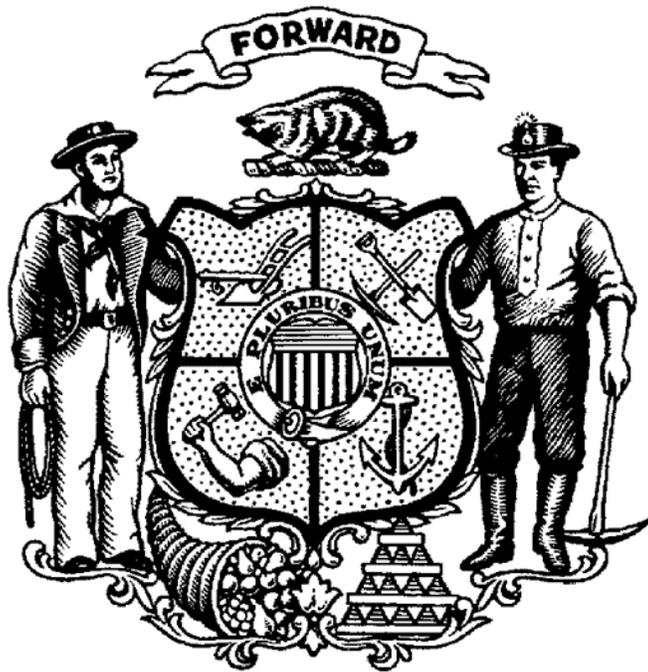


State of Wisconsin

Public Defender Board



Agency Budget Request

2023 – 2025 Biennium

September 15, 2022

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Wisconsin State Public Defender

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Kelli S. Thompson
State Public Defender

Jon Padgham
Deputy State
Public Defender

September 15, 2022

Mr. Brian Pahnke
Wisconsin Department of Administration
101 E. Wilson St., 10th floor
Madison, WI 53703

Dear Mr. Pahnke,

Attached, please find the 2023-2025 biennial budget request for the Office of the State Public Defender (SPD).

This budget request is significant but necessary to ensure that the State of Wisconsin is meeting its constitutional requirement under the 6th Amendment to ensure that counsel is provided to those who cannot afford it.

The general focus of this request is to address compensation and workload issues that drive recruitment and retention of staff and private bar. Without adequate resources, delays have a significant and negative impact on the accused, alleged victims, and public safety in general.

By and large, the work of the SPD is driven by external factors. Whether it is the number of cases being charged, the way cases proceed through the court system, or resource imbalances within the criminal legal system, delays risk constitutional violations and fiscal impact to counties. Ensuring that the rights of those accused of having committed a crime are preserved is a core constitutional responsibility of the government. In a country founded on the rule of law, the ability to protect these rights for one person ensures that these rights are protected for everyone.

We look forward to the opportunity to discuss this proposal with the State Budget Office and the administration.

Sincerely,

Kelli Thompson
State Public Defender

AGENCY DESCRIPTION

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

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

The office was created by statute in 1965, became an independent agency in 1977, and gradually began to represent indigent clients at the trial level with both in-house and private bar attorneys. The office consists of the Trial, Appellate, Administrative and Assigned Counsel divisions and the Office of Training and Development.

MISSION

The mission of the agency is to zealously represent clients, protect constitutional rights and advocate for an effective and fair criminal justice system. Our commitment is to treat our clients with dignity and compassion.

PROGRAMS, GOALS, OBJECTIVES ACTIVITIES

Program 1: Legal Assistance

Goal: Continuously improve services to clients.

Objective/Activity: Fair treatment and representation of clients.

Goal: 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: Continuously improve administrative management.

Objective/Activity: Maximize resources to serve eligible clients.

PERFORMANCE MEASURES

2021 AND 2022 GOALS AND ACTUALS

Prog. No.	Performance Measure	Goal 2021	Actual 2021	Goal 2022	Actual 2022
1.	Court grants attorney withdrawals at client request as a percentage of total trial cases.	2%	2.3%	2%	2.0%
1.	Number of educational contacts with children and youth.	2,100	1,750	2,000	1,825
1.	Number of qualified attorneys certified to take cases who accept at least 12 cases per year.	800	529	800	521
1.	Number of cases with greatest risk of penalties handled by staff attorneys.	1,450	1,086	1,450	1,048

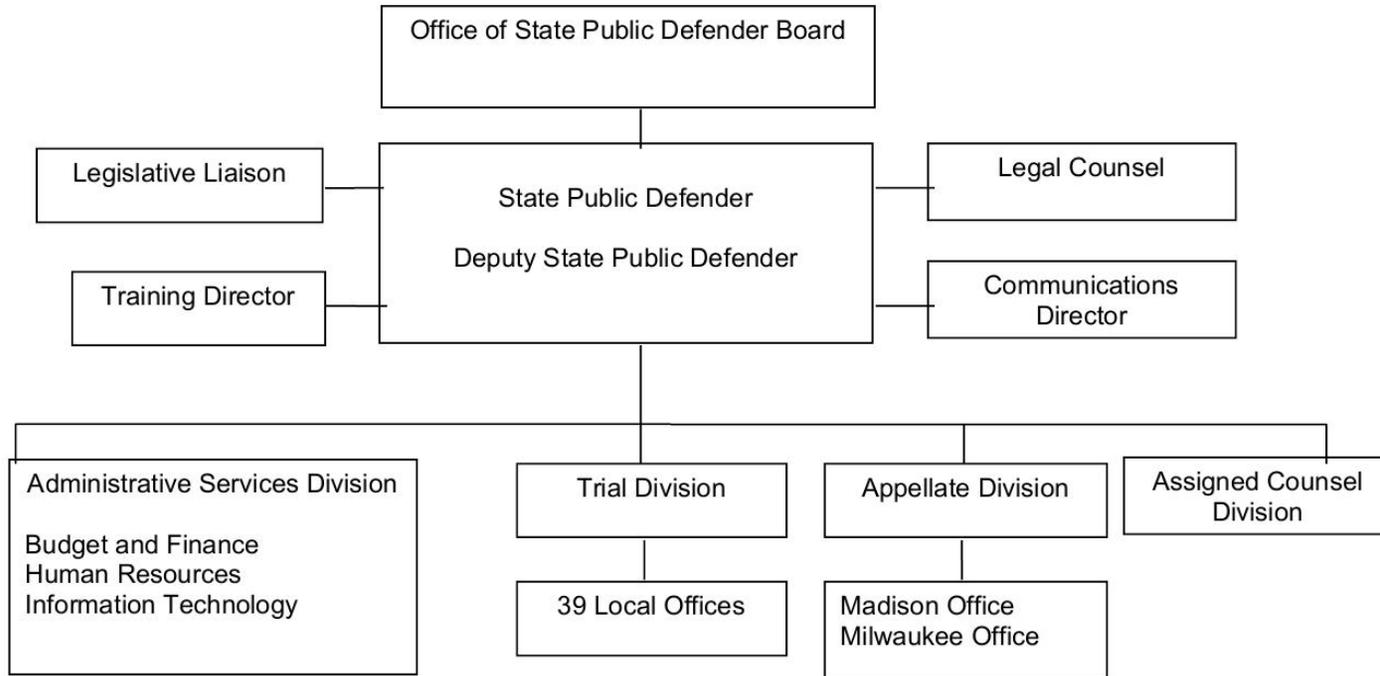
Note: Based on fiscal year.

2023, 2024 AND 2025 GOALS

Prog. No.	Performance Measure	Goal 2023	Goal 2024	Goal 2025
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.	2,000	2,000	2,000
1.	Number of qualified attorneys certified to take cases who accept at least 12 cases per year.	700	700	700
1.	Number of cases with greatest risk of penalties handled by staff attorneys.	1,400	1,400	1,400

Note: Based on fiscal year.

Office of the State Public Defender



Agency Total by Fund Source

Public Defender Board

2325 Biennial

		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	\$94,135,388	\$113,150,900	\$133,273,100	\$134,963,400	681.85	681.85	\$226,301,800	\$268,236,500	\$41,934,700	18.50%
Total		\$94,135,388	\$113,150,900	\$133,273,100	\$134,963,400	681.85	681.85	\$226,301,800	\$268,236,500	\$41,934,700	18.50%
PR	S	\$688,593	\$1,505,200	\$1,473,400	\$1,473,400	5.00	5.00	\$3,010,400	\$2,946,800	(\$63,600)	-2.10%
Total		\$688,593	\$1,505,200	\$1,473,400	\$1,473,400	5.00	5.00	\$3,010,400	\$2,946,800	(\$63,600)	-2.10%
PR Federal	S	\$0	\$0	\$0	\$0	63.00	0.00	\$0	\$0	\$0	0.00%
Total		\$0	\$0	\$0	\$0	63.00	0.00	\$0	\$0	\$0	0.00%
Grand Total		\$94,823,981	\$114,656,100	\$134,746,500	\$136,436,800	749.85	686.85	\$229,312,200	\$271,183,300	\$41,871,100	18.30%

Agency Total by Program

Public Defender Board

2325 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 %
01 Legal assistance										
Non Federal										
GPR	\$94,135,388	\$113,150,900	\$133,273,100	\$134,963,400	681.85	681.85	\$226,301,800	\$268,236,500	\$41,934,700	18.53%
S	\$94,135,388	\$113,150,900	\$133,273,100	\$134,963,400	681.85	681.85	\$226,301,800	\$268,236,500	\$41,934,700	18.53%
PR	\$688,593	\$1,505,200	\$1,473,400	\$1,473,400	5.00	5.00	\$3,010,400	\$2,946,800	(\$63,600)	-2.11%
S	\$688,593	\$1,505,200	\$1,473,400	\$1,473,400	5.00	5.00	\$3,010,400	\$2,946,800	(\$63,600)	-2.11%
Total - Non Federal	\$94,823,981	\$114,656,100	\$134,746,500	\$136,436,800	686.85	686.85	\$229,312,200	\$271,183,300	\$41,871,100	18.26%
S	\$94,823,981	\$114,656,100	\$134,746,500	\$136,436,800	686.85	686.85	\$229,312,200	\$271,183,300	\$41,871,100	18.26%
Federal										
PR	\$0	\$0	\$0	\$0	63.00	0.00	\$0	\$0	\$0	0.00%
S	\$0	\$0	\$0	\$0	63.00	0.00	\$0	\$0	\$0	0.00%
Total - Federal	\$0	\$0	\$0	\$0	63.00	0.00	\$0	\$0	\$0	0.00%
S	\$0	\$0	\$0	\$0	63.00	0.00	\$0	\$0	\$0	0.00%
PGM 01 Total	\$94,823,981	\$114,656,100	\$134,746,500	\$136,436,800	749.85	686.85	\$229,312,200	\$271,183,300	\$41,871,100	18.26%
GPR	\$94,135,388	\$113,150,900	\$133,273,100	\$134,963,400	681.85	681.85	\$226,301,800	\$268,236,500	\$41,934,700	18.53%

Agency Total by Program

Public Defender Board

2325 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 %	
01 Legal assistance											
S	\$94,135,388	\$113,150,900	\$133,273,100	\$134,963,400	681.85	681.85	\$226,301,800	\$268,236,500	\$41,934,700	18.53%	
PR	\$688,593	\$1,505,200	\$1,473,400	\$1,473,400	68.00	5.00	\$3,010,400	\$2,946,800	(\$63,600)	-2.11%	
S	\$688,593	\$1,505,200	\$1,473,400	\$1,473,400	68.00	5.00	\$3,010,400	\$2,946,800	(\$63,600)	-2.11%	
TOTAL 01	\$94,823,981	\$114,656,100	\$134,746,500	\$136,436,800	749.85	686.85	\$229,312,200	\$271,183,300	\$41,871,100	18.26%	
S	\$94,823,981	\$114,656,100	\$134,746,500	\$136,436,800	749.85	686.85	\$229,312,200	\$271,183,300	\$41,871,100	18.26%	
AGENCY TOTAL	\$94,823,981	\$114,656,100	\$134,746,500	\$136,436,800	749.85	686.85	\$229,312,200	\$271,183,300	\$41,871,100	18.26%	

