Background

The Office of the State Public Defender currently is authorized 17.5 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 gathering pertinent information about individual clients; investigating placement, treatment, and educational opportunities; and preparing a written recommendation 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.

At a sentencing hearing, both the prosecutor and defense attorney typically present sentencing recommendations. The prosecutor's office assists the victim, if he or she wishes to participate, in having a voice at the sentencing hearing. In many felony cases, the court also orders the Department of Corrections (DOC) to prepare a pre-sentence report, which describes the crime and the defendant's background. This report often includes a sentencing recommendation and, in general, reflects a perspective of great concern about potential risks presented by the defendant. A report by a CSS is usually the most effective tool available to defense counsel to counter-balance the factual assertions, perspectives, and recommendations presented by the prosecutor, victim, and DOC agent.

CSS involvement also occurs in serious juvenile cases, including those in which a CSS investigation and report may help convince the court to allow a case to be resolved in juvenile court, rather than in adult court. Revocation cases are another category of case in which a CSS is often instrumental in preparing

possible placement alternatives for clients. Revocation cases involve alleged violations of conditions of probation, parole, or extended supervision, for which DOC seeks imprisonment.

Analysis

In FY 2012, the State Public Defender provided representation in over 138,000 cases, including over 32,400 adult felony cases and over 7,800 revocation cases. The agency is able to assign a CSS to work on only a small percentage of these cases. The number of revocation cases in which the SPD appointed counsel has increased significantly since FY96.

<u>Year</u>	<u># of Revocations</u>	<u>% Increase from FY96</u>
FY96	4,458	
FY00	5,767	29.4%
FY04	7,260	62.9%
FY08	9,182	106.0%
FY12	7,810	75.2%

Often a CSS is requested to assist in these cases to investigate and develop an alternative to revocation (ATR), which can both promote the successful reintegration of the client into the community and save considerable costs for imprisonment that would otherwise be ordered. The daily cost to incarcerate an individual in a state institution is \$91.84 (\$33,523 per year) in FY11. Significant cost savings can be achieved by instead developing and implementing appropriate alternatives to incarceration. Here are some recent examples of cases in which the Client Services Specialist's work resulted in savings to the criminal justice system:

County	Charge(s)	Type of Work	DA/DOC Recommendation	Sentence	Sentence Impact
Dane	1 st Deg Reckless Injury	Sentencing Memo	Cap at 10 years prison; no cap on extended supervision	Imposed and Stayed (4 years incarceration/4 years supervision	Avoid 4+ years prison and 4+ years of supervision
Juneau	Possession of Drug Paraphernalia; Disorderly Conduct ;Bail Jumping (multiple);Resisting/Obstructing;	Assisted w/entry into Job Corps	Avoid Prosecution if completed Job Corps program	No sentencing	Avoid costs of incarceration and community supervision

Dane	Computer Message/Threaten to Injure or Harm as Repeater, DC, as Repeater	Facilitate treatment and community service	If treatment and service completed, charges will be dismissed	Court costs only	Avoided costs of incarceration
Milwaukee	Battery; 2 cts	Interviews	1 year probation	9 months probation	3 months less probation
Brown	Burglary, 3 cts	Court report	3 years incarceration; 3 yrs probation	1 year county jail; 6 years probation	2 years less incarceration
Brown	Sentencing after Revocation	Court report	18 months prison	1 year county	6 months less
Brown	Sentencing after Revocation	Developed Treatment Plan	2 years prison	1 year jail	No prison
Brown	Revocation	Treatment Proposal	1 year prison	Not Revoked	No prison time
Brown	2 nd Degree Reckless Endangerment	Treatment Proposal	5 years prison; 5 years Extended Supervision	1 year jail plus probation	No prison time
Walworth	Escape	Sentencing Report	1 year jail	1 year probation	No jail time
Rock	Disorderly Conduct and Bail jumping	Mentored in Veterans Court	Jail with probation	Veterans Court	No jail/probation
Walworth	Battery to Police Officer; Disorderly Conduct; Resisting	Mentored in Veterans Court	Jail	Veterans Court	No jail

The addition of CSS staff would provide much needed resources to increase the number of ATRs developed in revocation cases handled by SPD staff attorneys in several of the larger counties, including Milwaukee, Racine, and Dane. We propose working with the Department of Corrections and the DOA Division of Hearings and Appeals to document resulting savings to the criminal justice system, including savings to DOC and to counties resulting from shorter terms of confinement for many SPD clients. We also propose tracking the recidivism of clients who receive ATRs developed by the CSS contract professionals to document the anticipated reduction in future crime.

The SPD Appellate Division also relies extensively on sentencing specialists in direct appeal cases in which the trial attorney inadequately developed or

inadequately presented recommendations for sentencing to the trial court, or presented inaccurate information at sentencing. In these cases, the CSS reviews the court transcript, analyzes the sentencing recommendations, and develops more appropriate sentencing alternatives for consideration by the circuit court and the court of appeals.

Racial Disparity

The 2007 Governor's Commission on Reducing Racial Disparities in the Criminal Justice System found that racial disparities within the criminal justice system are a serious problem that should be addressed regardless of whether they arise by chance or from intentional discrimination. The Public Defender Board recognizes that people of color receive disparate treatment in the Wisconsin criminal justice system and that African Americans and Hispanics constitute a disproportionate percentage of the incarcerated populations in Wisconsin. People of color do not commit more crimes - yet, in Wisconsin, they have more contact with law enforcement, are arrested more often, are prosecuted more often, are found guilty more often, and are sentenced to longer sentences, than whites.

Some of the positions requested could be assigned in counties that contribute significantly to the present disparity, with the goal of diverting more minority clients from incarceration to appropriate alternatives.

Cost Estimate

Client Services Specialists retained by private bar attorneys for SPD cases take approximately 20 hours to prepare a report for a felony sentencing hearing. A Class A or B felony requires 30 hours or more. The addition of staff would allow for more sentencing plans to be developed, which has a lasting effect on costs within the criminal justice system by diverting those individuals to appropriate sentencing alternatives.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$136,300	3.00	\$155,900	3.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$136,300	3.00	\$155,900	3.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5004	Sentencing Specialists

	Expenditure items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$73,700	\$98,300
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$30,900	\$41,200
06	Supplies and Services	\$16,400	\$16,400
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	\$15,300	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$136,300	\$155,900
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	3.00	3.00
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
	5004	Sentencing Specialists			
01	Legal assistance				
	03 Trial representation	\$136,300	\$155,900	3.00	3.00
	Legal assistance SubTotal	\$136,300	\$155,900	3.00	3.00
	Sentencing Specialists SubTotal	\$136,300	\$155,900	3.00	3.00
	Agency Total	\$136,300	\$155,900	3.00	3.00

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	Sentencing Specialists				
	GPR	S	\$136,300	\$155,900	3.00	3.00
	Total		\$136,300	\$155,900	3.00	3.00
Agency Total			\$136,300	\$155,900	3.00	3.00

Decision Item (DIN) - 5005

Decision Item (DIN) Title - IT Hardware/Software and Network Upgrades

NARRATIVE

The Public Defender Board requests funding of \$1,968,500 and 2.0 FTE in FY14 and \$2,016,800 and 2.0 FTE in FY15 to upgrade hardware, software and network bandwidth at all State Public Defender locations statewide.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget

Issue Paper

Topic: DIN 5005 – Hardware/Software Upgrades and Network Upgrades/Mobile Access

Agency Request

The Office of the State Public Defender requests \$1,968,500 GPR and 2.0 GPR FTE in FY14 and \$2,016,800 GPR and 2.0 GPR FTE in FY15 to upgrade hardware, software and network bandwidth at all SPD locations statewide.

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 agency. These factors have also increased collateral consequences in lost efficiency and effectiveness due to issues requiring manual tracking outside of the IT system and lack of communication capabilities for staff in court or in travel status.

Background

The SPD has 579.85 FTE located 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 for network support, 1.0 developer and 1.0 Chief Information Officer. Position authority and funding for 6.0 FTE IT staff was provided in the 1999-2001 biennial budget, along with funds to implement an agency wide area network (WAN). In FY06, 1.0 IT FTE was eliminated to achieve mandated efficiency reductions. Another 1.0 FTE was eliminated in FY11.

The agency IT budget is funded through general funds for IT internet access and minor ongoing expenses and through redirecting agency funds from other appropriations. In FY12, approximately one million dollars was expended on IT-related services and staffing, which includes copier leasing and maintenance. The practice of transferring funds from the salary appropriation, although sometimes a helpful short-term strategy to address critical needs, is inefficient because the need to keep agency positions vacant increases the agency's cost for the private attorneys to whom additional cases must be appointed.

Network

The State Public Defender's office was appropriated funds in fiscal year 2000-01 to implement a Wide Area Network (WAN). At that time, the WAN's primary purpose was to provide a stable communication link among the SPD's forty-one

locations (38 main offices and 3 associated sites) and to provide real-time access and updates to the agency's nascent management information system.

Since then, the SPD implemented a web-based version of the management information system, e-OPD, as well as a web-based billing system for the private bar attorneys who are assigned SPD cases. Although the various local network providers have increased their respective service offerings at some locations, no significant upgrades to the WAN have occurred since 2001.

Hardware and Software Resources

The 1995-97 budget transferred responsibility for the SPD's IT program to the Department of Administration's new Bureau of Justice Information Systems (BJIS). The SPD's 4.5 FTE IT staff and associated funding were transferred to BJIS. In the 1997-99 budget, BJIS was provided funds from justice information system fees under § 814.635(1), to begin implementation of BJIS's three-year plan to convert the SPD from an outdated Macintosh platform to state standard IBM-compatible PCs.

Early in FY98, the SPD developed a plan to convert the entire agency within the 1997-99 biennium and within the funds appropriated to BJIS for two-thirds of the conversion. That plan was approved, and responsibility for the full range of IT functions was effectively returned to the SPD in December 1997. However, base IT resources could not be restored to the SPD outside the budget process. The Department of Administration made funds appropriated to BJIS on behalf of the SPD for conversion and staffing available to the SPD during FY98 and FY99. Conversion to state standard hardware and software was completed ahead of schedule and within budget. The first IBM PCs were installed in the spring of 1998, and the last offices were converted in November 1998.

Agency IT managers typically target a certain percentage of their desktop and server "base" for replacement in any given biennium. When funding is not received and other resources cannot be used, the agency must utilize equipment that negatively affects productivity, customer service, and support costs. In addition, the agency may not be able to capitalize on advances in technology, some of which – such as security – may increase risk of unauthorized access to confidential client files if not utilized. The agency software is on a Microsoft 2002 license year, which is behind most other federal, state and municipal agencies. The agency also does not have funds for a scheduled replacement cycle for all hardware, including computers, servers and peripherals.

Analysis

Information technology is a critical tool for conducting state business; and agencies have been unable to achieve predictable, appropriate replacement cycles, due to budget constraints, disparate funding sources and the treatment of IT desktop and server replacements/upgrades as one-time expenses, rather than an on-going cost of doing business.

Network Upgrades

The electronic/digital environment has changed significantly for Wisconsin state government and for the historically paper-intensive criminal justice system during the past decade. This trend will continue as technology evolves and as the public and state agencies rely more and more on electronic transmission and storage of files. The public's expectations regarding the degree to which state agencies are capable of efficiently handling new technologies has been affected by the increase in accessibility and availability of the internet. The size of data files has increased dramatically over time with varied types of content such as digital photos, scanned images, and video files becoming ubiquitous and common. This trend will, in all likelihood, continue with the current emphasis on the use of social media to share information.

In order to increase our capabilities for collaboration, enhance service delivery, improve operational efficiencies, and meet the expectations of the legislature, the state's citizens, our clients, and our criminal justice partners, the SPD requests funds to increase network bandwidth at all 41 locations (38 offices, 3 office extensions) and the DOJ datacenter. Specifically, approval of this request will allow for the following operational improvements.

- A recent update to Google for Government, allowing remote and mobile access to our email, the agency expects increased pressure on our currently limited bandwidth as staff begin to access files from remote locations and upload and otherwise share large digital files that previously were not readily handled by the current email system.
- The SPD must continue to improve and test its disaster recovery plan and capabilities. We intend to improve our disaster recovery capabilities by beginning to port backup files for our mission-critical case management system, eOPD, over the WAN.
- Increased bandwidth will improve our already centralized technical administration and support.
- Increased bandwidth should allow for some degree of internal videoconferencing to meet agency training and meeting demands.
- Justice system partners have begun to require that certain types of information, such as appellate court documents, be filed electronically. The State Courts plan to implement electronic filing of all criminal court documents by July 2015. While we are complying with current requirements, we are unable to comply with some voluntary e-filing programs because of limited resources, including bandwidth. Additionally, we expect more and more systems (discovery, court reports/transcripts) to change from the current paper-based information-sharing, to require

digital file sharing, primarily to save money on the production end. An overall increase in bandwidth, in addition to improvements to storage capacities, is necessary to implement these types of system changes.

This request assumes that all office and extension locations networks will be changed to BadgerNet with a minimum of 5Mbps speed at all office locations and 1.5Mbps at extension locations. Currently, only eight offices have BadgerNet connections, so this proposal would affect the majority of our office locations. Additionally, because most of our network connections are not symmetrical with respect to upload and download speeds, we are seeking to correct that deficiency so that we may consider implementing services that require improved download and upload capabilities, such as internal videoconferencing. The proposal also includes implementation of BadgerNet-based VPN services between offices, which must be upgraded to allow the specified increased bandwidth. We have also included the cost of wireless access to be added at all our office locations.

Item	Year 1	Year 2
Network Upgrade	\$786,400	\$786,400
Remote Access	\$92,900	\$92,900
	\$879,300	\$879,300

Hardware and Software Upgrades

Citizens will continue to push state government to provide more services, and services that are more responsive to their needs: services that are available anytime, anywhere. Use of the Internet will become more prevalent to provide such things as training for those looking for job opportunities, as well as for those who, due to disability or other limitation, may require alternative methods of service delivery. As more services are provided through technology, it becomes more important to protect the state's assets from such things as security breaches, viruses, and unauthorized access to confidential information. Information technology upgrades include replacement workstations, network equipment, operating systems and application software. They have become as much a part of doing business as buildings and electricity. Disruption of these essential tools because of downtime, non-compatibility, or security issues has major affects on agency productivity and services to the public.

To meet these challenges and to continue to provide secure, efficient, and stable services, state government requires desktop and network computing devices, operating systems and application software that provide up-to-date and effective features. A regular replacement schedule can help ensure that desktop and network server technology consistently supports service delivery. The cost to maintain this equipment in resources, staff time, and replacement parts is typically more than the cost of a new machine.

Lagging IT replacement cycles present the following challenges for state government:

- Inability to take advantage of evolving security features; leaving networks and applications susceptible to security and privacy breaches and major system failures due to viruses;
- Equipment failures that result in decreased employee productivity, which results in the inability to respond to clients. Even partial failures, such as frequent “reboots,” can result in hundreds of hours of downtime. The inability to access agency systems or applications hinders greater efficiency or consistency;
- Increased costs for replacement parts, and increased time required to fix equipment, especially when it may be totally replaced not long after the repair;
- Time to locate replacement parts or “cannibalize” them from other older equipment; and
- Undefined replacement cycles that can result in inconsistent and less predictable budget requirements, equipment dollars being reallocated, and unexpected expenses when equipment fails and has to be replaced.

Development of, and adherence to, appropriate IT replacement cycles provides many benefits including the following:

- More predictable on-going costs for budgeting purposes;
- Lower overall IT support costs, through use of shared applications and information, and core administrative applications;
- More consistent access to evolving technology security strategies;
- Easier implementation of statewide technology policy direction, such as consistency in customer access and the “look and feel” of applications;
- Greater consistency of operating systems and application versions, which reduces complexity of the environment, support costs, and administrative overhead associated with asset management;
- Remote administration of desktops (software installations and upgrades), which can avoid considerable time and travel costs compared to individual installations; and
- Ability to take advantage of warranty agreements and software licensing agreements to reduce the overall costs associated with maintaining obsolete software and hardware.

Many agencies strive to achieve a four-year replacement cycle for desktop computers, three -year cycle for laptops, four-year cycle for network servers, and three to four-year cycle for software upgrades. A predictable replacement cycle evens out agency expenditures and workload. Although some agencies have been able to extend the life of their desktop computers beyond a four-year life cycle, most agree that beyond four years the cost to maintain the equipment and

the risk of equipment failure increases. Some agencies have been successful in achieving the four-year replacement cycle either through decision packages or by redirecting dollars that became available throughout the biennium.

Agencies that have not been successful in achieving a replacement cycle for IT equipment now struggle to manage multiple operating systems and desktop software configurations, as well as to maintain obsolete equipment that no longer has any residual value. The cost to maintain this equipment in resources, staff time, and replacement parts is typically more than the cost of a new machine.

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 a seriously 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 old Macs 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.

To avoid unplanned outages, which would negatively impact not only the agency and its ability to serve clients, but also the agency's ability to interact effectively with its justice partners and the court system, much of the agency's hardware and software must be replaced relatively soon. The likelihood of such an outage occurring increases as time goes by. The majority of servers currently deployed in SPD offices around the state were purchased in 1999 and then repurposed in 2002. All of these servers are out of warranty. Likewise, all workstations currently in use in the agency are out of warranty or will soon be out of warranty. Replacement parts for old equipment is difficult to locate and expensive to purchase. Aged hardware also tends to break down more frequently, which takes more and more time and attention from the agency's small IT staff.