Agency Total by Decision Item

Public Defender Board

2325 Biennial Budget

Decision Item	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
2000 Adjusted Base Funding Level	\$114,656,100	\$114,656,100	682.85	682.85
3001 Turnover Reduction	(\$1,354,900)	(\$1,354,900)	0.00	0.00
3002 Removal of Noncontinuing Elements from the Base	\$0	\$0	0.00	(63.00)
3003 Full Funding of Continuing Position Salaries and Fringe Benefits	(\$659,000)	(\$659,000)	0.00	0.00
3007 Overtime	\$222,200	\$222,200	0.00	0.00
3011 Minor Transfers Within the Same Alpha Appropriation	\$0	\$0	0.00	0.00
4002 Expert Witness Services Cost to Continue	\$686,900	\$686,900	0.00	0.00
4003 Transcripts, Interpreters, and Discovery Cost to Continue	\$401,600	\$401,600	0.00	0.00
4010 Restore Turnover	\$1,354,900	\$1,354,900	0.00	0.00
4502 Charging and Sentencing Alternatives	(\$2,363,900)	(\$4,727,700)	0.00	0.00
5001 Private Bar Rate Increase	\$12,235,100	\$12,235,100	0.00	0.00
5002 Staff Compensation and Workload	\$9,067,500	\$13,121,600	67.00	67.00
5018 Tuition Reimbursement/Loan Assistance	\$500,000	\$500,000	0.00	0.00
5019 Pilot CHIPS Extension	\$0	\$0	0.00	0.00
TOTAL	\$134,746,500	\$136,436,800	749.85	686.85

GPR Earned

2325 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance
DATE	09/15/2022	

Revenue	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$0	\$5,600	\$0	\$0
Misc. Revenue	\$5,600	\$5,500	\$5,500	\$5,500
TOTAL	\$5,600	\$11,100	\$5,500	\$5,500

Program Revenue

2325 Biennial Budget

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

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$74,300	\$73,700	\$72,700	\$75,700
Misc. Sales	\$0	\$1,000	\$3,000	\$3,000
Total Revenue	\$74,300	\$74,700	\$75,700	\$78,700
Expenditures	\$600	\$2,000	\$0	\$0
Total Expenditures	\$600	\$2,000	\$0	\$0
Closing Balance	\$73,700	\$72,700	\$75,700	\$78,700

Program Revenue

2325 Biennial Budget

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

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$163,600	\$181,300	\$250,300	\$450,300
Training Course Fee	\$68,800	\$120,000	\$200,000	\$200,000
Total Revenue	\$232,400	\$301,300	\$450,300	\$650,300
Expenditures	\$51,000	\$51,000	\$0	\$0
Total Expenditures	\$51,000	\$51,000	\$0	\$0
Closing Balance	\$181,400	\$250,300	\$450,300	\$650,300

Program Revenue

2325 Biennial Budget

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

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$0	\$0	\$0	\$369,500
Client Payments	\$358,100	\$363,800	\$369,500	\$375,400
Total Revenue	\$358,100	\$363,800	\$369,500	\$744,900
Expenditures	\$358,100	\$363,800	\$0	\$0
Total Expenditures	\$358,100	\$363,800	\$0	\$0
Closing Balance	\$0	\$0	\$369,500	\$744,900

Program Revenue

2325 Biennial Budget

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

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$3,216,700	\$3,924,400	\$4,724,700	\$5,636,700
Client Payments	\$233,800	\$300,000	\$300,000	\$300,000
DOA Contracted Collections	\$256,000	\$280,000	\$280,000	\$280,000
Court Ordered and Collected Atty Fees for Juveniles	\$306,100	\$310,000	\$310,000	\$310,000
Court Ordered and Collected Atty Fees for Commitment Cases	\$18,100	\$15,000	\$15,000	\$15,000
Court Ordered and Collected Atty Fees for Adult Cases	\$5,400	\$7,000	\$7,000	\$7,000
Total Revenue	\$4,036,100	\$4,836,400	\$5,636,700	\$6,548,700
Expenditures	\$111,700	\$111,700	\$0	\$0
Total Expenditures	\$111,700	\$111,700	\$0	\$0
Closing Balance	\$3,924,400	\$4,724,700	\$5,636,700	\$6,548,700

Program Revenue

2325 Biennial Budget

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

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	\$0	\$0	\$0	\$224,600
Misc. Revenue	\$218,800	\$221,700	\$224,600	\$227,600
Total Revenue	\$218,800	\$221,700	\$224,600	\$452,200
Expenditures	\$218,800	\$221,700	\$0	\$0
Total Expenditures	\$218,800	\$221,700	\$0	\$0
Closing Balance	\$0	\$0	\$224,600	\$452,200

Program Revenue

2325 Biennial Budget

	CODES	TITLES
DEPARTMENT	550	Public Defender Board
PROGRAM	01	Legal assistance
SUBPROGRAM		
NUMERIC APPROPRIATION	41	Federal aid

Revenue and Expenditures	Prior Year Actuals	Base Year Estimate	1st Year Estimate	2nd Year Estimate
Opening Balance	(\$25,900)	(\$586,800)	(\$475,200)	\$0
Grant Funding	\$487,900	\$1,000,000	\$887,800	\$0
Total Revenue	\$462,000	\$413,200	\$412,600	\$0
Expenditures	\$1,048,800	\$888,400	\$0	\$0
Total Expenditures	\$1,048,800	\$888,400	\$0	\$0
Closing Balance	(\$586,800)	(\$475,200)	\$412,600	\$0

Decision Item (DIN) - 2000

Decision Item (DIN) Title - Adjusted Base Funding Level

NARRATIVE

Adjusted Base Funding Level

Decision Item by Line

2325 Biennial Budget

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	\$45,465,000	\$45,465,000
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$122,800	\$122,800
05	Fringe Benefits	\$17,587,900	\$17,587,900
06	Supplies and Services	\$51,480,400	\$51,480,400
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$114,656,100	\$114,656,100
18	Project Positions Authorized	63.00	63.00
19	Classified Positions Authorized	239.15	239.15
20	Unclassified Positions Authorized	380.70	380.70

Decision Item by Numeric

2325 Biennial Budget

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 operation	\$3,112,600	\$3,112,600	18.40	18.40
	02 Appellate representation	\$5,241,600	\$5,241,600	44.35	44.35
	03 Trial representation	\$60,906,300	\$60,906,300	546.85	546.85
	04 Private bar invstgtr reimburse	\$41,648,400	\$41,648,400	0.00	0.00
	05 Private bar invstgtr pay admin	\$735,100	\$735,100	5.25	5.25
	06 Transcripts discovery intrprtr	\$1,506,900	\$1,506,900	0.00	0.00
	35 Payments from clients; administrative costs	\$367,200	\$367,200	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	\$225,000	\$225,000	2.00	2.00
	41 Federal aid	\$0	\$0	63.00	63.00
	Legal assistance Sub Total	\$114,656,100	\$114,656,100	682.85	682.85
	Adjusted Base Funding Level Sub Total	\$114,656,100	\$114,656,100	682.85	682.85
	Agency Total	\$114,656,100	\$114,656,100	682.85	682.85

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
2000 Adjusted Base Funding Level					
GPR	S	\$113,150,900	\$113,150,900	614.85	614.85
PR	S	\$1,505,200	\$1,505,200	5.00	5.00
PR Federal	S	\$0	\$0	63.00	63.00
Adjusted Base Funding Level Total		\$114,656,100	\$114,656,100	682.85	682.85
Agency Total		\$114,656,100	\$114,656,100	682.85	682.85

Decision Item (DIN) - 3001

Decision Item (DIN) Title - Turnover Reduction

NARRATIVE

Standard Budget Adjustment - Turnover Reduction

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	3001	Turnover Reduction

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	(\$1,354,900)	(\$1,354,900)
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unallotted 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	(\$1,354,900)	(\$1,354,900)
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

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	3001 Turnover Reduction				
01	Legal assistance				
	03 Trial representation	(\$1,354,900)	(\$1,354,900)	0.00	0.00
	Legal assistance Sub Total	(\$1,354,900)	(\$1,354,900)	0.00	0.00
	Turnover Reduction Sub Total	(\$1,354,900)	(\$1,354,900)	0.00	0.00
	Agency Total	(\$1,354,900)	(\$1,354,900)	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
3001 Turnover Reduction					
GPR	S	(\$1,354,900)	(\$1,354,900)	0.00	0.00
Turnover Reduction Total		(\$1,354,900)	(\$1,354,900)	0.00	0.00
Agency Total		(\$1,354,900)	(\$1,354,900)	0.00	0.00

Decision Item (DIN) - 3002

Decision Item (DIN) Title - Removal of Noncontinuing Elements from the Base

NARRATIVE

Standard Budget Adjustment - Removal of Noncontinuing Elements from the Base

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	3002	Removal of Noncontinuing Elements from the Base

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$0	\$0
18	Project Positions Authorized	0.00	(63.00)
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	3002 Removal of Noncontinuing Elements from the Base				
01	Legal assistance				
	41 Federal aid	\$0	\$0	0.00	(63.00)
	Legal assistance Sub Total	\$0	\$0	0.00	(63.00)
	Removal of Noncontinuing Elements from the Base Sub Total	\$0	\$0	0.00	(63.00)
	Agency Total	\$0	\$0	0.00	(63.00)

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
3002 Removal of Noncontinuing Elements from the Base					
PR Federal	S	\$0	\$0	0.00	(63.00)
Removal of Noncontinuing Elements from the Base Total		\$0	\$0	0.00	(63.00)
Agency Total		\$0	\$0	0.00	(63.00)

Decision Item (DIN) - 3003

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

NARRATIVE

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

Decision Item by Line

2325 Biennial Budget

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	(\$946,100)	(\$946,100)
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$287,100	\$287,100
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unallotted 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	(\$659,000)	(\$659,000)
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

2325 Biennial Budget

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 operation	(\$24,700)	(\$24,700)	0.00	0.00
	02 Appellate representation	\$75,100	\$75,100	0.00	0.00
	03 Trial representation	(\$670,800)	(\$670,800)	0.00	0.00
	05 Private bar invstgtr pay admin	(\$3,900)	(\$3,900)	0.00	0.00
	35 Payments from clients; administrative costs	(\$42,500)	(\$42,500)	0.00	0.00
	37 Conferences and training	\$7,800	\$7,800	0.00	0.00
	Legal assistance Sub Total	(\$659,000)	(\$659,000)	0.00	0.00
	Full Funding of Continuing Position Salaries and Fringe Benefits Sub Total	(\$659,000)	(\$659,000)	0.00	0.00
	Agency Total	(\$659,000)	(\$659,000)	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
3003 Full Funding of Continuing Position Salaries and Fringe Benefits					
GPR	S	(\$624,300)	(\$624,300)	0.00	0.00
PR	S	(\$34,700)	(\$34,700)	0.00	0.00
Full Funding of Continuing Position Salaries and Fringe Benefits Total		(\$659,000)	(\$659,000)	0.00	0.00
Agency Total		(\$659,000)	(\$659,000)	0.00	0.00

Decision Item (DIN) - 3007

Decision Item (DIN) Title - Overtime

NARRATIVE

Standard Budget Adjustment - Overtime

Decision Item by Line

2325 Biennial Budget

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	\$192,700	\$192,700
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$29,500	\$29,500
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$222,200	\$222,200
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

2325 Biennial Budget

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 operation	\$9,900	\$9,900	0.00	0.00
	02 Appellate representation	\$26,300	\$26,300	0.00	0.00
	03 Trial representation	\$172,300	\$172,300	0.00	0.00
	05 Private bar invstgtr pay admin	\$10,800	\$10,800	0.00	0.00
	35 Payments from clients; administrative costs	\$2,900	\$2,900	0.00	0.00
	Legal assistance Sub Total	\$222,200	\$222,200	0.00	0.00
	Overtime Sub Total	\$222,200	\$222,200	0.00	0.00
	Agency Total	\$222,200	\$222,200	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
3007 Overtime					
GPR	S	\$219,300	\$219,300	0.00	0.00
PR	S	\$2,900	\$2,900	0.00	0.00
Overtime Total		\$222,200	\$222,200	0.00	0.00
Agency Total		\$222,200	\$222,200	0.00	0.00

Decision Item (DIN) - 3011

Decision Item (DIN) Title - Minor Transfers Within the Same Alpha Appropriation

NARRATIVE

Standard Budget Adjustment - Minor Transfers Within the Same Alpha Appropriation

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	3011	Minor Transfers Within the Same Alpha Appropriation

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$0	\$0
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	3011 Minor Transfers Within the Same Alpha Appropriation				
01	Legal assistance				
	02 Appellate representation	\$173,600	\$173,600	1.00	1.00
	03 Trial representation	(\$173,600)	(\$173,600)	(1.00)	(1.00)
	Legal assistance Sub Total	\$0	\$0	0.00	0.00
	Minor Transfers Within the Same Alpha Appropriation Sub Total	\$0	\$0	0.00	0.00
	Agency Total	\$0	\$0	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
3011 Minor Transfers Within the Same Alpha Appropriation					
GPR	S	\$0	\$0	0.00	0.00
Minor Transfers Within the Same Alpha Appropriation Total		\$0	\$0	0.00	0.00
Agency Total		\$0	\$0	0.00	0.00

Decision Item (DIN) - 4002

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

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), a cost-to-continue funding adjustment of \$686,900 GPR in FY 24 and \$686,900 GPR in FY 25 for the agency to contract with expert witnesses, to reflect current needs.