The requested funding would allow the SPD to not only replace its existing aged hardware and software but to take advantage of a number of technologies that the agency is not currently able to provide. These technologies have been requested by agency staff (e.g., remote access and laptops) to increase staff efficiency and also have surfaced in relation to both state-wide business continuity and pandemic preparedness planning. Other requests have been related to new court system e-filing rules, which require e-filing of certain appellate documents and allow e-filing of appendices; however, because the agency's aging infrastructure cannot support the use of scanners, we will be

unable to comply with this aspect of the new e-filing rule without additional funding.

Cost Estimate

Thus far, the SPD has been able to internally fund replacement hardware and software priorities by closely managing other supplies and services expenditures, such as office supplies and telephone bills. However, the agency's supplies and services budget has been repeatedly reduced in the recent biennia – annual base cuts and lapses of \$537,000 were imposed in 2001-03, \$201,400 in 2005-2007 and \$1,013,500 in 2011-2013 and we anticipate further lapses in the 2013-2015 budget. And, increasing costs for employee travel due to higher gas prices and mileage rates and DOA financial services have also reduced the discretionary supplies and services funding available for IT purchases.

The agency estimates the cost of implementing a four-year replacement cycle for all hardware and software as well as moving to multi-function machines rather than stand-alone fax, scanners and copiers to be just under \$1 million annually.

Item	Year 1	Year 2
Servers	\$ 87,400	\$87,400
SW	\$ 387,600	\$393,900
Google Apps for Gov	\$ 46,900	\$46,900
Workstation	\$ 55,600	\$55,600
Remote Access	\$ 140,200	\$140,200
Network devices	\$ 8,500	\$8,500
DOA	\$ 30,000	\$30,000
Mopiers/Printers	\$ 157,100	\$157,100
	\$ 913,300	\$919,600

Staffing would be necessary to assist with network support and installation as well as data management. The annualized staffing costs are estimated at \$217,800 for 2.0 FTE.

<i>Classification</i>	<i>FTE</i>	<i>Hourly Rate</i>	<i>Annual Salary</i>	<i>Fringe</i>	<i>Supplies and Service</i>	<i>Total</i>
IS Data Services Specialist	1.00	\$35.00	\$72,800	\$30,500	\$5,600	\$108,900
IS Network Services Specialist	1.00	\$35.00	\$72,800	\$30,500	\$5,600	\$108,900
Total State Staff Costs	2.00		\$145,600	\$61,000	\$11,200	\$217,800

Information Technology Management Strategic Plan

This project was identified in the SPD IT Business Plan in March 2012 as an initiative to improve efficiency and allow remote access to the system.

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 providing mobile applications support and access as well as enhances service delivery by increasing network speed and availability within our offices.
- The project expands utilization of technology to improve efficiencies and reduce costs.
- Depending on the solution funded, the use of cloud computing and server virtualization would also be implemented.

The Return on Investment is 80% by 2017 in efficiency measures.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$1,968,500	2.00	\$2,016,800	2.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$1,968,500	2.00	\$2,016,800	2.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5005	IT Hardware/Software and Network Upgrades

	Expenditure items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$109,200	\$145,600
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$45,800	\$61,000
06	Supplies and Services	\$1,382,000	\$1,382,000
07	Permanent Property	\$421,900	\$428,200
08	Unalloted Reserve	\$0	\$0
09	Aids to Individuals Organizations	\$0	\$0
10	Local Assistance	\$0	\$0
11	One-time Financing	\$9,600	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$1,968,500	\$2,016,800
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	2.00	2.00
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 Hardware/Software and Network Upgrades			
01	Legal assistance				
	01 Program administration	\$1,968,500	\$2,016,800	2.00	2.00
	Legal assistance SubTotal	\$1,968,500	\$2,016,800	2.00	2.00
	IT Hardware/Software and Network Upgrades SubTotal	\$1,968,500	\$2,016,800	2.00	2.00
	Agency Total	\$1,968,500	\$2,016,800	2.00	2.00

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 Hardware/Software and Network Upgrades				
	GPR	S	\$1,968,500	\$2,016,800	2.00	2.00
	Total		\$1,968,500	\$2,016,800	2.00	2.00
Agency Total			\$1,968,500	\$2,016,800	2.00	2.00

Decision Item (DIN) - 5006

Decision Item (DIN) Title - Administrative Oversight in Regional Offices

NARRATIVE

The Public Defender Board requests 3.0 FTE in each year of the biennium and \$226,100 in FY14 and \$270,200 in FY15 to provide a regional non-attorney manager for each region throughout the state to manage non-attorney staff, provide cohesive administrative functions and be the main point of contact for all non-legal functions within a region.

**Office of the State Public Defender
2013-2015 Biennial Budget
Issue Paper**

Topic: DIN 5006 – Administrative Oversight in Regional Offices

Agency Request

The Office of the State Public Defender requests \$226,100 and 3.0 FTE in FY14 and \$270,200 and 3.0 FTE in FY15, for the addition of 3.0 FTE Public Defender Regional Office Management Program Supervisor (PDROMPS) positions and the reallocation of 3.0 FTE Program Assistant Supervisor positions.

The purpose of this request is to provide a regional non-attorney manager for each region throughout the state to manage non-attorney staff, provide cohesive administrative functions and be the main point of contact for all non-legal functions within a region.

Problem Description

The Office of the State Public Defender is divided into 12 regions, which include a total of 36 trial offices and two appellate offices, covering 72 counties. The current six PDROMPS are assigned to six of the larger regions. There is a need in the remaining six regions for these positions to perform the mandated administrative functions required of agency staff that are not directly related to the provision of legal service

Background

The SPD was authorized 6.0 FTE Public Defender Regional Office Management Program Supervisor positions in the 1995-1997 biennial budget (1995 WI Act 27). These positions were to provide support in the following areas: computer automation/redesign, personnel, policy and procedure development, operational budget and collections efforts. The SPD found that the PDROMPS were valuable and contributed to the quality of representation, allowing attorney managers and staff attorneys to focus on client representation. The Public Defender Regional Office Management Program Supervisors enable attorney managers and staff attorneys to achieve the high caseload goals established by the legislature.

Since 1995, the PDROMPS have increased their responsibilities and have become essential to the operations of the agency management. The PDROMPS perform the mandated administrative functions required of agency staff that are not directly related to the provision of legal services. These functions include (but are not limited to) supervision and training of non-attorney staff; liaison with

courts for appointment of counsel; act as agency experts regarding the determination of eligibility; liaison with administrative office and agency management; provide regional expertise and input to the agency IT personnel for data management development; special projects assigned by agency management; responsible for all file and records management at the regional level.

2009 Wisconsin Act 164 was enacted on March 15, 2010. Act 164 changed the criteria for determining eligibility for purposes of representation by the State Public Defender. Act 164 authorized FTE positions for the public defender board to be increased by 45.4 GPR positions on the effective date. With the increased staff in regional offices, and the increased caseload, there is a need for Regional Office Management Program Supervisors to perform the above duties. Since the PDRMPS were authorized in 1995, the number of PDRMPS positions has not increased while the complexities and administrative functions within the agency have increased considerably.

Calendar Year	Agency FTE Total	PDRMPS	Staff Caseload
1995	518	6	61,016
2012	580	6	82,778

Analysis

Staffing

The Office of the State Public Defender is divided into 12 regions, which include a total of 36 trial offices and two appellate offices, covering 72 counties. The current six PDRMPS are assigned to six of the larger regions. With the addition of six PDRMPS positions, the agency would have one PDRMPS assigned to each region. This would increase the efficiency of operations and consistency between the regions, the administrative services division and agency management. Also, the addition of these positions would make more time available to attorney managers and staff attorneys for client representation.

In the six regions currently without PDRMPS, five have Program Assistant Supervisors in one of the local offices. If the five PA Supervisors were reallocated to PDRMPS, and one new PDRMPS hired, the PA Supervisor positions could be reallocated to a lower level, such as legal secretaries, legal associates, etc. As an alternative, funds for Limited Term Employees would be requested to provide assistance with administrative services in the regions without PDRMPS positions.

The request would allow the agency to continue to comply with mandated record keeping, monitoring, reporting and other administrative mandates. While the additional staffing costs will not necessarily result in increased revenues given

our client base, they will result in more efficient and cost-effective agency operations.

Costs

Hiring of three new Public Defender Regional Office Management Program Supervisors and reallocation of three Program Assistant Supervisors would cost \$226,100 for annual salary and fringe benefits, and one time costs for new positions for FY14, and \$270,200 for annual salary and fringe benefits, and supplies and services for the new positions for FY15.

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$226,100	3.00	\$270,200	3.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$226,100	3.00	\$270,200	3.00

Prepared By:

Kathy Smith
Budget & Policy Analyst
608-267-0974

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5006	Administrative Oversight in Regional Offices

	Expenditure items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$127,300	\$169,700
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$51,000	\$68,000
06	Supplies and Services	\$32,500	\$32,500
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	\$15,300	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$226,100	\$270,200
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	3.00	3.00
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
	5006	Administrative Oversight in Regional Offices			
01	Legal assistance				
	03 Trial representation	\$226,100	\$270,200	3.00	3.00
	Legal assistance SubTotal	\$226,100	\$270,200	3.00	3.00
	Administrative Oversight in Regional Offices SubTotal	\$226,100	\$270,200	3.00	3.00
	Agency Total	\$226,100	\$270,200	3.00	3.00

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	5006	Administrative Oversight in Regional Offices				
	GPR	S	\$226,100	\$270,200	3.00	3.00
	Total		\$226,100	\$270,200	3.00	3.00
Agency Total			\$226,100	\$270,200	3.00	3.00

Decision Item (DIN) - 5007

Decision Item (DIN) Title - Administrative and Financial Span of Control

NARRATIVE

The Public Defender Board requests 4.0 FTE in each year of the biennium and \$202,000 in FY14 and \$224,500 in FY15 to increase administrative and financial oversight and span of control within the agency.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget

Issue Paper

Topic: DIN 5007 – Administrative and Financial Span of Control

Agency Request

The Office of the State Public Defender requests \$158,900 GPR and 3.0 GPR FTE and \$43,100 PR and 1.0 PR FTE in FY14 and \$178,200 GPR and 3.0 GPR FTE and \$46,300 PR and 1.0 PR FTE in FY15 to increase administrative oversight and span of control within the agency.

Problem Description

Administrative functions are not as functionally well-rounded as possible due to limited number of administrative staff for critical functions in human resources, fiscal services and training. Due to the current staffing levels, the agency struggles with ensuring span of control and fulfilling critical functions when staff are on leave or positions are vacant.

Background

The Office of the State Public Defender (SPD) currently has 579.85 FTE, which is supported by 7.80 FTE administrative staff. These administrative functions are in human resources, fiscal services and training to support the entire agency.

The fiscal staff are responsible for auditing, accounting, accounts payable, procurement, accounts receivable and fiscal reporting. The fiscal staff also are responsible for processing of all court transcript payments for over 300 state court reporters. The human resources unit is responsible for staffing and recruitment, classification and compensation, labor relations, affirmative action and civil rights compliance, health and safety and legal compliance with state and federal regulations (FMLA, FLSA, ADA, USERRA) for the agency. The training staff are responsible for providing and organizing training for all staff as well as private bar attorneys (approximately 1,200 attorneys) to ensure they are qualified to maintain their licenses through continued legal education (CLE) requirements.

Analysis

2009 Wisconsin Act 164 added 45 FTE to the agency, bringing the total FTE to 579.85, with no increase in support staff for fiscal services, training and human resources. Also, a review of other agency staffing shows a disparate number of administrative support staff positions for these critical functions. The FTE count of these agencies make them approximately the same size or smaller than SPD. The table below shows various comparisons of FTE unit, based on information

gathered from agency organizational charts posted on their websites in March 2012 and budget information. This comparison only reviewed those positions that oversee the entire department administration of finance, human resources and training and did not review administrative positions within a specific division of an agency.

Department	Agency FTE	HR Positions	Fiscal Positions	Training Positions
Children and Families	700.00	8.00	37.00	1.00
Justice	640.00	5.00	5.00	Unknown
Agriculture, Trade and Consumer Protection	592.89	4.00	8.00	1.00
Employee Trust Funds	260.20	3.00	Unknown	Unknown

Fiscal Services

Financial controls are the means by which an agency's resources are directed, monitored, and measured. Financial controls play an important role in ensuring the accuracy of reporting, eliminating fraud and protecting agency resources, both physical and intangible. These internal control procedures reduce process variation, leading to more predictable outcomes and allowing for reporting and trends analysis.

The SPD has 3.0 FTE responsible for agency-wide fiscal services. There are two other responsibility areas in the agency that use fiscal positions, but they are specialized and not considered within this analysis. The fiscal services unit processes all payments and revenues for the agency, which include all payments for 38 agency locations statewide. In FY11, the fiscal services unit processed 340,000 transactions, which is approximately 170,000 transactions per financial specialist, with one supervisor to approve all transactions.

The agency does not have the fiscal staff to move from simple processing and reporting to an efficient system to determine issues and resolve them before they become a problem. In a 2012 State Controller's Audit, it was found that the SPD does not reconcile balance sheet accounts, including those in fiscal and payroll. The audit found that the agency has to reconcile over \$125,000 in fiscal transactions and complete monthly reconciliations of balance sheets. The agency does not have fiscal staff time available to develop procedures and complete monthly reconciliations of all of our balance sheet accounts. Also, the agency does not have coverage for fiscal staff during leave or illness situations. This lack of coverage means that payables wait until the person is back to the office before being processed, which can cost the agency money due to prompt-pay requirements or overtime to pay bills within the allotted time frame of 30 days.

The agency is requesting 1.0 FTE accountant and 1.0 FTE financial specialist for a total of 2.0 FTE increase to the fiscal services unit. The financial specialist position would be utilized to provide processing of accounts payables and accounts receivables, which would increase efficiencies and provide necessary coverage of these functions from the current financial specialist staff. The accountant position would be utilized to assist in reconciling balance sheets, ensure all accounts are opened and closed according to state fiscal guidance, and to evaluate financial performance of the fiscal services unit. This position would also ensure that financial data is recorded, consolidated, and reported accurately, timely, and in compliance with Government Accepted Accounting Principles (GAAP) reporting requirements. These tasks are currently completed by a Financial Program Supervisor. This change would enable the supervisor to look for efficiencies, to analyze and review financial data, to prepare reports for both internal and external purposes, and to resolve a diverse range of problems consistent with an understanding of mission, vision, role, goals of the unit.

Human Resources

The human resources functions are centralized within the SPD and ultimately rest with the human resources director. In order to provide a reasonable level of human resources support and service to the agency's managers and employees, as well as meet the full scope of our state and federal responsibilities, it's recognized that sufficient staff is necessary in order to do so. The SPD currently has limited human resources staff available – less than 2.0 FTE to carry out all HR functions. The full scope of human resource services expected and required for a state agency include civil service exam development, recruitment, staffing, classification, compensation, employee relations, performance management, organizational analysis and consultation, and training. Within each one of these specialized areas are a multitude of programs and responsibilities. In each of these areas, there are state and federal laws, rules, policies and regulations that must be interpreted, applied and monitored. The SPD is the only agency of its size to function with less than 2 full time staff to meets it program needs and responsibilities. Agencies smaller than the SPD currently have more staff such as Military Affairs (4.0 FTE) and Employee Trust Funds (3.0 FTE). The SPD is more complex and diverse than many state agencies because of the 38 locations. Unlike other agencies the SPD has a substantial number of unclassified attorneys (351.20), who are recruited and hired by the agency without any assistance from the Office of State Employment Relations.

The agency is requesting 1.0 FTE Human Resources Specialist-Advanced to focus on the necessary personnel related functions. The addition of this position would enable the human resources director to focus on assisting supervisors and managers in assessing workplace situations and resolving problems, conducting proper investigations, developing polices and procedures, training on the policies and procedures, developing and advancing affirmative action concepts, employee health and safety, and legal compliance. More importantly, the addition of this position will provide back up to the current human resources

specialist so there would be continuous coverage and service when agency managers or employees need assistance.

Training Support

The Training Unit within the SPD develops, organizes and provides training to all of our staff as well as to the private bar attorneys – over 1,800 individuals per year. The Training Unit has 3.0 FTE to complete these training tasks as well as to provide the administrative support functions of implementing training – signing people up, ensuring payment, reserving hotel rooms, entering and managing contracts for lodging and food, etc... The tasks associated with implementing training are vital but tedious and time-consuming. These tasks take away from current training staff responsibilities and expertise, which limits their ability to develop more training, update current training or identify training needs through discussion with agency staff and management.

The agency is requesting 1.0 FTE Office Operations Associate, who would be responsible for the administrative tasks of the Training Unit. This position would work closely with the fiscal unit as well as the Assigned Counsel Division to ensure that administrative needs are met relating to payments and private bar attorney training. This position would also be responsible for tracking attorney CLE credits to ensure that they have been met for the year.