OFFICE OF THE STATE PUBLIC DEFENDER
2023-2025 Biennial Budget
Issue Paper

Topic: DIN 4002 – Expert Witness Services Cost-to-Continue

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), a cost-to-continue funding adjustment of \$686,900 GPR in FY 24 and \$686,900 GPR in FY 25 for the agency to contract with expert witnesses, to reflect current needs.

Problem Description

The complexity of cases has increased significantly, causing an increased cost for expert witnesses, psychological evaluations and risk assessments that cannot be absorbed within the existing appropriation. Expert witnesses are necessary to provide an adequate defense. The increased complexity in areas such as physical and digital evidence has had a significant impact on expert witness costs.

Background

The SPD received funding in 2013 Wisconsin Act 20 (2013-2015 biennial budget act) for expert witnesses in the amount of \$337,600 annually to provide the additional resources to retain expert witnesses for sexually violent person commitment cases under Chapter 980 for which the SPD provides representation.

Analysis

The SPD provides representation to indigent persons in criminal and certain civil commitment cases. In the course of representation, they often require experts in various professions to assist with the defense and to advocate for alternatives to confinement. These include psychologists, psychiatrists, Shaken Baby Syndrome/Abusive Head Trauma experts (SBS/AHT), DNA experts, or computer analysts, who provide written reports and/or testify in court. In criminal and commitment proceedings, the State of Wisconsin is the SPD's institutional adversary, thus although some employees in other state agencies might have the skills or knowledge to perform many of these functions, it could be an inherent conflict of interest to utilize them as expert witnesses for the defense.

Expert costs are paid for by the supply and service budgets of the Trial and Appellate divisions. In the 2013-15 biennium, the agency received an additional \$337,600 annually to provide the additional resources to retain expert witnesses for sexually violent person commitment cases under Chapter 980 for which the SPD provides representation.

The cost of expert witnesses has increased by 311.3% since FY10.

Fiscal Year	Appellate	Trial	TOTAL
FY10	\$6,575	\$322,505	\$329,080
FY11	\$14,840	\$333,399	\$348,239
FY12	\$13,069	\$400,020	\$413,089
FY13	\$14,822	\$458,770	\$473,592
FY14	\$24,068	\$573,468	\$597,536
FY15	\$13,787	\$706,437	\$720,224
FY16	\$13,306	\$854,299	\$867,605
FY17	\$23,941	\$1,072,491	\$1,096,431
FY18	\$25,738	\$1,039,795	\$1,065,533
FY19	\$22,361	\$1,079,161	\$1,101,522
FY20	\$21,763	\$1,022,116	\$1,043,878
FY21	\$21,913	\$1,002,614	\$1,024,527

The increased cost of expert witnesses can no longer be absorbed by the agency. The shortfall in funding for expert witnesses in fiscal year 2022 was \$686,900.

The Public Defender Board requests that additional funding be provided for expert witnesses as follows:

Funding received in 2013 Wisconsin Act 20	\$ 337,600
FY21 actual expenditures	<u>\$ 1,024,527</u>
Annual increase needed	\$ 686,900

Summary

	FY24		FY25	
	Funding	FTE	Funding	FTE
GPR	\$686,900	0.00	\$686,900	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$686,900	0.00	\$686,900	0.00

Prepared by:
 Briar Oehler, Accountant
 608-267-7734

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	4002	Expert Witness Services Cost to Continue

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$686,900	\$686,900
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$686,900	\$686,900
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

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4002 Expert Witness Services Cost to Continue				
01	Legal assistance				
	03 Trial representation	\$686,900	\$686,900	0.00	0.00
	Legal assistance Sub Total	\$686,900	\$686,900	0.00	0.00
	Expert Witness Services Cost to Continue Sub Total	\$686,900	\$686,900	0.00	0.00
	Agency Total	\$686,900	\$686,900	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
4002 Expert Witness Services Cost to Continue					
GPR	S	\$686,900	\$686,900	0.00	0.00
Expert Witness Services Cost to Continue Total		\$686,900	\$686,900	0.00	0.00
Agency Total		\$686,900	\$686,900	0.00	0.00

Decision Item (DIN) - 4003

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

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), increased funding of \$401,600 GPR in FY 24 and \$401,600 GPR in FY 25, per year for the payments for transcripts, discovery, and interpreters, to reflect current needs.

**Office of the State Public Defender
2023-2025 Biennial Budget
Issue Paper**

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

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), increased funding of \$401,600 GPR in FY 24 and \$401,600 GPR in FY 25, per year for the payments for transcripts, discovery, and interpreters, to reflect current needs.

Problem Description

The State Public Defender (SPD) is responsible for the cost of transcripts of court proceedings that SPD staff and private bar attorneys request from the courts, for copying costs incurred by counties and other parties to provide SPD attorneys with discovery materials, and for the cost of interpreters needed for attorney-client communication and other case preparation (the courts are responsible for the costs of in-court interpreters). Total funding and expenditure/commitment levels each year since FY05 are shown below:

Fiscal year	Appropriated	Actual Expenditures	Shortfall
FY05	\$1,339,100	\$1,966,968	(\$627,868)
FY06	\$1,339,100	\$1,761,832	(\$422,732)
FY07	\$1,339,100	\$1,644,047	(\$304,947)
FY08	\$1,339,100	\$1,775,960	(\$436,860)
FY09	\$1,339,100	\$1,844,328	(\$505,228)
FY10	\$1,325,700	\$1,963,371	(\$637,671)
FY11	\$1,325,700	\$2,084,068	(\$758,368)
FY12	\$1,325,700	\$2,098,427	(\$772,727)
FY13	\$1,325,700	\$2,130,700	(\$805,000)
FY14	\$1,325,700	\$2,279,247	(\$953,547)
FY15	\$1,325,700	\$2,429,151	(\$1,103,451)
FY16	\$1,325,700	\$2,406,052	(\$1,080,352)
FY17	\$1,325,700	\$2,120,700	(\$795,000)
FY18	\$1,407,500	\$2,240,545	(\$833,045)
FY19	\$1,407,500	\$2,050,248	(\$642,748)
FY20	\$1,485,100	\$1,900,048	(\$414,948)
FY21	\$1,506,900	\$1,815,895	(\$308,995)
FY22	\$1,506,900	\$1,908,523	(\$401,623)

The amounts appropriated were sufficient in the 1999-01 biennium. Since then, this appropriation was subjected to a five percent across the board "efficiency reduction" in 2001 Wisconsin Act 16, the 2001-2003 biennial budget act. However, as discussed below, these expenses are largely driven by the volume and complexity of SPD appointments.

While the SPD received a funding increase of \$163,600 in the 2017-19 budget and \$155,200 in the 2019-21 budget, those increases have not kept pace with the increase expenses.

Background

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

At the end of each fiscal year beginning in FY02, significant delays in payments to court reporters, interpreters, and counties were avoided by transferring available expenditure authority from the salary, fringe benefit, and LTE budget lines. Although these transfers prevented funding deficits and payment backlogs from being compounded each year, they did not increase the base level of funding going forward and did not allow the agency to utilize the money in other areas of significant need, such as providing experts or information technology upgrades. The SPD had a structural deficit in this appropriation of approximately \$401,623 at the end of FY22.

Transcript Payments

The total expenses for transcripts in FY22 was \$1,076,001. The demand for transcripts is a function of the number of cases appointed, their case type and complexity, the number and duration of court appearances and trials, and the number of cases in which defendants seek post-conviction (appellate) representation from SPD. The SPD has attempted to mitigate the effect of the increased expenditures for transcripts by urging staff attorneys to carefully determine when transcripts are needed and when they are not. Transcript expenditures are reviewed on a monthly basis, and higher than average expenditure levels are further reviewed to determine which individual attorneys are incurring high transcript costs and why.

Transcript requests have become more numerous and complex as more items have become electronic such as video surveillance, audio and video recordings and interrogations. Audio and video files take significant time to transcribe since people sometimes are talking at the same time or the quality of the audio and video increases

the difficulty of an accurate transcription. Also, courts increasingly require attorneys to produce transcripts of recordings before the recordings are played in open court.

Discovery Payments

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

The SPD was initially provided \$60,000 in the 1995 Budget Adjustment Bill for discovery payments. The appropriation was increased to \$150,000 in the 1999-2001 biennial budget, but was then reduced to \$141,100 by across-the-board reduction in the 2001-03 and 2009-11 biennial budget acts.

Discovery payments from this appropriation are driven by the number of cases appointed. In FY22, the SPD incurred costs totaling \$759,252 for discovery.

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

Further, 2005 Wis Act 60 provides that custodial interrogations of adult felony defendants should be recorded and admitted into evidence at trial, and that, barring good cause not to do so, the judge may instruct the jury that they may consider the absence of a recording when weighing the evidence. These recordings are subject to discovery. The SPD experienced an eight-fold increase in payments for video recordings between FY05 and FY14 (the last year in which SPD was able to track this expense separately) from \$12,184 to \$146,707. Squad-car recordings and security-camera recordings also contribute to the increased costs in this appropriation. As noted above, recordings also entail transcription costs because of the need to present the court with an accurate record of the recorded statement, interrogation, or other conversation. In a four month period in one office, the SPD received approximately 7000 hours of video evidence. Oftentimes, a transcript of the video is required for clarity in the court record.

Interpreter Payments

Even before the SPD's \$10,000 budget in FY01 for interpreter payments was permanently reduced by the five percent across-the-board efficiency reduction, the funding was insufficient to meet the growing need for interpreters. The number of defendants who are not able to communicate effectively with their attorney without such assistance has grown. In FY22, the SPD incurred costs totaling \$73,269.92 for interpreters. The agency has attempted to mitigate costs for interpreters through language line services; however, that option is not always available when meetings or interviews occur in jails, courthouses, and other non-office settings.

In addition to the need to communicate directly with the client, SPD staff often need to interview potential witnesses who require an interpreter.

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

Analysis

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

Full funding of transcript payments	\$ 1,076,001 annually
Full funding of discovery payments	\$ 759,252 annually
Full funding of interpreter payments	<u>\$ 73,270 annually</u>
Total Projected Annual Need in 2017-19	\$ 1,908,523 annually
Apn. 106 Adjusted 2023 Base Funding	<u>\$ 1,506,900</u>
Annual increase needed	\$ 401,623

Summary

	FY24		FY25	
	Funding	FTE	Funding	FTE
GPR	\$401,600	0.00	\$401,600	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$401,600	0.00	\$401,600	0.00

Prepared by:
Briar Oehler, Accountant
608-267-7734

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	4003	Transcripts, Interpreters, and Discovery Cost to Continue

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$401,600	\$401,600
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$401,600	\$401,600
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

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4003 Transcripts, Interpreters, and Discovery Cost to Continue				
01	Legal assistance				
	06 Transcripts discovery intrprtr	\$401,600	\$401,600	0.00	0.00
	Legal assistance Sub Total	\$401,600	\$401,600	0.00	0.00
	Transcripts, Interpreters, and Discovery Cost to Continue Sub Total	\$401,600	\$401,600	0.00	0.00
	Agency Total	\$401,600	\$401,600	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
4003 Transcripts, Interpreters, and Discovery Cost to Continue					
GPR	S	\$401,600	\$401,600	0.00	0.00
Transcripts, Interpreters, and Discovery Cost to Continue Total		\$401,600	\$401,600	0.00	0.00
Agency Total		\$401,600	\$401,600	0.00	0.00

Decision Item (DIN) - 4010

Decision Item (DIN) Title - Restore Turnover

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$1,354,900 GPR in both years to restore the turnover reduction in DIN 3001. Historically, SPD has been exempted from taking the turnover due to constitutional requirements. The Constitution and U.S. Supreme Court case law requires that SPD provides representation for all financially eligible individuals accused of a crime. In Wisconsin's system, representation is provided by both staff attorneys by private bar attorneys. As staff attorneys are able to handle a higher volume of cases than private bar attorneys, not filling staff attorney positions will result in higher costs to provide representation. From an overall fiscal standpoint, it is more cost effective to fill all currently authorized staff attorney positions.