Cost Estimate

The agency estimates the total cost to be \$202,100 in FY14 and \$224,400 in FY15 to add these critical positions to the fiscal services unit, human resources and training unit. The cost of each position is identified in the table below.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$158,900	3.00	\$178,200	3.00
PR	\$43,100	1.00	\$46,300	1.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$202,000	4.00	\$224,500	4.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5007	Administrative and Financial Span of Control

	Expenditure items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$108,000	\$144,100
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$45,200	\$60,400
06	Supplies and Services	\$20,000	\$20,000
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	\$28,800	\$0
12	Debt Service	\$0	\$0
13		\$0	\$0
14		\$0	\$0
15		\$0	\$0
16		\$0	\$0
17	Total Cost	\$202,000	\$224,500
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	4.00	4.00
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
	5007	Administrative and Financial Span of Control			
01	Legal assistance				
	01 Program administration	\$158,900	\$178,200	3.00	3.00
	37 Conferences and training	\$43,100	\$46,300	1.00	1.00
	Legal assistance SubTotal	\$202,000	\$224,500	4.00	4.00
	Administrative and Financial Span of Control SubTotal	\$202,000	\$224,500	4.00	4.00
	Agency Total	\$202,000	\$224,500	4.00	4.00

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	5007	Administrative and Financial Span of Control				
	GPR	S	\$158,900	\$178,200	3.00	3.00
	PR	S	\$43,100	\$46,300	1.00	1.00
	Total		\$202,000	\$224,500	4.00	4.00
Agency Total			\$202,000	\$224,500	4.00	4.00

Decision Item (DIN) - 5008

Decision Item (DIN) Title - Bilingual Add-On Pay

NARRATIVE

The Public Defender Board requests \$55,400 in FY14 and \$73,800 in FY15 to provide for bilingual pay add-ons per the 2011-2013 Compensation Plan.

OFFICE OF THE STATE PUBLIC DEFENDER
2013-2015 Biennial Budget
Issue Paper

Topic: DIN 5008 – Bilingual Pay Add-On

Agency Request

The Office of the State Public Defender requests \$53,100 GPR and \$2,300 in PR in FY14 and \$70,800 GPR and \$3,000 in PR in FY15 to provide for bilingual pay add-ons per the 2011-2013 Compensation Plan.

Problem Description

The Office of the State Public Defender currently has six employees whose position descriptions require that they are bilingual. There also are currently eighteen employees whose position descriptions do not require that they are bilingual, but that spend approximately fifty-percent or more of their time using their bilingual skills. These employees are not currently paid the bilingual pay add-on per the 2011-2013 Compensation Plan.

Background

The 2011-2013 Compensation Plan, Section A – 4.28, states: “The appointing authority will have the sole discretion to provide an add-on not to exceed \$1.00 per hour to any employee whose position description requires the employee to speak or translate a language other than English.” During the past several biennia the agency budgets have been reduced through cuts or lapses resulting in the agency being unable to fund this add-on pay for bilingual positions.

Analysis

The State of Wisconsin has seen a significant increase in the Hispanic population in the Southeastern and South Central areas of the state, which has the potential to increase our need for interpreters to serve this population. According to the U.S. Census Bureau, the Hispanic population in Wisconsin was 3.6% of the state’s total population in the year 2000. As of 2010, it was 6.1%. The Bureau also reports that in 2010, 8.4% of the state’s total population lived in a home where a language other than English was spoken.

The Office of the Director of State Courts has set rates to pay interpreters at \$40 for the first hour and \$20 for each additional half hour for certified interpreters, and \$30 for the first hour and \$15 for each additional half hour for other qualified interpreters. Employing individuals with bilingual skills significantly reduces the costs for interpreters in these areas of the state.

The SPD currently has 24 bilingual staff working as attorneys, client account specialists and legal support staff. Bilingual staff increase the efficiency of client interactions, reduce scheduling conflicts/issues, and result in less stress for the client already in a stressful situation. These staff are also available to other SPD staff around the state to assist with the interpretation of documents and conference-call discussions for areas that do not have a readily available interpreter. All are performing the tasks required of their non-bilingual colleagues, in addition to the extra tasks involving their bilingual skills. At current funding levels, the agency is unable to compensate for the extra work they perform. The ability to provide this modest pay add-on is likely to help with retention of bilingual staff and with future ability to recruit bilingual staff.

Summary

In summary, the bilingual staff currently employed by the SPD provide an invaluable service. Their skills assist staff statewide with providing effective representation and with communication between staff and clients. Not only do their skills reduce stress to the clients and staff, they significantly reduce interpreter costs to the agency.

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$53,100	0.00	\$70,800	0.00
PR	\$2,300	0.00	\$3,000	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$55,400	0.00	\$73,800	0.00

Prepared By:

Kathy Smith

Budget & Policy Analyst

608-267-0974

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5008	Bilingual Add-On Pay

	Expenditure items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$39,000	\$52,000
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$16,400	\$21,800
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	\$55,400	\$73,800
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
	5008	Bilingual Add-On Pay			
01	Legal assistance				
	03 Trial representation	\$53,100	\$70,800	0.00	0.00
	35 Payments from clients; administrative costs	\$2,300	\$3,000	0.00	0.00
	Legal assistance SubTotal	\$55,400	\$73,800	0.00	0.00
	Bilingual Add-On Pay SubTotal	\$55,400	\$73,800	0.00	0.00
	Agency Total	\$55,400	\$73,800	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	5008	Bilingual Add-On Pay				
	GPR	S	\$53,100	\$70,800	0.00	0.00
	PR	S	\$2,300	\$3,000	0.00	0.00
	Total		\$55,400	\$73,800	0.00	0.00
Agency Total			\$55,400	\$73,800	0.00	0.00

Decision Item (DIN) - 5009

Decision Item (DIN) Title - Westlaw and Lexis Access

NARRATIVE

The Public Defender Board requests \$45,900 in FY14 and \$46,800 in FY15 to provide all attorneys access to Westlaw and Lexis systems. These tools are critical for attorneys to find statutes, cases, and other pertinent legal materials needed to represent their clients.

OFFICE OF THE STATE PUBLIC DEFENDER
2013-15 Biennial Budget
Issue Paper

Topic: DIN 5009 – Lexis and Westlaw Funding

Agency Request

The Office of the State Public Defender requests \$45,900 in FY14 and \$46,800 in FY15 for Lexis and Westlaw access for attorneys.

Problem Description

A computerized research service is essential for public defender attorneys to find statutes, cases, and other pertinent legal materials. To provide a complete hard copy library with all of the resources available through Lexis and Westlaw would cost approximately \$525,747 per library annually, for an agency cost of over \$19 million for the 38 Public Defender Offices statewide.

Background

Services such as Lexis and Westlaw provide searchable databases that are updated regularly to show changes to legal resources, for example, when statutes are amended and when cases are reversed on appeal. Computerized services also afford the flexibility to conduct research from home, from a laptop, from a smart phone and in other situations which does not require the researcher to be at a law library.

Other federal and state, governmental agencies and private firms provide computerized research for their attorneys, in recognition of the reality that there are fewer fully-maintained law libraries available. Computerized research is more cost-effective, as well as more up-to-date, than reliance upon traditional libraries to meet the needs of a workforce located in multiple locations.

Lexis services are utilized by attorney and non-attorney staff within the State Public Defender's Office (SPD). SPD investigators and clerical staff regularly use the services to search for updated client addresses. The Client Accounts and Verification Unit uses the services to assist in their efforts to collect attorney fees from public defender clients.

Analysis

To provide a complete hard copy library with all of the resources available through Lexis and Westlaw would cost an estimated \$525,747 annually. These costs would be for one library. The agency has 38 offices statewide. The expense for hard copy books is impossible for the SPD to absorb. The Lexis and

Westlaw options for electronic, searchable legal reference books are an excellent and cost savings option for the agency. The table below details the legal reference book required for attorneys and the cost per library. As identified below, the cost of one annotated legal reference series is as much as \$125,000.

Reference	Annual Amount
50 States Statutes Annotated	\$125,000
United States Code Annotated	\$10,794
All 50 States Cases	\$150,000
All Federal Cases	\$33,515
Supreme Court Cases	\$5,174
All 50 States Digest	\$150,000
Federal Digest	\$19,119
American Jurisprudence 2d	\$11,888
American Law Reports	\$10,791
Restatement of the Laws	\$5,483
Wisconsin Practice Series	\$1,513
Callaghan's Wisconsin Pleading & Practice with Forms	\$2,470

The ability to use Lexis and Westlaw resources also enables the agency to save funds by allowing access to items we would normally not purchase for each library but may purchase to support a specific case. For example, the agency would also have access to the Code of Federal Regulations, all 50 State Administrative Codes, over 600 Law Reviews and Journals.