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	4010	Restore Turnover

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$1,354,900	\$1,354,900
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$1,354,900	\$1,354,900
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

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	4010 Restore Turnover				
01	Legal assistance				
	03 Trial representation	\$1,354,900	\$1,354,900	0.00	0.00
	Legal assistance Sub Total	\$1,354,900	\$1,354,900	0.00	0.00
	Restore Turnover Sub Total	\$1,354,900	\$1,354,900	0.00	0.00
	Agency Total	\$1,354,900	\$1,354,900	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
4010 Restore Turnover					
GPR	S	\$1,354,900	\$1,354,900	0.00	0.00
Restore Turnover Total		\$1,354,900	\$1,354,900	0.00	0.00
Agency Total		\$1,354,900	\$1,354,900	0.00	0.00

Decision Item (DIN) - 4502

Decision Item (DIN) Title - Charging and Sentencing Alternatives

NARRATIVE

The Public Defender Board, for the Office of the State Public Defender (SPD), proposes statutory changes to the charging process for certain offenses (juvenile and adult) to reduce the number of cases in which the SPD must appoint an attorney. This request would save \$2,363,900 GPR in FY24 and \$4,727,700 GPR in FY25 in agency-wide savings. There would also be collateral savings for other criminal justice system entities.

OFFICE OF THE STATE PUBLIC DEFENDER
2023-2025 Biennial Budget

Issue Paper

Topic: DIN 4502 – Charging and Sentencing Alternatives

Agency Request

The Public Defender Board, for the Office of the State Public Defender (SPD), proposes statutory changes to the charging process for certain offenses (juvenile and adult) to reduce the number of cases in which the SPD must appoint an attorney. This request would save \$2,363,900 GPR in FY24 and \$4,727,700 GPR in FY25 in agency-wide savings. There would also be collateral savings for other criminal justice system entities.

Problem Description

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

Background

The SPD has the statutory responsibility to appoint counsel for financially eligible defendants in criminal and juvenile delinquency cases, sec. 977.05(4)(i), Stats. The SPD does not provide representation to persons whose charges are classified as non-criminal forfeitures (such as city and county ordinance cases). Thus, when cases are diverted from the formal criminal and delinquency court processes without the issuance of formal charges, the SPD will have fewer cases in which it is required to appoint counsel. Also, to the extent that remaining SPD cases are charged as misdemeanors, rather than as felonies, the average cost per case will decrease resulting in incremental savings.

Analysis

The right to counsel in a criminal proceeding is contained in both chapter 977 of the Wisconsin statutes and in the United States and Wisconsin Constitutions. Therefore, the SPD cannot unilaterally reduce the number of cases in which the agency appoints counsel. The SPD's caseload and associated costs are largely determined by the number and nature of criminal proceedings filed in state court. This proposal advances a potential strategy for reducing the number of SPD cases by amending specified criminal statutes. Criminal charges identified in this request include both adult and juvenile charges.

Provide a Diversion/Restitution Alternative

The SPD requests a change to the procedure for charging an adult or a juvenile with first offense misdemeanor violations of s. 947.01, Disorderly Conduct 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 this misdemeanor statutes, the District Attorney would be required to offer the alleged first offender the opportunity to either 1) complete a diversion program by satisfying all conditions of the program, including restitution when applicable; or 2) pay a forfeiture under a stipulated finding of guilt of a non-criminal ordinance violation.

SPD anticipates that most defendants would accept either the diversion option or agree to pay a forfeiture, given that the alternative would be to face a criminal charge. SPD would not appoint an attorney unless the defendant turned down the options for the non-criminal disposition.

Defendants in these cases are currently eligible for representation by the State Public Defender's office because a conviction for any 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 motion or following an acquittal at trial), reduced to a conforming ordinance, or addressed with one or more alternatives to incarceration.

This proposal would also provide benefits to other justice agencies, such as district attorneys and courts, because more resources could be focused on prosecution and adjudication of more-serious allegations.

We estimate that approximately half of the SPD's 4,896 disorderly conduct cases could have been diverted if this proposed provision had been in effect during FY22 (the numbers represent the numbers of SPD appointments for these case types during the fiscal year). Based on cost per case averages, this option could reduce SPD costs by \$1,271,300.

Reclassify Offenses

Many counties and municipalities issue non-criminal citations 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.

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

In FY22, the SPD represented clients in 5,951 related to possession of drugs. If one-third of these cases would not have qualified for representation due to the suggested reclassification to ordinances, then the SPD would have saved \$869,000.

SPD also recommends eliminating the felony penalty for bail jumping under s. 946.49 and allowing for a misdemeanor penalty regardless of the original criminal charge, which is still pending regardless of the additional bail jumping charge. In FY22, SPD provided representation in 2,376 felony bail jumping cases. While this is not likely to have a significant impact specifically for SPD as these individuals were already receiving representation prior to the bail jumping charge being added, it will have significant impacts for prosecutors, the courts, jails, and prisons. It is possible that a small savings of approximately \$106,300 may be realized by SPD through a reduction of the incarceration risk presented by a felony bail jumping charge.

As a number of statewide and county-based justice work groups study best practices, a consensus is emerging that incarceration is less effective than other responses to criminal conduct, especially when the defendant does not pose a high degree of risk to the community. The statutory changes in this proposal would apply to individuals charged with nonviolent offenses, and the decrease in potential incarceration would be consistent with evidence-based practices.

Summary

As it would take 6 months to complete cases charged under the current system, SPD estimates savings of half the costs listed above in Fiscal Year 2024 and the full annual savings in Fiscal Year 2025. These cases are represented by staff attorneys as well as private bar attorneys.

	FY24		FY25	
	Funding	FTE	Funding	FTE
GPR	\$(2,363,900)	0.00	\$(4,727,700)	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$(2,363,900)	0.00	\$(4,727,700)	0.00

Prepared by:

Adam Plotkin, Legislative Liaison
608-264-8572

Decision Item by Line

2325 Biennial Budget

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	(\$2,363,900)	(\$4,727,700)
07	Permanent Property	\$0	\$0
08	Unallotted 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	(\$2,363,900)	(\$4,727,700)
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

2325 Biennial Budget

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 invstgtr reimburse	(\$2,363,900)	(\$4,727,700)	0.00	0.00
	Legal assistance Sub Total	(\$2,363,900)	(\$4,727,700)	0.00	0.00
	Charging and Sentencing Alternatives Sub Total	(\$2,363,900)	(\$4,727,700)	0.00	0.00
	Agency Total	(\$2,363,900)	(\$4,727,700)	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
4502 Charging and Sentencing Alternatives					
GPR	S	(\$2,363,900)	(\$4,727,700)	0.00	0.00
Charging and Sentencing Alternatives Total		(\$2,363,900)	(\$4,727,700)	0.00	0.00
Agency Total		(\$2,363,900)	(\$4,727,700)	0.00	0.00

Decision Item (DIN) - 5001

Decision Item (DIN) Title - Private Bar Rate Increase

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$12, 235,100 GPR in FY24 and \$12,235,100 GPR in FY25 to increase the \$70 per hour reimbursement rate for private bar attorneys to a rate of \$125 per hour for in-court work, \$100 per hour for out-of-court work, and \$50 per hour for travel. The new rates would apply to cases assigned on or after July 1, 2023. The SPD requests modification of the statutory reimbursement rate for in-court and out-of-court work in Wis. Stats. s. 977.08 (4m).

OFFICE OF THE STATE PUBLIC DEFENDER
2023-2025 Biennial Budget

Issue Paper

Topic: DIN 5001 – Private Bar Rate Increase

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$12, 235,100 GPR in FY24 and \$12,235,100 GPR in FY25 to increase the \$70 per hour reimbursement rate for private bar attorneys to a rate of \$125 per hour for in-court work, \$100 per hour for out-of-court work, and \$50 per hour for travel. The new rates would apply to cases assigned on or after July 1, 2023. The SPD requests modification of the statutory reimbursement rate for in-court and out-of-court work in Wis. Stats. s. 977.08 (4m).

Problem Description

The hourly rate paid to the private bar attorneys who accept appointments to provide legal representation in Public Defender cases is impeding the SPD's ability to consistently and reliably recruit and retain private bar attorneys who accept appointments and provide effective representation. It also has a direct impact on county expenses through increased jail costs, costs for appointment of counsel at county expense, and costs related to delays in the court process.

Background

When the Legislature created the SPD in 1977, it established the hourly rate paid to private bar attorneys at \$45 per hour for time spent in-court and \$35 for time spent out-of-court. See s. 977.08 (4m) (a). Travel time was, and continues to be, reimbursed at \$25 per hour. In 1992, the Legislature raised private bar rates to \$50 per hour for in-court and \$40 per hour for out-of-court work. See s. 977.08 (4m) (b). However, in 1995, the private bar rate was reduced to \$40 per hour for in-court work. See s. 977.08 (4m) (c). Finally, in the 2019-21 biennial budget, the rate for both in-court and out-of-court work was increased to \$70 per hour effective January 1, 2020. See s. 977.08 (4m) (d). At the same time, the rate for court appointed counsel at county expense was increased from \$70 to \$100 per hour.

Considering the market rate for retained private counsel and the cost of operating a law practice, it is unsurprising that there are fewer attorneys willing to accept SPD appointments. The pandemic also had a significant impact on the number of attorneys willing to accept SPD appointments. Coupled with ongoing difficulties in recruiting and retaining attorneys from all areas of practice to locate in more rural parts of Wisconsin, there are negative effects on the rights of defendants, justice for victims, the efficiency of the court system, and the budgets of both county and state-based criminal justice system partners.

On May 16, 2018, the Supreme Court of Wisconsin held a public hearing on Rule Petition 17-06 regarding the rate of compensation for court appointed attorneys. The petition asked that the court raise the rate for attorneys appointed at county expense from \$70 to \$100 an hour. It also asked the Court to find any rate lower than that, including the SPD appointment rate, unreasonable. On June 27, 2018, the Supreme Court issued an order raising the court appointed rate to \$100 an hour effective January 1, 2020. While it declined to find rates less than that unreasonable, members of the court were unambiguous in the order that the SPD rate at the time was "abysmally low." Comments from the order include:

"A rate of \$100/hour is reasonable and necessary to ensure the court can obtain needed counsel to assist in the administration of justice."

Having a court appointment rate higher than the SPD rate essentially means that the SPD is competing against courts to find counsel for SPD eligible clients, with a burden falling on county taxpayers to pay the difference for a state responsibility. Raising the SPD rate would ensure that appointments for all SPD

eligible clients will be made at state expense which benefits clients through consistent quality of counsel statewide.

Analysis

The SPD proposes increasing the hourly rate of reimbursement from \$70 to \$125 per hour for in-court work, \$100 per hour for out-of-court work, and \$50 per hour for travel and indexing the hourly rate to future increases for state employees.

Private Bar In and Out of Court Reimbursement Rate

The SPD appoints cases to the private bar attorneys when SPD staff is unavailable due to conflicts of interest, vacancies, or workloads. Appointments to the private bar necessitated by conflicts of interest include cases such as when multiple SPD clients are co-defendants in the same case or in which a current SPD client is a key witness against another client in a separate case.

The current \$70 per hour rate has been cited by private bar attorneys as one of the main factors in their decisions to not accept SPD case appointments. Most attorneys are small-business owners who must make sound economic decisions in order to remain in business. Experienced attorneys who have private clients paying a market rate lose a significant amount of money for every hour they spend on an SPD case.

Attorneys in private practice set their hourly rates so that overhead is covered and the attorney is paid at a rate commensurate with experience, knowledge, and skills. As small business operational costs increased, the median hourly rate that attorneys charge clients has increased. According to the State Bar of Wisconsin's study, *2017 Economics of Law Practice in Wisconsin*, by all measures the current SPD rate is far below industry standards. The report shows the following:

- The median hourly billing rate for a criminal law private practitioner is \$183.
- The mean hourly billing rate for a legal associate with no experience is \$175, and for a paralegal or legal secretary is \$100.

More recently, Clio released the Legal Trends Report in 2021 which reinforces the findings from the 2017 State Bar of Wisconsin study:

- The average hourly billing rate for Wisconsin lawyers of any practitioner type is \$248.
- Nationwide, the average hourly rate for criminal defense lawyers is \$181.

Another key finding of the State Bar's Economics of Law Practice in Wisconsin is that the median overhead rate to operate a law practice is 35% of gross income. Taking into account other reductions of the gross payment from SPD payments (federal and state income taxes, malpractice insurance, professional licensing, etc.), the net reimbursement of the SPD payment rate is inadequate for many attorneys to accept SPD appointments.

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

In comparison, attorneys retained by federal, state and local governments are paid substantially more than \$70 per hour. Defense attorneys are paid \$158 per hour for non-capital federal cases by the Federal Defender. The disparities among state agencies in attorney reimbursement rates is continually identified by the private bar attorneys as another reason why they will take cases for some state or county agencies, but not the SPD. In some counties in Wisconsin, judges are making court appointments at \$20-25 per hour higher than the \$100 reimbursement rate.

Wage inflation rates compiled by the Social Security Administration indicate that a \$40 per hour wage set in 1995 would equate to \$90.10 per hour in 2020. Over the same period, the buying power of the dollar has decreased to \$0.51 in 2021. In perspective, the buying power of \$70 in 1995 is the equivalent of \$41.41 in 2020. The cumulative effect of even modest annual inflation rates shows that in terms of buying power, private attorneys have had their reimbursement rate substantially reduced over time.

The number of attorneys who have actively taken public defender appointments has declined significantly during the pandemic, from 940 attorneys certified in January 2019 to only 772 attorneys in August 2022, a 17.9% decrease. Although there are currently about 770 lawyers on the appointment lists, 13% took zero case appointments in FY 2022. 39% took fewer than 26 appointments. 16% took 26-50 appointments and 33% took more than 50 appointments.

The average number of contacts statewide that it takes to appoint a private bar attorney is just over 123. In some counties, it can be more than 200, with the outliers taking more than 1000 contacts to appoint a single case. There is not a county or jurisdiction in the state that has not felt these effects.

These numbers demonstrate the difficulties in appointing cases that have been reported by field staff. The SPD local offices report that one reason lawyers who used to accept appointments now take fewer appointments – or none at all - is because counties and federal courts pay substantially higher rates. Workload demands, fewer available private bar attorneys, and the conditions of practice in some counties are the other frequently cited reasons for not accepting SPD appointments.

Cost Estimate

Private Bar In and Out of Court Reimbursement Rate

SPD requests that the rate increase beginning with cases appointed on or after July 1, 2023. This would result in a total increase in the 2023-25 biennium of \$24,470,200.

Statutory Changes (Appendix A)

Amend §977.08(4m) to increase the statutory reimbursement rate for in-court work to \$125 per hour, out-of-court work to \$100 per hour, and travel to \$50 per hour for cases assigned on or after July 1, 2023.

Summary

	FY 24		FY 25	
	Funding	FTE	Funding	FTE
GPR	\$12,235,100	0.00	\$12,235,100	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$12,235,100	0.00	\$12,235,100	0.00

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

Appendix A – Statutory Changes

Create §977.08(4m)(e) for an hourly rate increase to \$125 per hour, out-of-court work to \$100 per hour, and travel to \$50 per hour for cases assigned on or after July 1, 2023, and indexing the hourly rate for a cost of living adjustment in the future.

Proposed language:

Unless otherwise provided by a rule promulgated under s. 977.02 (7r) or by a contract authorized under sub. (3) (f), for cases assigned on or after July 1, 2023, private local attorneys shall be paid \$125 per hour for time spent in court; \$100 per hour for time spent out of court, excluding travel, related to a case; and \$50 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.~~ Subsequently, the rate paid to private local attorneys will increase annually in an amount equal to the cost of living increase that state employees receive each year from the legislature.

STATUTORY LANGUAGE

(See Attached)

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	5001	Private Bar Rate Increase

	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	\$12,235,100	\$12,235,100
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$12,235,100	\$12,235,100
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

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5001 Private Bar Rate Increase				
01	Legal assistance				
	04 Private bar invstgtr reimburse	\$12,235,100	\$12,235,100	0.00	0.00
	Legal assistance Sub Total	\$12,235,100	\$12,235,100	0.00	0.00
	Private Bar Rate Increase Sub Total	\$12,235,100	\$12,235,100	0.00	0.00
	Agency Total	\$12,235,100	\$12,235,100	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
5001 Private Bar Rate Increase					
GPR	S	\$12,235,100	\$12,235,100	0.00	0.00
Private Bar Rate Increase Total		\$12,235,100	\$12,235,100	0.00	0.00
Agency Total		\$12,235,100	\$12,235,100	0.00	0.00

Decision Item (DIN) - 5002

Decision Item (DIN) Title - Staff Compensation and Workload

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$9,067,500 GPR and 67.0 FTE in FY24 and \$13,121,600 GPR and 67.0 FTE in FY25 to increase staff compensation and address retention, recruitment, and workload issues that contribute to delays in the provision of constitutionally required representation.

OFFICE OF THE STATE PUBLIC DEFENDER
2023-2025 Biennial Budget
Issue Paper

Topic: DIN 5002 – Staff Compensation & Workload

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$9,067,500 GPR and 67.0 FTE in FY24 and \$13,121,600 GPR and 67.0 FTE in FY25 to increase staff compensation and address retention, recruitment, and workload issues that contribute to delays in the provision of constitutionally required representation.

Problem Description

Direct compensation and changing workload are the two primary obstacles in recruiting and retaining SPD staff in all job classifications. The impact of the coronavirus pandemic has dramatically exacerbated these issues. An increase in turnover, a decrease in job applicants, and cases taking longer to resolve have all contributed to workload increases that are unsustainable in the long term.

Background

SPD has approximately 615 authorized FTE positions, including approximately 380 attorneys in both the trial and appellate divisions, who provide representation in a majority of the more than 120,000 appointments made in FY 22.

Staff attorneys have required minimum caseloads but take significantly more appointments than the minimum. United States Supreme Court caselaw requires ethical and zealous representation for all clients. The more open cases that a staff attorney has at one time, the more quality of representation is affected.

As a result of many factors, including the pandemic, the currently authorized number of positions at SPD are insufficient to fulfill the constitutional obligation. The key issues are recruitment and retention of both staff and private bar attorneys (see DIN 5001) as well as support staff, and the significant increase in workload. The main barriers in addressing these issues are the number of filled positions, the pay rate for those positions, and the turnover rate.

Analysis

The impact of the workload and compensation issues affecting recruitment, retention, and workload are that clients' constitutional rights are jeopardized and the fiscal burden falls to counties in the form of longer pretrial incarceration or monitoring or appointment of counsel for SPD eligible clients.

Addressing recruitment and retention of all staff positions at SPD will help address issues with timely appointment of cases, reduce the individual workload of current staff, and decrease the fiscal impact to counties.

Attorney Compensation

SPD staff attorneys handle a significant number of cases. Taken collectively, SPD staff attorneys had a total of 62,000 open cases in 2022. At the same point in 2019, that number was approximately 32,000. On top of the dramatic increase in the number of open cases, the workload associated with those cases has increased. Over the past decade the time associated with direct representation for individual cases has increased dramatically. The reasons for this include an increase in discovery data such as video evidence, cell phone and computer data; keeping up with changing science such as DNA and chemical compound analysis; complying with recent constitutional changes related to victim rights; and delays related to the pandemic in resolving cases. In addition, time spent facilitating access to the court in proceedings such as representation at initial appearance or in treatment court staffing places additional demands on attorneys' time.

This has led to a noticeable increase in turnover rates, particularly among trial attorneys and a decrease in the number of applications for attorney positions. Turnover rates of trial attorneys have almost doubled over the course of the prior 2-3 years:

FY	Termed FTEs	#FTEs	Turnover
FY18	41.00	374.2	10.96%
FY19	42.80	374.2	11.44%
FY20	36.80	374.2	9.83%
FY21	67.00	374.2	17.90%
FY22	77.00	377.7	20.39%

Despite a significant increase in the number of attorney positions posted for recruitment, there has been a decrease in the number of individual applications:

FY	Attorney Applicants
FY18	355
FY19	214
FY20	188
FY21	185
FY22	168

It does not appear that the decrease in applications is a result of a reduction in the number of licensed attorneys in the state, but rather an indication of other issues such as compensation and workload. The State Bar of Wisconsin shows a slight increase in the number of total attorneys licensed to practice law in Wisconsin:

FY	Licensed Attorneys
FY18	25,283
FY19	25,310
FY20	25,318
FY21	25,452
FY22	25,555

As noted by attorneys who have either left the agency or those who have not accepted a position, the starting salary is so far below market rate and the workload is so high, that they are seeking other attorney positions or simply working outside of the legal profession.

Comparing the SPD attorney starting salary to other statewide indigent defense systems, we find that the SPD salary is below average compared to peers:

State	Starting Attorney Salary (Hourly)
North Carolina	\$21.84
Missouri	\$23.25
New Mexico	\$25.96
Iowa	\$26.60
Wisconsin	\$26.70
Arkansas	\$26.94
Maine	\$29.41
Virginia	\$30.05
Wyoming	\$30.18
North Dakota	\$32.55
Alaska	\$33.01
Maryland	\$33.28
Minnesota	\$33.72
Montana	\$36.96
South Dakota	\$39.59
Texas	\$40.87
Oregon	\$43.60

In calendar year 2022, several states have enacted legislation specifically to increase the pay rate of public defenders. For instance, Alaska, which already pays attorneys over \$4 per hour more than Wisconsin, introduced legislation increasing salaries by 15% plus a \$10,000 across the board increase. Kentucky, which pays its attorneys one of the lowest rates in the nation, is increasing public defender salaries by nearly 25%

plus making them eligible for the across the board state employee increases of 8% this year and 12% next year. Once those increases are factored in, Kentucky's starting salary will be higher than Wisconsin. And in Minnesota, the legislature proposed bipartisan legislation to increase the overall funding for the public defender by \$50 million over a current \$106 million a year budget. This is primarily to address significant pay disparities within the criminal justice system in that state.

In addition, the Division of Personnel Management assembled information for positions in a job classification that is similar to Assistant State Public Defender's at the county level within Wisconsin and in other states. Of the position postings that DPM reviewed, the findings show that, at the county level within Wisconsin, the salaries are:

- Assistant Corporation Counsel - \$34.36 per hour minimum, \$48.26 weighted average salary
- Deputy Corporation Counsel - \$45.42 per hour minimum, \$50.59 weighted average salary
- Corporation Counsel - \$54.79 per hour minimum, \$65.74 weighted average salary

Of comparable positions in other states, DPM found:

- Iowa - \$35.87 per hour average minimum
- Minnesota - \$35.14 per hour average minimum
- Michigan - \$35.21 per hour average minimum

In lieu of requesting additional attorney positions to handle the workload, the SPD requests that the minimum attorney salary be increased to \$35 per hour to be able to recruit and retain attorneys to fill the current number of authorized positions. In addition, SPD requests that the salary of current staff attorneys be adjusted to resolve salary compression issues created by raising the minimum salary. This incremental cost increase is a more fiscally responsible method to addressing staffing shortages in lieu of requesting new general purpose revenue funded positions.

To increase the minimum attorney salary to \$35 per hour, adjust for the compression of existing attorney salaries, and provide merit-based pay increases, SPD requests \$5,311,800 in FY 24 and \$8,292,800 in FY 25.