The agency currently has a Lexis contract for 600 users in all offices, and a Westlaw contract for 30 users in the Appellate and Administration offices. User passwords cannot be shared, so each attorney and support staff are required to have their own. The agency proposes increasing the number of Westlaw users to 40 and ensuring the continuation of the Lexis access for staff.

Westlaw and Lexis are both very powerful legal research systems that are utilized by the state courts and prosecutors. Their coverage (cases and statutes, law reviews, treatises and other secondary sources) has overlap, and their features are generally comparable, but because they operate with different search algorithm criteria, each system turns up cases and citations that the other does not. Differences in secondary resources depend upon whether the company has acquired the right to include the resource in its database. Thomson Publications, West nutshells and hornbooks are available only through Westlaw. Martindale Hubbell and Matthew Bender Publications are only available on Lexis. Researchers who need to be thorough (appellate practitioners and agency counsel) should use both systems and conduct multiple searches.

Lexis has a great deal of non-legal data that is not available on Westlaw, which we use for financial eligibility verification, client collection efforts, and case related investigative purposes. Usually that means searching public records, or finding people with public records, but it is also used to find periodicals, such as large and small town newspaper articles to support a legal claim regarding pretrial publicity or juror bias.

Westlaw has the potential to offer very useful legal sources that we don't have access to in Lexis (like the LaFave treatises and older, superceded versions of statutes) but they are not available in the low-cost version that we currently have.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$45,900	0.00	\$46,800	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$45,900	0.00	\$46,800	0.00

Prepared by:

Kathy Smith, Budget & Policy Analyst
608-267-0974

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5009	Westlaw and Lexis Access

	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	\$45,900	\$46,800
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	\$45,900	\$46,800
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
	5009	Westlaw and Lexis Access			
01	Legal assistance				
	03 Trial representation	\$45,900	\$46,800	0.00	0.00
	Legal assistance SubTotal	\$45,900	\$46,800	0.00	0.00
	Westlaw and Lexis Access SubTotal	\$45,900	\$46,800	0.00	0.00
	Agency Total	\$45,900	\$46,800	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	5009	Westlaw and Lexis Access				
	GPR	S	\$45,900	\$46,800	0.00	0.00
	Total		\$45,900	\$46,800	0.00	0.00
Agency Total			\$45,900	\$46,800	0.00	0.00

Decision Item (DIN) - 5010

Decision Item (DIN) Title - IT eOPD Replacement or Reengineering

NARRATIVE

The Public Defender Board requests \$1,910,000 in FY14 and \$410,000 in FY15 to replace or reengineer the current case management system, eOPD, used by all staff within the agency.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget Issue Paper

Topic: DIN 5010 – eOPD Replacement or Reengineering

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$1,910,000 GPR in FY14 and \$410,000 GPR in FY15 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 maintenance or replacement of our case management system.

Background

The SPD has 579.85 FTE located 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 for network support, 1.0 developer and 1.0 Chief Information Officer. Position authority and funding for 6.0 FTE IT staff was provided in the 1999-2001 biennial budget, along with funds to implement an agency wide area network (WAN). In FY06, 1.0 IT FTE was eliminated to achieve mandated efficiency reductions. Another 1.0 FTE was eliminated in FY11.

The SPD implemented a web-based version of the management information system in 2002, e-OPD, as well as a web-based billing system for the private bar attorneys who are assigned SPD cases. When clients began to be assessed a payment fee for legal representation, a client accounts and verification module was implemented. Since eOPD was implemented, over 1.5 million cases have been entered in the system. This system is not sophisticated enough to ensure the veracity of the data which has resulted in discrepancies when performing conflict of interest checks, party matching issues, and multiple entries of the same client.

There exists a significant disparity between resources and funding of IT resources between the defense and prosecution. The existing eOPD case management system was developed, and the Wisconsin legislature has provided no additional funding for updates since its initial development. 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.

Analysis

The agency legacy system, eOPD - a case management system, needs significant overhaul to fix coding issues related to conflict of interest checks, management reports and case entry and management. The limited staffing within our IT unit does not allow time for identifying and fixing any of these significant issues. The IT staff have only the ability to maintain the system, but are limited in their ability to repair significant system issues or to implement operational enhancements and reporting. There are two options facing the agency:

1. Replace the case management system
2. Reengineer the current case management system

It is critical to the agency's success that one of these two options be implemented.

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, resulting in the existence of mature products in the market to solve particular business problems
- Vendors have the benefit of working with multiple agencies and law offices, which allows their products to more naturally gravitate to the industry best practices
- Vendors are in business 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 your peers on how to best make use of the application
- The "best and brightest" in an organization will likely move to the next project after this one. 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 US 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. Some options available include 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 \$1,500,000 in one-time costs and \$410,000 in ongoing annual costs. This estimate includes a per case entry fee per case, customization costs and conversion of current data.

Case Entry/Mgmt	Per Case	# of Cases	Total
	\$ 1.50	140,000	\$ 210,000
Customization	Hourly	# of Hours	Total
	\$ 100	2,000	\$ 200,000
TOTAL Ongoing			\$ 410,000
One-Time	Per Case	# of Cases	Total
Conversion	\$ 1.50	1,000,000	\$ 1,500,000
GRAND TOTAL			\$ 1,910,000

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 case management needs on an easily trained and implemented system and be compatible with CCAP data fields. 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 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. The key to successfully reengineering the legacy system requires 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 deficiencies within the system. These upgrades would require contractors to complete ongoing maintenance of the system. The agency estimates that 5,200 contract hours would be needed on an ongoing basis to complete the upgrades and enhancements to the system. These IT contractors would complete programming of the system to ensure that the needs of the agency were met. The use of contractors would reduce the ongoing costs of maintaining the system.

Contractors	Hourly Rate	Hours	Personnel Costs	Supplies and Service	Total
IS Professional Services	\$ 75.00	1,500	\$ 112,500	\$ 1,950	\$ 114,450
IS Professional Services	\$ 75.00	1,200	\$ 90,000	\$ 1,950	\$ 91,950
IS Professional Services	\$ 75.00	2,000	\$ 150,000	\$ 1,950	\$ 151,950
IS Professional Services	\$ 75.00	500	\$ 37,500	\$ 1,950	\$ 39,450
Total Contractor Costs			\$ 390,000	\$ 7,800	\$ 397,800

Conclusion

Replacing a legacy system will have a major impact on the agency, but also represents an opportunity to correct or redefine essential business processes. The antiquated architecture of a legacy system can limit the ability to improve system capabilities, the associated business processes, and staff communications. Replacement is often necessary to strengthen operational capabilities and meet increasing staff and client expectations.

The agency requests that the option of a full system replacement would be the best option for ongoing success due to the difficulty in recruiting for IT professionals with the required skills to maintain the system and data.

Information Technology Management Strategic Plan

This project was identified in the SPD IT Business Plan in March 2012 as an initiative to improve efficiency and allow remote access to the system.

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.

The Return on Investment is 151% in efficiency savings.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$1,910,000	0.00	\$410,000	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$1,910,000	0.00	\$410,000	0.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5010	IT eOPD Replacement or Reengineering

	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	\$1,910,000	\$410,000
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	\$1,910,000	\$410,000
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 eOPD Replacement or Reengineering			
01	Legal assistance				
	01 Program administration	\$1,910,000	\$410,000	0.00	0.00
	Legal assistance SubTotal	\$1,910,000	\$410,000	0.00	0.00
	IT eOPD Replacement or Reengineering SubTotal	\$1,910,000	\$410,000	0.00	0.00
	Agency Total	\$1,910,000	\$410,000	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 eOPD Replacement or Reengineering				
	GPR	S	\$1,910,000	\$410,000	0.00	0.00
	Total		\$1,910,000	\$410,000	0.00	0.00
Agency Total			\$1,910,000	\$410,000	0.00	0.00

Decision Item (DIN) - 5011

Decision Item (DIN) Title - IT E-Records Management

NARRATIVE

The Public Defender Board requests \$355,000 in FY14 and \$180,000 in FY15 to implement an e-records management system for the Public Defender Offices statewide.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget

Issue Paper

Topic: DIN 5011 – Agency Content Management System for E-Records Management

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender, \$355,000 GPR in FY14 and \$180,000 GPR in FY15 to implement an e-records management system for the Public Defender Offices statewide.

Problem Description

The pending implementation of electronically filed criminal court documents has identified weaknesses in our IT abilities as it relates to the storage and management of electronic records. The agency needs to respond to this new court document strategy to develop, submit and receive court documents.