Support Staff Request

The SPD requests additional support staff to provide litigation and administrative support to address the extraordinary workload. In the trial and appellate divisions, the ratio of attorneys to all support staff positions (legal secretaries, investigators, client services specialists, etc.) combined is approximately 2 attorneys to 1 support staff

person. In comparison, the Department of Justice has a ratio of 5 attorneys to 3 support staff. Some local prosecutors have staffing ratios as high as 3 support staff to 1 attorney. This does not include support available in the form of local law enforcement agencies. Particularly in some of the SPD's smaller offices, there may only be one support staff person on site for three to five attorneys. If that person spends all day making calls to appoint cases to the private bar, they are not available to provide support for the SPD attorneys in the office. This increases the amount of time the attorneys spend on administrative matters.

Additional staff support is necessary to address the workload impact of direct representation requirements such as motion practice, working with attorneys and clients to investigate and prepare their case for trial, assistance with administrative matters such as drafting and eFiling court documents, and reviewing video evidence. The workload impact of video evidence continues to grow exponentially. For instance, in one of forty SPD trial offices, over just a four month period, the office downloaded and reviewed approximately 7000 hours of video evidence. This is the equivalent of nearly 4 FTE for a year just to review video. In the prior budget, SPD received 5 FTE related to all workload issues, including the impact of video evidence.

SPD requests the addition of 62.0 FTE support staff positions (25.0 paralegals, 13.0 investigators, 9.0 FTE client services specialists, and 15.0 FTE legal secretaries) in the trial division and 2.0 FTE paralegal support staff positions in the appellate division. The total cost for these 64.0 FTE positions in Fiscal Year 24 is \$3,556,900 and \$4,571,800 in Fiscal Year 2025.

Workload Adjustment

In addition to taking significant numbers of cases, the workload demands on public defender attorneys have increased significantly. Issues discussed above related to direct representation are a portion of what impacts workload. Additionally, SPD attorneys provide service to local courts around the state in ensuring that individuals have access to the court. These proceedings largely take the form of initial appearances to set bail, representation on bench warrants, and service to treatment court teams and local criminal justice coordinating councils.

Over the course of 20 weeks this year, SPD tracked the amount of time that staff attorneys spent traveling to and from meetings and appearing with clients at intake court. Attorneys reported spending nearly 2100 hours, or the equivalent of nearly 1.5 FTE, participating in these initial appearance proceedings. Extrapolated annually, this is the equivalent workload of approximately 4.0 FTE attorneys.

Staff attorneys also participate on treatment court teams around the state. In Fiscal Year 22, they provided the equivalent of 6.5 FTE worth of attorney time based on budgetary standards to participate in treatment court. They do this in addition to their full caseload requirement.

In addition to these quantifiable workload impacts, staff attorneys are frequently called to court on short notice to provide representation at arrest warrant proceedings. Providing the Constitutionally required representation to move cases forward in the courts and facilitating individual access to the court is a vital service for the operation of the court system, but is not accounted for in the caseload requirements of staff attorneys.

To account for this workload more accurately, SPD requests that the current statutory allowance of 10.0 FTE off caseload for management activity be increased to 25.0 FTE to account for initial appearance, treatment court, and other time spent in relation to representation that is not accounted for in caseload requirements.

SPD estimates that the cost impact for this change can be absorbed as part of the cost-to-continue budget for the 2023-25 biennium.

Administrative Staff

As a result of the increased turnover rates and in conjunction with the additional staff requested above, the SPD requests additional staff in the administrative office to recruit, onboard, and train staff.

Human Resources

The significant increase in turnover, and the potential addition of support staff, necessitate additional assistance for SPD Human Resources for recruitment and onboarding. The SPD human resources staffing ratio is also disproportionate to other state agencies:

Agency	Total HR Staff	#FTEs	Ratio
SPD	5	697	1:139
DOJ	8	742	1:93
DPI	9	683	1:76
ETF	5	282	1:56
DHS	82	6653	1:81

Even with the addition of an additional HR Specialist, SPD's ratio would still be one of the highest among state agencies at 1 HR position per 117 FTE.

Information Technology

The SPD requests 1.0 FTE IT staff to support the IT needs of SPD and enterprise wide IT requirements. This position will help to continue adherence with Enterprise changes started in the 2021-23 biennium, in some cases, as a result of the Legislative Audit Bureau's IT and Procurement Performance Audit:

- Adherence and implementation of the DOA/DET Security Policy, Standards, and Procedures (PSP) requirement;
- Adherence to the DOA/DET Cloud Brokerage requirements;
- Management of the new mandatory Vulnerability Management and Next Gen Antivirus platforms;
- Implementation and maintenance of the MyWisconsinID and Enterprise VOIP strategies.

The SPD IT staffing ratio is the lowest in the state and is disproportionate to other agencies who must align with these requirements:

Agency	Total IT Staff	#FTEs	Ratio
SPD	6	697	1:116
DOC	92	7867	1:86
DMA	27	488	1:18
DFI	7	127	1:18
DATCP	24	568	1:23

SPD requests 1.0 FTE Information Systems Technical Services Consultant Administrator to align with the Enterprise strategy and requirements. The cost for these two positions in the administrative office is \$149,100 in Fiscal Year 2024 and \$193,400 in Fiscal Year 2025.

Training

Given the increase in turnover and the potential addition of new staff, having a dedicated position in the training unit to provide intensive and specific SPD onboarding and training for new employees would more quickly and consistently acclimate staff to the agency, reduce the onboarding requirements of staff in local offices who already have full workloads, and would provide an increased level of operational consistency statewide. This position would also have the ability to provide logistical support for the current training activities of the SPD that primarily focus on the direct representation of clients.

SPD requests the addition of a 1.0 FTE Staff Development Program Specialist. The estimated cost is \$49,600 in Fiscal Year 2024 and \$63,600 in Fiscal Year 2025.

Statutory Changes (Appendix A)

Amend §977.08(5)(br) to exempt additional attorneys in the trial division to account for the increase in workload related to additional management responsibilities, treatment court staffing, and access to the court legal work.

Include a non-statutory provision allowing SPD to exceed the 10 percent cap in base pay increases to account for the minimum pay raise and salary compression request.

Summary

	FY 24		FY 25	
	Funding	FTE	Funding	FTE
GPR	\$9,067,500	67.00	\$13,121,600	67.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$9,067,500	67.00	\$13,121,00	67.00

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

Appendix A – Statutory Changes

Proposed language for §977.08(5)(br):

Beginning on July 1, 200023, the state public defender may exempt up to ~~40~~25 full-time assistant state public defenders in the subunit responsible for trials from the annual caseload standards under par. (bn) based on their need to perform other assigned duties.

Proposed non statutory language including a “notwithstanding” provision:

Notwithstanding s. 230.12 (11) (c), a salary adjustment for an assistant state public defender under this subsection may exceed 10 percent of his or her base pay during fiscal year 2024 and fiscal year 2025.

STATUTORY LANGUAGE

(See attached)

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board
DECISION ITEM	CODES	TITLES
	5002	Staff Compensation and Workload

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$7,288,800	\$11,035,700
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$1,242,700	\$1,549,900
06	Supplies and Services	\$536,000	\$536,000
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$9,067,500	\$13,121,600
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	67.00	67.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5002 Staff Compensation and Workload				
01	Legal assistance				
	01 Program operation	\$198,800	\$257,000	3.00	3.00
	02 Appellate representation	\$112,200	\$139,900	2.00	2.00
	03 Trial representation	\$5,853,600	\$6,840,800	62.00	62.00
	07 Salary adjustments	\$2,902,900	\$5,883,900	0.00	0.00
	Legal assistance Sub Total	\$9,067,500	\$13,121,600	67.00	67.00
	Staff Compensation and Workload Sub Total	\$9,067,500	\$13,121,600	67.00	67.00
	Agency Total	\$9,067,500	\$13,121,600	67.00	67.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
5002 Staff Compensation and Workload					
GPR	S	\$9,067,500	\$13,121,600	67.00	67.00
Staff Compensation and Workload Total		\$9,067,500	\$13,121,600	67.00	67.00
Agency Total		\$9,067,500	\$13,121,600	67.00	67.00

Decision Item (DIN) - 5018

Decision Item (DIN) Title - Tuition Reimbursement/Loan Assistance

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$500,000 GPR in FY24 and \$500,000 GPR in FY25 to conduct a pilot tuition reimbursement program for staff attorneys and private bar attorneys who accept public defender appointments and who meet certain additional criteria.

**OFFICE OF THE STATE PUBLIC DEFENDER
2023-2025 Biennial Budget
Issue Paper**

Topic: DIN 5018 – Tuition Reimbursement/Loan Assistance

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$500,000 GPR in FY24 and \$500,000 GPR in FY25 to conduct a pilot tuition reimbursement program for staff attorneys and private bar attorneys who accept public defender appointments and who meet certain additional criteria.

Problem Description

As a result of many factors, the availability of staff attorneys and certified private bar attorneys to accept private bar appointments statewide, but most acutely in rural parts of the state, is a systemic issue affecting the efficiency of the court system and impacting procedural justice for clients.

In addition to increases to direct compensation (see DIN 5001 and DIN 5002), compensation to address the significant amount of student loan debt that most attorneys carry is an impediment to being a staff attorney or accepting private bar appointments. Student loan debt, in addition to costs such as child care, housing, and travel related expenses, are cited as reasons that attorneys do not accept public defender cases. While this impact is seen statewide, the lack of attorneys in rural parts of the state can be particularly acute with some counties having no licensed criminal defense attorneys at all. This in turn increases costs to the SPD to pay for travel related expenses for out-of-county attorneys to accept cases in these areas. It also reduces the number of cases that attorneys can accept in their home county and impacts client representation by providing physical obstacles to client contact which is necessary in providing representation.

Background

As noted in DINs 5001 and 5002, turnover of staff attorneys, decrease in applications, and a reduction in the number of private attorneys taking private bar appointments has a negative impact on clients and a fiscal impact on counties statewide. While this is a statewide problem, it can be felt most acutely in rural parts of the state. Whether it is the loss of one staff attorney in a three attorney SPD office, or a lack of private bar attorneys locally, the impact can be more significant in rural counties.

During the pandemic, the Ashland office, staffed by four staff attorneys providing representation in Ashland, Bayfield, and Iron counties, lost three staff attorneys. It took nearly a year to fill two of those positions. In the meantime, and due to a lack of certified private bar attorneys in that area, staff from offices in LaCrosse, Janesville, Milwaukee, and Madison helped to provide representation, due to a lack of certified private bar

attorneys in that area. The loss of two staff attorneys in one office had ripple effects statewide for almost a year.

From a State Bar of Wisconsin review of the geographic dispersion of attorneys in Wisconsin:

- Fewer than 40 percent of Wisconsin's 12,752 active attorneys practice law outside of major urban areas
- Fifteen counties have 10 or fewer attorneys actively practicing law
- Nine of those counties are in northern Wisconsin, including Iron, Langlade and Forest counties
- In Vilas County, only six of the county's 40 attorneys are under the age of 50
- Around 64 percent of active attorneys in Wisconsin practice law in Waukesha, Milwaukee and Dane counties

The August 18, 2020 final report from the Governor's Task Force on Student Debt had as one of its recommendations the expansion of the current Wisconsin Teacher Education Loan program and Wisconsin's Health Professions Loan Assistance Program into other fields and areas to support loan forgiveness programs.

Providing an incentive in the form of a pilot tuition reimbursement program to locate in a rural area would benefit clients and the court system by providing better access to justice.

Analysis

Wisconsin currently offers two tuition reimbursement programs, both geared at the medical profession - the Wisconsin Health Professionals Loan Assistance Program (WHPLA) and the Primary Care and Physician Shortage Grant (PCPS.)

The WHPLA is administered by the University of Wisconsin School of Medicine and Public Health and the Office of Rural Health. It provides up to \$100,000 in grants to a physician who practices in a federally designated shortage area. The program is funded up to \$748,000 with \$300,000 coming from the federal government and \$448,000 in state funding coming from the Division of Gaming.

The PCPS is administered by the Higher Educational Aids Board. It provides a minimum annual award of \$20,800 for up to 12 physicians and 12 psychiatrists per fiscal year with a \$1.5 million appropriation. Each applicant is eligible for up to three years of funding. The person must practice in an underserved area as defined by either the federal government or the Governor. Physicians should have completed their medical residency in Wisconsin as well.

26 states also operate a State Loan Repayment Assistance Program (LRAP) for attorneys meeting certain eligibility criteria. The general program criteria cover who may apply (type of employment, amount of qualified debt, years out of school, etc.), the available amount per person, the length of the award, and the funding source.

SPD suggests the following criteria as possible options:

- Administration of program
 - SPD (verification of attorney employment or certification and acceptance of appointments)
 - The State Public Defender Board will need authority to promulgate administrative rules for the administration of the program
 - HEAB (potential partner organization to verify loan balances, to administer funds, and disburse funds)
- Staff eligibility
 - Licensed to practice in Wisconsin
 - Employed in an SPD office that is located in [WEDC Economic Development Regions 1, 2, 3, 4, or 6](#)
- Private Bar eligibility
 - Licensed to practice in Wisconsin & certified for SPD appointments
 - Maintains a law practice with headquarters or demonstrated majority of legal work performed in a county that is located in [WEDC Economic Development Regions 1, 2, 3, 4, or 6](#)
- Grant terms
 - Must maintain SPD practice in county while receiving award
 - Up to \$10,000 per year
 - SPD staff must continue in employment for 12 months following award
 - Private bar attorney must accept at least 50 appointments over 12 months following award
 - Require a clawback provision of 10% of grant amount per month if leaving before satisfying terms
- Funding amount
 - \$500,000 per fiscal year, \$1,000,000 for biennium

Summary

	FY24		FY25	
	Funding	FTE	Funding	FTE
GPR	\$500,000	0.00	\$500,000	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$500,000	0.00	\$500,000	0.00

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

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	5018	Tuition Reimbursement/Loan Assistance

	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	\$500,000	\$500,000
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$500,000	\$500,000
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

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5018 Tuition Reimbursement/Loan Assistance				
01	Legal assistance				
	01 Program operation	\$500,000	\$500,000	0.00	0.00
	Legal assistance Sub Total	\$500,000	\$500,000	0.00	0.00
	Tuition Reimbursement/Loan Assistance Sub Total	\$500,000	\$500,000	0.00	0.00
	Agency Total	\$500,000	\$500,000	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
5018 Tuition Reimbursement/Loan Assistance					
GPR	S	\$500,000	\$500,000	0.00	0.00
Tuition Reimbursement/Loan Assistance Total		\$500,000	\$500,000	0.00	0.00
Agency Total		\$500,000	\$500,000	0.00	0.00

Decision Item (DIN) - 5019

Decision Item (DIN) Title - Pilot CHIPS Extension

NARRATIVE

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$0 GPR in FY24 and \$0 GPR in FY25 to extend the sunset date on the pilot program to provide counsel for parents in a Child in Need of Protection or Services (CHIPS) proceeding in five counties.

**OFFICE OF THE STATE PUBLIC DEFENDER
2023-2025 Biennial Budget
Issue Paper**

Topic: DIN 5019 – Pilot CHIPS Extension

Agency Request

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$0 GPR in FY24 and \$0 GPR in FY25 to extend the sunset date on the pilot program to provide counsel for parents in a Child in Need of Protection or Services (CHIPS) proceeding in five counties.

Problem Description

2017 Wisconsin Act 253 created s. 48.233 and authorized the State Public Defender to provide representation for parents in CHIPS cases. The Act was originally conceived of as a pilot program to determine the impact of providing representation. As a result of the impact of the pandemic, the 2021-23 biennial budget included a provision extending the original sunset date contained in s. 48.233 (2) from June 30, 2021 to June 30, 2023. Given that the impact of the pandemic in the criminal legal and family court systems continues to be significant, SPD requests another extension of the pilot program until June 30, 2025. Funding to operate the pilot program is included in the SPD base budget so an extension of the sunset date would not require additional funding, but would require that the base not be decreased to correspond with the end of the Act 253 pilot.

Background

Until 1995, the SPD was authorized to represent parents in CHIPS proceedings. That statutory authorization was removed as a cost cutting measure in the 1995-97 budget. When Act 253 was passed, it was hoped that the timing of the sunset would correspond with the 2021-23 budget cycle to allow policymakers to make an informed decision regarding the future of the pilot program. The two-year extension in the 2021-23 biennial budget was hoped to provide data not impacted by the pandemic. As that impact persists, allowing another two years to judge the efficacy of the pilot is warranted.

Analysis

Providing representation for parents in CHIPS proceedings has been documented in other jurisdictions to reduce the amount of time children spend in out-of-custody placements, decreases the time to final disposition, and reduces the number of termination of parental rights petitions that are contested. Advocate counsel for the parent allows for earlier intervention in the process for parents to ensure that their chances for reunification, which is in the best interests of the child and the family, is increased.

Since the inception of the pilot on July 1, 2018 through June 30, 2022, the SPD has made approximately 1800 appointments for parents in the five pilot counties: Brown; Kenosha; Outagamie; Racine; and Winnebago.

Fiscal Year	Brown	Kenosha	Outagamie	Racine	Winnebago	Total
2019	183	267	146	209	105	910
2020	132	249	209	135	57	782
2021	235	215	200	99	43	792
2022	229	177	140	172	82	800
Since start	779	908	695	615	287	3,284

Early in the pilot, there were issues related to training and education of both attorneys and others working in the court and child protection system as to the role of advocate counsel in CHIPS cases. And while the coronavirus has impacted the total number of cases, its bigger impact was on the ability to both provide representation within the court system as well as limitations on the ability for parents to meet the conditions such as limited visitation as a result of social distancing requirements.

As a result, the initial three-year pilot outcomes will have been significantly impacted making measurable outcomes uncertain due to factors beyond the control of the SPD. Extending the sunset date would allow for a more thorough study of the impact of the pilot.

The original statutory language in Act 253 required that SPD and the Department of Children and Families submit a report on costs and data related to the pilot. Key findings from the report showed improvement in outcomes but also reflected the anecdotal observation by SPD staff that the pandemic had an impact on the case types. Key findings include:

- SPD counties had a higher permanency rate than non-SPD counties.
- SPD counties had a lower re-entry rate than non-SPD counties.
- SPD counties had a lower median length of Out of Home Care episodes than non-SPD counties.

Since that report was released, SPD staff reports that attorneys have noted that representation at the CHIPS stage leads to more stable outcomes for families and better assurances of due process for parents and the possibility of increased family interaction and eventual reunification.

Generally, SPD's involvement in CHIPS proceedings has resulted in greater access to information, discovery, and due process for parents. The simple action of assuring legal representation has, in a significant manner, empowered parents to be more informed participants of the CPS system, enabling them to take more intentional steps to achieve reunification with their children. It has also increased the standard of practice of all participants in these proceedings, further protecting due process rights.

To ensure clarity in the CHIPS pilot program statute, SPD also requests that s. 48.233 (1) be amended to conform with the legislative intent that representation can be provided at the temporary physical custody hearing or removal hearing even if a petition has not yet been filed. Suggested statutory language could include the underlined language:

s. 48.233(1) No later than July 1, 2018, the state public defender shall establish a pilot program in Brown, Outagamie, Racine, Kenosha, and Winnebago counties to provide counsel to any nonpetitioning parent after a petition has been filed under s. 48.255 in a proceeding under s. 48.13 and at any hearing under s. 48.21.

Statutory Language to Extend Sunset

s. 48.233 (2) - This section does not apply to a proceeding commenced under s. 48.13 after June 30, 20235.

s. 48.233 (4) - By January 1, 2021, and by January 1, 2023 and January 1, 2025, the department and the state public defender shall each submit a report to the joint committee on finance, and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), regarding costs and data from implementing the pilot program under sub. (1).

Summary

	FY 24		FY 25	
	Funding	FTE	Funding	FTE
GPR	\$0	0.00	\$0	0.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$0	0.00	\$0	0.00

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

STATUTORY LANGUAGE

s. 48.233(1) No later than July 1, 2018, the state public defender shall establish a pilot program in Brown, Outagamie, Racine, Kenosha, and Winnebago counties to provide counsel to any nonpetitioning parent after a petition has been filed under s. 48.255 in a proceeding under s. 48.13 and at any hearing under s. 48.21.

Statutory Language to Extend Sunset

s. 48.233 (2) - This section does not apply to a proceeding commenced under s. 48.13 after June 30, 2023~~5~~.

s. 48.233 (4) - By January 1, 2021, and by January 1, 2023 and January 1, 2025, the department and the state public defender shall each submit a report to the joint committee on finance, and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), regarding costs and data from implementing the pilot program under sub. (1).

Decision Item by Line

2325 Biennial Budget

DEPARTMENT	CODES	TITLES
	550	Public Defender Board

DECISION ITEM	CODES	TITLES
	5019	Pilot CHIPS Extension

	Expenditure Items	1st Year Cost	2nd Year Cost
01	Permanent Position Salaries	\$0	\$0
02	Turnover	\$0	\$0
03	Project Position Salaries	\$0	\$0
04	LTE/Misc. Salaries	\$0	\$0
05	Fringe Benefits	\$0	\$0
06	Supplies and Services	\$0	\$0
07	Permanent Property	\$0	\$0
08	Unallotted 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	\$0	\$0
18	Project Positions Authorized	0.00	0.00
19	Classified Positions Authorized	0.00	0.00
20	Unclassified Positions Authorized	0.00	0.00

Decision Item by Numeric

2325 Biennial Budget

Public Defender Board

Program	Decision Item/Numeric	1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
	5019 Pilot CHIPS Extension				
01	Legal assistance				
	04 Private bar invstgtr reimburse	\$0	\$0	0.00	0.00
	Legal assistance Sub Total	\$0	\$0	0.00	0.00
	Pilot CHIPS Extension Sub Total	\$0	\$0	0.00	0.00
	Agency Total	\$0	\$0	0.00	0.00

Decision Item by Fund Source

2325 Biennial Budget

Public Defender Board

Decision Item/Source of Funds		1st Year Total	2nd Year Total	1st Year FTE	2nd Year FTE
5019 Pilot CHIPS Extension					
GPR	S	\$0	\$0	0.00	0.00
Pilot CHIPS Extension Total		\$0	\$0	0.00	0.00
Agency Total		\$0	\$0	0.00	0.00

ACT 201

Proposal under s. 16.42(4)(b)2.: **0% change in each fiscal year**

FY: **FY24**

Agency: **SPD - 550**

Exclusions: Federal
Debt Service

Columns A-G were prepopulated for agencies to reflect state operations adjusted base and reductions agreed to by DOA and LFB. See Appendix H for instructions on how to complete these templates.

Proposed \$ and Proposed FTE columns reflect total agency proposed spending and positions for indicated fiscal year. These amounts should include standard budget adjustments (SBAs), any proposed reallocations or reductions to meet the target, and any other requests that the agency would want considered under this proposal.

Appropriations with zero dollars and zero FTEs are not loaded into the template. If you have any questions, contact your SBO analyst.

IF YOUR AGENCY PLANS TO TAKE THE SAME CUTS OVER BOTH YEARS, YOU SHOULD ONLY FILL OUT ONE GRID FOR 0% GROWTH AND ONE GRID FOR 5% REDUCTION, THEN CHANGE "FY24" TO "FY24 AND 25".