Background

The SPD has 579.85 FTE located 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 for network support, 1.0 developer and 1.0 Chief Information Officer. Position authority and funding for 6.0 FTE IT staff was provided in the 1999-2001 biennial budget, along with funds to implement an agency wide area network (WAN). In FY06, 1.0 IT FTE was eliminated to achieve mandated efficiency reductions. Another 1.0 FTE was eliminated in FY11. There is no budget specifically identified for maintenance and enhancements for our case management system.

The Wisconsin court system is working to implement, by July 2015, a legal filing of court documents via an electronic method. Also, the agency has the capability to receive and/or store court transcripts and discovery electronically. The agency staff and private bar attorneys also request discovery documents to assist with their clients' cases. The agency needs to develop and implement an e-records management program to store, scan, index and manage all electronic media and facilitate electronic data sharing requirements (discovery, court reports/transcripts, etc...).

Analysis

The agency spends over \$1.3 million dollars on transcript payments to court reporters. The inability to save and store these documents electronically may result in paying for the same transcript multiple times as various staff and private

bar attorneys request transcripts or are unable to locate the transcript, if the case file was archived in long-term storage. The current case management system does not allow for electronic storage of the documents or the identification of transcripts to identify where they are located.

Optical Character Recognition

Optical character recognition (OCR), is the mechanical or electronic conversion of scanned images of handwritten, typewritten or printed text into machine-encoded text. It is widely used as a form of data entry from original paper data sources, including documents, sales receipts, mail, and various printed records. It is a common method of digitizing printed texts so that they can be electronically searched, stored more compactly, displayed on-line, and used in machine processes.

For many document-input tasks, OCR is the most cost-effective and speedy method available. And each year, the technology frees acres of storage space once given over to file cabinets and boxes full of paper documents. Before OCR can be used, the source material must be scanned using an optical scanner (and sometimes a specialized circuit board in the PC) to read in the page as a bitmap (a pattern of dots). Software to recognize the images is also required. Transcripts would be easy to scan and store with an OCR system since they are very static in their format and are typed (attributes that reduce input errors).

It is our understanding that both the Department of Children and Families and the Department of Workforce Development use an OCR or similar electronic indexing and scanning system for unemployment and collection records. The SPD could utilize an optical scanner and record management software to reduce any duplicative payments for transcripts that may occur as a result of the agency not being able to verify if a transcript was requested at a prior time as well as to reduce paper within the office.

We estimate the cost of an OCR scanner to be \$25,000 and the software needed to read the scanned image could be as low as \$500 annually per licensed user. We estimate that 300 staff would require the software for a total \$150,000 per year for licensing. We estimate that the department would need at least one extra large storage server at an estimated \$75,000 for ongoing data storage. The total estimated cost of this e-records management system would be \$250,000 over the biennium.

Discovery Storage

The agency receives court discovery documents in various formats that cause electronic storage and IT issues for the agency. Municipalities, police departments and county sheriff's offices use different technology to record the investigatory meetings and confessions of individuals. When the SPD requests this discovery, we are unable, in many cases, to easily view the material because we either do not have the proprietary software or the size of the document is too

large for our network, causing a systematic delay for computer access for all office personnel. These issues cause undue delay on our networks and for our attorneys while they prepare a case. The electronic size of these files can be significant, so a storage solution to accept large electronic files will be a requirement. We estimate that we would need one extra large storage server to adequately store the discovery. The estimated cost is \$75,000 for the server.

Cost Estimate

The estimated cost to implement an electronic records management system for transcripts and discovery is \$175,000 in one-time equipment costs and \$150,000 annually for software licensing and access. We would also require a contractor to manage the electronic records and network needs. We estimate that it would take no more than 500 hours per year for an estimated contractor cost of \$30,000 annually.

Information Technology Management Strategic Plan

This project was identified in the SPD IT Business Plan in March 2012 as an initiative to improve efficiency and to control and reduce overall agency costs.

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 would allow for an internal customer service delivery option that is not available within the agency today.
- The project expands utilization of technology to improve efficiencies and reduce costs. The addition of an integrated e-records management system would also allow for mobile technology accessibility, cloud computing and the use of server virtualization.

The Return on Investment is 31% by 2017.

Summary

	<u>FY 14</u>		<u>FY 15</u>	
	<u>Funding</u>	<u>FTE</u>	<u>Funding</u>	<u>FTE</u>
GPR	\$355,000	0.00	\$180,000	0.00
PR	\$0	0.00	\$0	0.00
FED	\$0	0.00	\$0	0.00
SEG	\$0	0.00	\$0	0.00
TOTAL	\$355,000	0.00	\$180,000	0.00

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

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5011	IT E-Records Management

	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	\$30,000	\$30,000
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$150,000	\$150,000
07	Permanent Property	\$175,000	\$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	\$355,000	\$180,000
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
	5011	IT E-Records Management			
01	Legal assistance				
	01 Program administration	\$355,000	\$180,000	0.00	0.00
	Legal assistance SubTotal	\$355,000	\$180,000	0.00	0.00
	IT E-Records Management SubTotal	\$355,000	\$180,000	0.00	0.00
	Agency Total	\$355,000	\$180,000	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	5011	IT E-Records Management				
	GPR	S	\$355,000	\$180,000	0.00	0.00
	Total		\$355,000	\$180,000	0.00	0.00
Agency Total			\$355,000	\$180,000	0.00	0.00

Decision Item (DIN) - 5012

Decision Item (DIN) Title - Private Bar Travel Restrictions

NARRATIVE

The Public Defender Board requests a modification to statutory language under §977.08(4m)(c) related to travel for assigned counsel.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget Statutory Language Change

Topic: STAT §977.08(4m)(c) – Exemption from Private Bar Travel Restrictions

Agency Request

The Office of the State Public Defender requests a modification to statutory language under §977.08(4m)(c) related to travel for assigned counsel.

Background and Analysis

§977.08(4m)(c), Wis. Stats. sets the rate of reimbursement at which a private attorney assigned a case under ch. 977, Wis. Stats. As a result, some attorneys receive reimbursement because the trip is outside the county where their primary office is located, which may be five miles; however, another attorney traveling less than 30 miles one way within their county cannot be reimbursed for their travel time to attend court or interview witnesses. This causes a disparity based on a geographic designation that unfairly penalizes attorneys in large counties from qualifying for travel reimbursements while providing legal representation.

Current Language

The lack of private bar attorneys in non-metropolitan areas of the state requires attorneys to travel great distances or travel outside of their county to visit clients or make court appearances in an effort to provide competent legal representation for indigent clients under Ch. 977, Wis Stats.

§977.08(4m)(c) 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 29, 1995, private local attorneys shall be paid \$40 per hour for time spent related to a case, excluding travel, and a \$25 per hour for time spent in travel related to a case if any portion of the trip is outside the county in which the attorney's principal office is located or if the trip requires traveling a distance of more than 30 miles, one way, from the attorney's principal office.

Suggested Language

To remove the county and one-way distinction for applying travel status for private attorneys the modification of the following statutory language would be most effective:

Modify §977.08(4m)(c) 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 29, 1995, private local attorneys shall be paid \$40 per hour for time spent related to a case, excluding travel, and a \$25 per hour for time spent in travel related to a case if any portion of the trip is outside the county in which the attorney's principal office is located or if the trip requires traveling a distance of more than 30 miles, one way, from the attorney's principal office.

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

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

2013-2015 Biennial Budget Statutory Language Change

Topic: STAT §977.02(3)(b) and §977.02(3)(c) – Income Eligibility Indexing

Agency Request

The Office of the State Public Defender requests a change to §977.02(3)(b) and §977.02(3)(c).

Background and Analysis

2009 Wisconsin Act 164 updated the eligibility standards to qualify for public defender representation. Prior to Act 164, income eligibility limits were set at the defunct 1987 Aid to Families with Dependent Children guidelines. Over time, this created a gap whereby defendants did not statutorily qualify for public defender representation but were still deemed by the court to be unable to afford an adequate defense. This forced counties to pay for appointed counsel at a total cost to counties of \$7 million a year. Act 164 transferred over 12,000 cases in Fiscal Year 2012 that would otherwise have received county appointed defense counsel.

Current Language

Sections 3559d and 3559h of 2011 Wisconsin Act 32, the biennial budget, removed a provision from Act 164 which indexed the income eligibility guidelines to 115% of the federal poverty line. While the short term effect is negligible, over time the lack of an indexing provision for the income eligibility limit will create a similar gap between public defender and county appointed representation 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).~~ gross income exceeds the income limitations in s. 49.145(3)(b) ~~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.~~

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

Decision Item (DIN) - 5014

Decision Item (DIN) Title - Physical Presence in a Court

NARRATIVE

The Public Defender Board requests §885.60(2)(a) and §885.60(2)(d) be amended to expand the statutory protection for a defendant to be physically present in a courtroom.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget Statutory Language Change

Topic: STAT §885.60(2)(a) and §885.60(2)(d) – Physical Presence in Court

Agency Request

The Office of the State Public Defender requests §885.60(2)(a) and §885.60(2)(d) be amended to expand the statutory protection for a defendant to be physically present in a courtroom.

Background and Analysis

The intended purpose in making this statutory change in the 2011-2013 budget was to encourage the use of video conferencing for some court proceedings. Expected savings in not transporting defendants for court appearances is offset by the investment in technology by counties to meet statutory and Supreme Court guidelines. Additional costs are realized when technology is not available or is not operating and court operations are delayed.

§885.60 was developed as a consensus policy by the Supreme Court through the Policy and Procedure Advisory Committee's Subcommittee on Videoconferencing. Some of the practical problems affecting clients and their defense counsel include additional travel time to be with their client in remote locations and the need to choose whether to be with their client or to be in court with the judge and opposing counsel.

Returning the language in §885.60 as it existed prior to 2011 Wisconsin Act 32 does not preclude the use of video conferencing technology, but will preserve the right of the defendant to appear in court.

Current Language

Sections 3492r and 3492w of 2011 Wisconsin Act 32 amended the language in §885.60(2)(a) and §885.60(2)(d) to limit the types of court proceedings at which a defendant is able to be physically present for court proceedings.

§885.60 (2)(a) Except as may otherwise be provided by law, a defendant in a criminal case and a respondent in a matter listed in sub. (1) is entitled to be physically present in the courtroom at all trials and sentencing or dispositional hearings.

§885.60 (2)(d) If an objection is made by the defendant or respondent in a matter listed in sub. (1), regarding any proceeding where he or she is entitled to be physically present in the courtroom, the court shall sustain the objection. For all other proceedings in a matter listed in sub. (1), the court shall determine the objection in the exercise of its discretion under the criteria set forth in s. 885.56.

Suggested Language

§885.60 (2)(a) Except as may otherwise be provided by law, a defendant in a criminal case and a respondent in a matter listed in sub. (1) is entitled to be physically present in the courtroom at all critical stages of the proceedings, including evidentiary hearings, trials or fact-finding hearings, plea hearings at which a plea of guilty or no contest, or an admission, will be offered, and sentencing or dispositional hearings.

§885.60 (2)(d) If an objection is made by the defendant or respondent in a matter listed in sub. (1), ~~regarding any proceeding where he or she is entitled to be physically present in the courtroom,~~ the court shall sustain the objection. ~~For all other proceedings in a matter listed in sub. (1), the court shall determine the objection in the exercise of its discretion under the criteria set forth in s. 885.56.~~

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

Decision Item (DIN) - 5015

Decision Item (DIN) Title - Just Cause Employment Protection

NARRATIVE

The Public Defender Board requests adding Assistant State Public Defender to the just cause employment protection under §230.34(1)(a) and §230.34(1)(ar).

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget Statutory Language Change

Topic: STAT §230.34(1)(a) and §230.34(1)(ar) – Just Cause Employment Protection

Agency Request

The Office of the State Public Defender requests a change to §230.34(1)(a) and §230.34(1)(ar).

Background and Analysis

Both assistant district attorneys and assistant state public defender attorneys are statutorily defined as unclassified staff. When assistant district attorneys were reassigned from being employees of the county to being employees of the state, they were granted just cause protection under §230.34.

At the time, assistant state public defenders had the same just cause protections provided as a term of employment subject to collective bargaining.

The Wisconsin State Public Defender's Association opted not to re-certify as a bargaining unit under the terms of 2011 Wisconsin Act 10. The just cause protections previously included in the employment contract were included as part of the Compensation Plan approved by the Legislature in 2011.

Current Language

Under Ch. 230.34, assistant district attorneys with 12 continuous months of service may be removed, suspended without pay, discharged, reduced in base pay, or demoted only for just cause. Assistant state public defender attorneys are not covered by the just cause protections.

§230.34(1)(a) An employee with permanent status in class or an employee who has served with the state as an assistant district attorney for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

§230.34(1)(ar) Paragraphs (a) and (am) apply to all employees with permanent status in class in the classified service and all employees who have served with the state as an assistant district attorney for a continuous period of 12 months or more.

Suggested Language

§230.34(1)(a) An employee with permanent status in class or an employee who has served with the state as an assistant district attorney or assistant state public defender attorney for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

§230.34(1)(ar) Paragraphs (a) and (am) apply to all employees with permanent status in class in the classified service and all employees who have served with the state as an assistant district attorney or assistant state public defender attorney for a continuous period of 12 months or more.

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

Decision Item (DIN) - 5016

Decision Item (DIN) Title - Payments for Medical Records

NARRATIVE

The Public Defender Board requests the creation of a new statute under s. 146.83 to allow a "person authorized by the patient" to include an attorney appointed to represent the patient under s. 977.08.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget Statutory Language Change

Topic: STAT §146.83(1f)(cm) – Exemption from Payments for Medical Records

Agency Request

The Office of the State Public Defender requests new statutory language under §146.83.

Background and Analysis

§146.83(1f)(cm), Wis. Stats. authorizes a reduced fee for health care providers to provide one set of copies of a patient's health care records if the patient is eligible for medical assistance. Defendants who are eligible for medical assistance are by statutory definition eligible for SPD representation. Medical records companies often deny the reduced fee copy if requested by an assistant state public defender rather than directly by their client, and have also denied the reduced fee if the client has requested the record directly and asked that it be mailed to their attorney.

Current Language

The cost in time for the defense counsel and court, as well as the complication in having a client, particularly if they are incarcerated, request the record and physically transmit it to their attorney, decreases the effectiveness in providing an adequate defense and decreased the efficiency of the criminal justice system.

§146.83(1f)(cm) Except as provided in sub. (1g), a health care provider may not charge a patient or a person authorized by the patient more than 25 percent of the applicable fee under sub. (3f) for providing one set of copies of a patient's health care records under this section if the patient is eligible for medical assistance, as defined in s. 49.43 (8). A health care provider may require that a patient or person authorized by the patient provide proof that the patient is eligible for medical assistance before providing copies under this paragraph at a reduced charge. A health care provider may charge 100 percent of the applicable fee under sub. (3f) for providing a 2nd or additional set of copies of patient health care records for a patient who is eligible for medical assistance.

Suggested Language

To ensure that this fee is removed only for attorneys representing indigent clients facing criminal charges, creation of the following statutory language would be most effective:

Create §146.83(1b): Notwithstanding s. 146.81(5), in this section, a “person authorized by the patient” includes an attorney appointed to represent the patient under s. 977.08.

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

Decision Item (DIN) - 5017

Decision Item (DIN) Title - Maximum Fees for Copies

NARRATIVE

The Public Defender Board requests modification of language in § 977.02(9) to set maximum payment amounts for copies of materials that are subject to discovery in cases under § 977.08.

OFFICE OF THE STATE PUBLIC DEFENDER

2013-2015 Biennial Budget Statutory Language Change

Topic: STAT §977.02(9) – Set maximum fees for copies

Agency Request

The Office of the State Public Defender requests modification of language in § 977.02(9) to include payment for copies other than for discovery materials.

Background and Analysis

§ 977.02(9), Wis. Stats. authorizes the Public Defender Board to promulgate rules to establish the maximum fees that the State Public Defender may pay for copies of materials that are subject to discovery in cases under § 977.08. This does not allow for other copies required to provide legal representation such as copies for medical records, court files, probation and parole, school records, prison records and health services non-medical records. Many of these records are from governmental agencies, which charge significant amounts for record retrieval and copy. Private vendors charge copy fees as well as up to a \$20 retrieval fee regardless of how many pages are requested.

Current Language

§ 977.02(9) Promulgate rules establishing the maximum fees that the state public defender may pay for copies, in any format, of materials that are subject to discovery in cases in which the state public defender or counsel assigned under s. 977.08 provides legal representation. In promulgating the rules under this subsection, the board shall consider information regarding the actual, necessary, and direct cost of producing copies of materials that are subject to discovery.

Suggested Language

To ensure that legal representation is not hindered due to the cost of receiving records and copies for indigent clients facing criminal charges, modification of the following statutory language would be most effective:

Modify §977.02(9) Promulgate rules establishing the maximum fees that the state public defender may pay for copies or retrieval of copies, in any format, of materials ~~that are subject to discovery~~ requested from any governmental unit, governmental or profit or not-for-profit entity in cases in which the state public defender or counsel assigned under s. 977.08 provides legal representation. In promulgating the rules under this subsection, the board shall consider information regarding the actual,

necessary, and direct cost of producing copies of materials that are subject to discovery.

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

Decision Item (DIN) - 9900

Decision Item (DIN) Title - B-9 Fix - allocation to subprogram

NARRATIVE

File maintenance fix.