Agency	Appropriation		Fund Source	Adjusted Base		0% Change Target	Proposed Budget 2023-24			Change from Adj Base		(See Note 2) Remove SBAs		Change from Adjusted Base after Removal of SBAs	
	Alpha	Numeric		\$	FTE		Proposed \$	Proposed FTE	Item Ref.	\$	FTE	\$	FTE	\$	FTE
550	1a	101	GPR	\$3,112,600.00	18.40	0	3,097,800	18.40	1, 2	(14,800)	0.00	14,800	0.00	0	0.00
550	1a	102	GPR	\$5,241,600.00	44.35	0	5,516,600	44.35	2	275,000	0.00	(275,000)	0.00	0	0.00
550	1a	103	GPR	\$60,906,300.00	546.85	0	58,879,300	546.85	2, 5	(2,027,000)	0.00	2,027,000	0.00	0	0.00
550	1a	105	GPR	\$735,100.00	5.25	0	742,000	5.25		6,900	0.00	(6,900)	0.00	0	0.00
550	1a	106	GPR	\$1,506,900.00	0.00	0	1,506,900	0.00	4	0	0.00	0	0.00	0	0.00
550	1a	104	GPR	\$41,648,400.00	0.00	0	41,648,400	0.00	3	0	0.00	0	0.00	0	0.00
550	1a	107	GPR	\$0.00	0.00	0	0	0.00	2	0	0.00	0	0.00	0	0.00
550	1fb	135	PR	\$367,200.00	3.00	0	327,600	3.00		(39,600)	0.00	39,600	0.00	0	0.00
550	1kj	137	PR	\$225,000.00	2.00	0	232,800	2.00	2	7,800	0.00	(7,800)	0.00	0	0.00
550	1L	136	PR	\$913,000.00	0.00	0	913,000	0.00		0	0.00	0	0.00	0	0.00
Totals				114,656,100	619.85	0	112,864,400	619.85		(1,791,700)	0.00	1,791,700	0.00	0	0.00

Note 1: Reduction target must be met within state operations appropriations, but may be allocated across those appropriations and fund sources.

Note 2: Amounts should be SBAs (DINs 3001 - 3011) from agency request multiplied by -1.

Target Reduction = 0

Difference = **0**
Should equal \$0

Items - Describe proposed changes (excl. SBAs) to reach target or other priorities of agency

- 1 Remove DIN 5018 - Tuition reimbursement/loan assistance
- 2 Remove DIN 5002 - Staff compensation & workload
- 3 Decrease base funding in App 104 by \$9,866,000
- 4 Remove DIN 4003 - Transcripts, Interpreters, Discovery Cost to Continue
- 5 Remove DIN 4002 - Expert Witness Service Cost to Continue

ACT 201

Proposal under s. 16.42(4)(b)1.: 5% change in each fiscal year

FY: **FY24**

Agency: **SPD - 550**

Exclusions Federal
Debt Service

Columns A-G were prepopulated for agencies to reflect state operations adjusted base and reductions agreed to by DOA and LFB. See Appendix H for instructions on how to complete these templates.

Proposed \$ and Proposed FTE columns reflect total agency proposed spending and positions for indicated fiscal year. These amounts should include standard budget adjustments (SBAs), any proposed reallocations or reductions to meet the target, and any other requests that the agency would want considered under this proposal.

Appropriations with zero dollars and zero FTEs are not loaded into the template. If you have any questions, contact your SBO analyst.

IF YOUR AGENCY PLANS TO TAKE THE SAME CUTS OVER BOTH YEARS, YOU SHOULD ONLY FILL OUT ONE GRID FOR 0% GROWTH AND ONE GRID FOR 5% REDUCTION, THEN CHANGE "FY24" TO "FY24 AND 25".

Agency	Appropriation		Fund Source	Adjusted Base		(See Note 1)	Proposed Budget 2023-24		Item Ref.	Change from Adj Base		(See Note 2)		Change from Adjusted Base after Removal of SBAs	
	Alpha	Numeric		\$	FTE	5% Reduction Target	Proposed \$	Proposed FTE		\$	FTE	Remove SBAs \$	FTE	\$	FTE
550	1a	101	GPR	\$3,112,600.00	18.40	(155,600)	2,942,910	18.40	1, 2	(169,690)	0.00	14,800	0.00	(154,890)	0.00
550	1a	102	GPR	\$5,241,600.00	44.35	(262,100)	5,240,770	44.35	2	(830)	0.00	(275,000)	0.00	(275,830)	0.00
550	1a	103	GPR	\$60,906,300.00	546.85	(3,045,300)	55,935,335	546.85	2, 5	(4,970,965)	0.00	2,024,400	0.00	(2,946,565)	0.00
550	1a	105	GPR	\$735,100.00	5.25	(36,800)	704,900	5.25		(30,200)	0.00	(6,900)	0.00	(37,100)	0.00
550	1a	106	GPR	\$1,506,900.00	0.00	(75,300)	1,431,555	0.00	4	(75,345)	0.00	0	0.00	(75,345)	0.00
550	1a	104	GPR	\$41,648,400.00	0.00	(2,082,400)	39,405,230	0.00	3	(2,243,170)	0.00	0	0.00	(2,243,170)	0.00
550	1a	107	GPR	\$0.00	0.00	0	0	0.00	2	0	0.00	0	0.00	0	0.00
550	1fb	135	PR	\$367,200.00	3.00	(18,400)	327,600	3.00		(39,600)	0.00	39,600	0.00	0	0.00
550	1kj	137	PR	\$225,000.00	2.00	(11,300)	232,800	2.00	2	7,800	0.00	(7,800)	0.00	0	0.00
550	1L	136	PR	\$913,000.00	0.00	(45,700)	913,000	0.00		0	0.00	0	0.00	0	0.00
Totals				114,656,100	619.85	(5,732,900)	107,134,100	619.85		(7,522,000)	0.00	1,789,100	0.00	(5,732,900)	0.00

Note 1: Reduction target must be met within state operations appropriations, but may be allocated across those appropriations and fund sources.

Note 2: Amounts should be SBAs (DINs 3001 - 3011) from agency request multiplied by -1.

Target Reduction = (5,732,900)

Difference = **0**

Should equal \$0

Items - Describe proposed changes (excl. SBAs) to reach target or other priorities of agency

- 1 Remove DIN 5018 - Tuition reimbursement/loan assistance
- 2 Remove DIN 5002 - Staff compensation & workload
- 3 Decrease base funding in App 104 by \$10,031,820
- 4 Remove DIN 4003 - Transcripts, Interpreters, Discovery Cost to Continue
- 5 Remove DIN 4002 - Expert Witness Service Cost to Continue

ACT 201

Proposal under s. 16.42(4)(b)2.: **0% change in each fiscal year**

FY: **FY25**
 Agency: **SPD - 550**

IF YOUR AGENCY PLANS TO TAKE THE SAME CUTS OVER BOTH YEARS, YOU SHOULD ONLY FILL OUT ONE GRID FOR 0% GROWTH AND ONE GRID FOR 5% REDUCTION, THEN CHANGE "FY24" TO "FY24 AND 25".

Agency	Appropriation		Fund Source	Adjusted Base		(See Note 1) 0% Change		Proposed Budget 2024-25		Item Ref.	Change from Adj Base		(See Note 2) Remove SBAs		Change from Adjusted Base after Removal of SBAs	
	Alpha	Numeric		\$	FTE	Target	Proposed \$	Proposed FTE	\$		FTE	\$	FTE	\$	FTE	
550	1a	101	GPR	\$3,112,600.00	18.40	0	3,097,800	18.40	1, 2	(14,800)	0.00	14,800	0.00	0	0.00	
550	1a	102	GPR	\$5,241,600.00	44.35	0	5,516,600	44.35	2	275,000	0.00	(275,000)	0.00	0	0.00	
550	1a	103	GPR	\$60,906,300.00	546.85	0	58,879,300	546.85	2, 5	(2,027,000)	0.00	2,027,000	0.00	0	0.00	
550	1a	105	GPR	\$735,100.00	5.25	0	742,000	5.25		6,900	0.00	(6,900)	0.00	0	0.00	
550	1a	106	GPR	\$1,506,900.00	0.00	0	1,506,900	0.00	4	0	0.00	0	0.00	0	0.00	
550	1a	104	GPR	\$41,648,400.00	0.00	0	41,648,400	0.00	3	0	0.00	0	0.00	0	0.00	
550	1a	107	GPR	\$0.00	0.00	0	0	0.00	2	0	0.00	0	0.00	0	0.00	
550	1fb	135	PR	\$367,200.00	3.00	0	327,600	3.00		(39,600)	0.00	39,600	0.00	0	0.00	
550	1kj	137	PR	\$225,000.00	2.00	0	232,800	2.00	2	7,800	0.00	(7,800)	0.00	0	0.00	
550	1L	136	PR	\$913,000.00	0.00	0	913,000	0.00		0	0.00	0	0.00	0	0.00	
Totals				114,656,100	619.85	0	112,864,400	619.85		(1,791,700)	0.00	1,791,700	0.00	0	0.00	

Note 1: Reduction target must be met within state operations appropriations, but may be allocated across those appropriations and fund sources.

Note 2: Amounts should be SBAs (DINs 3001 - 3011) from agency request multiplied by -1.

Target Reduction = 0

Difference = 0

Should equal \$0

Items - Describe proposed changes (excl. SBAs) to reach target or other priorities of agency

- 1 Remove DIN 5018 - Tuition reimbursement/loan assistance
- 2 Remove DIN 5002 - Staff compensation & workload
- 3 Decrease base funding in App 104 by \$7,507,400
- 4 Remove DIN 4003 - Transcripts, Interpreters, Discovery Cost to Continue
- 5 Remove DIN 4002 - Expert Witness Service Cost to Continue

ACT 201

Proposal under s. 16.42(4)(b)1.: 5% change in each fiscal year

FY: **FY25**

Agency: **SPD - 550**

IF YOUR AGENCY PLANS TO TAKE THE SAME CUTS OVER BOTH YEARS, YOU SHOULD ONLY FILL OUT ONE GRID FOR 0% GROWTH AND ONE GRID FOR 5% REDUCTION, THEN CHANGE "FY24" TO "FY24 AND 25".

Agency	Appropriation		Fund Source	Adjusted Base		(See Note 1)	Proposed Budget 2024-25		Item Ref.	Change from Adj Base		(See Note 2)		Change from Adjusted Base after Removal of SBAs	
	Alpha	Numeric		\$	FTE	5% Reduction Target	Proposed \$	Proposed FTE		\$	FTE	Remove SBAs \$	FTE	\$	FTE
550	1a	101	GPR	\$3,112,600.00	18.40	(155,600)	2,942,910	18.40	1, 2	(169,690)	0.00	0	0.00	(169,690)	0.00
550	1a	102	GPR	\$5,241,600.00	44.35	(262,100)	5,240,770	44.35	2	(830)	0.00	0	0.00	(830)	0.00
550	1a	103	GPR	\$60,906,300.00	546.85	(3,045,300)	55,935,335	546.85	2, 5	(4,970,965)	0.00	0	0.00	(4,970,965)	0.00
550	1a	105	GPR	\$735,100.00	5.25	(36,800)	704,900	5.25		(30,200)	0.00	0	0.00	(30,200)	0.00
550	1a	106	GPR	\$1,506,900.00	0.00	(75,300)	1,506,900	0.00	4	0	0.00	0	0.00	0	0.00
550	1a	104	GPR	\$41,648,400.00	0.00	(2,082,400)	41,118,985	0.00	3	(529,415)	0.00	0	0.00	(529,415)	0.00
550	1a	107	GPR	\$0.00	0.00	0	0	0.00	2	0	0.00	0	0.00	0	0.00
550	1fb	135	PR	\$367,200.00	3.00	(18,400)	327,600	3.00		(39,600)	0.00	0	0.00	(39,600)	0.00
550	1kj	137	PR	\$225,000.00	2.00	(11,300)	232,800	2.00	2	7,800	0.00	0	0.00	7,800	0.00
550	1L	136	PR	\$913,000.00	0.00	(45,700)	913,000	0.00		0	0.00	0	0.00	0	0.00
Totals				114,656,100	619.85	(5,732,900)	108,923,200	619.85		(5,732,900)	0.00	0	0.00	(5,732,900)	0.00

Note 1: Reduction target must be met within state operations appropriations, but may be allocated across those appropriations and fund sources.

Note 2: Amounts should be SBAs (DINs 3001 - 3011) from agency request multiplied by -1.

Target Reduction = (5,732,900)

Difference = **0**

Should equal \$0

Items - Describe proposed changes (excl. SBAs) to reach target or other priorities of agency

- 1 Remove DIN 5018 - Tuition reimbursement/loan assistance
- 2 Remove DIN 5002 - Staff compensation & workload
- 3 Decrease base funding in App 104 by \$529,415
- 4 Remove DIN 4003 - Transcripts, Interpreters, Discovery Cost to Continue
- 5 Remove DIN 4002 - Expert Witness Service Cost to Continue