

**OFFICE OF THE STATE PUBLIC DEFENDER
STATE OF WISCONSIN**

2009-11 BIENNIAL REPORT

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STATE PUBLIC DEFENDER**

The website address for the Office of the State Public Defender is <http://www.wisspd.org/>. Our website is available in English, Hmong and Spanish, and includes our Mission Statement, historical information, information about the Appellate, Trial, and Training divisions, links for certified private bar attorney on-line billing, and other information.

**AGENCY PERFORMANCE AND OPERATIONS
DURING THE 2009-11 BIENNIUM**

Caseloads:

During the 2009-11 Biennium, the SPD opened 258,065 cases; of those, 105,300 were appointed to private bar attorneys on a rotational or contract basis.

Contracts with the Private Bar:

As authorized by statute, the SPD assigns cases to the private bar both by fixed-fee contracts and rotational appointments. The SPD entered into 44 fixed-fee contracts for 7,795 misdemeanor cases in FY10, and 43 fixed-fee contracts for 7,565 misdemeanor cases in FY11. In FY10, there was a contract with the Legal Aid Society of Milwaukee for representation in 600 Chapter 51 (civil commitment) cases. In FY11, 8 contracts were awarded to private bar attorneys for representation in 640 Chapter 51 cases.

Collections:

State Public Defender collections from clients are received in the following categories: SPD-initiated, DOA contract collections, juvenile recoupment (from parents) by counties, commitment recoupment by counties, and court-ordered payments. The following was received in each category during the biennium:

	FY10	FY11
SPD-Initiated	\$862,147	\$788,243
Court-Ordered Attorney Fees	50,777	49,978
Juvenile Recoupment	418,778	405,983
Commitment Recoupment	25,166	33,618
DOA Contract Collections	<u>243,082</u>	<u>193,632</u>
Total	\$1,599,950	\$1,471,454

Specialty Courts:

The SPD has been an active and integral participant in specialty courts since the creation of the first Wisconsin drug court in Dane County in 1996. Since 2003-05, the SPD's strategic plan has included strategies to support specialty courts of all types.

SPD staff attorneys are active in over 40 specialty courts statewide including drug treatment courts, OWI courts, juvenile drug courts, mental health courts, and veterans' courts. SPD staff attorneys are also involved in the planning stages of at least 7 additional specialty courts. SPD involvement is critical to the success of these courts because research shows the importance of having a collaborative treatment-court team of justice professionals.

SPD staff attorneys also serve on the board of the Wisconsin Association of Treatment Court Professionals (WATCP), which is the professional organization supporting all who work with specialty courts including judges, prosecutors, probation agents, case managers, and treatment providers. In 2011, the president of WATCP was SPD attorney manager Liesl Nelson.

Awards Received:

The Wisconsin State Public Defender's Office received the Patriot Award from the National Committee for Employer Support of the Guard and Reserve on May 10, 2010. Air National Guard Master Sergeant Will Mattered, an investigator with the SPD, and Colonel Murray Mitten presented the award to the agency.

The Patriot Award recognizes employers who support a strong National Guard and Reserve force. Employers qualify for recognition when they practice leadership and personnel policies that support employee participation in the Guard and Reserve.

**OFFICE OF THE STATE PUBLIC DEFENDER
2011-2013 PROGRAM GOALS AND OBJECTIVES**

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.

2011, 2012, AND 2013 GOALS

Prog. No.	Performance Measure	Goal 2011	Goal 2012	Goal 2013
1.	Attorney withdrawals at client request as a percentage of total Trial Division cases.	1.5%	1.5%	1.5%
1.	Number of educational contacts with children and youth.	3,100	4,000	4,000
1.	Number of qualified attorneys certified to take cases who accept at least 12 cases per year.	800	800	800
1.	Number of cases with greatest risk of penalties handled by staff attorneys.	1,300	1,100	1,100

Note: Goals based on fiscal year.

ENACTMENT OF 2009 WISCONSIN ACT 164

Background

The State Public Defender's Office (SPD) provides constitutionally-mandated legal representation to the indigent who meet financial eligibility standards. These standards, set by statute, remained stagnant since 1987, leaving many working poor defendants without access to SPD representation. However, 2009 Wisconsin Act 164 (Act 164) updated the financial eligibility standards to be similar to those of Wisconsin Works (W2), effective June 19, 2011.

Benefits of Act 164

- Saves taxpayer money – the new standards reduce the cases in which defendants seek appointment of an attorney at county expense. SPD absorbed some costs previously borne by counties and is able to provide representation cost effectively.
- Ensures a consistent eligibility standard is used throughout Wisconsin – all SPD appointments use the same eligibility criteria.
- Ensures that Wisconsin provides uniform representation according to constitutional requirements.

Challenges Before Implementation of 164

- Many individuals who did not qualify for SPD representation were still too poor to afford a lawyer. In these cases, the courts were required to appoint a lawyer at county expense. Wisconsin counties reported spending nearly \$8.2 million in 2008 to appoint counsel for these individuals.
- A person may have been provided a county-appointed attorney in one court, yet could have been denied an appointed attorney under similar circumstances in an adjoining courtroom or in another county; consistency was not assured throughout all 72 counties.
- Courts and counties had to divert resources from other important services to create appointment-of-counsel structures that already existed within the SPD.

ELIGIBILITY EXAMPLES PRIOR TO IMPLEMENTATION OF ACT 164 VS. AFTER IMPLEMENTATION OF ACT 164

Charge	Dependents	Wages	% of 2009 Federal Poverty Level (FPL)	Assets	Prior to Act 164 – Eligible for SPD?	After Act 164 – Eligible for SPD?
Misdemeanor	None	Gross \$62.50 per week	30% of FPL	\$300 cash \$2,000 car	No	Yes
Misdemeanor or felony	2 children	Minimum wage of \$7.25/hr (40 hrs per week) Gross \$290/wk	82% of FPL	\$300 cash \$2,000 car	No	Yes

SUMMARY OF ACT 164

- The Act took effect June 19, 2011, as amended by 2011 Wis. Act 32. The amendments removed provisions of Act 164 that would have linked the SPD eligibility criteria to updated W2 criteria (including the federal poverty guidelines).
- The SPD's financial eligibility criteria are similar to the standards for the W2 program eligibility criteria (except the SPD criteria limits the asset exclusion for a home to \$30,000 and takes into account the cost to hire an attorney). Because of the amendments to Act 164 enacted in 2011 Wis. Act 32, the SPD criteria may differ in other respects from the W2 criteria in the future.
- The new criteria will dramatically reduce county expenditures for providing counsel to indigent persons who do not qualify for SPD representation.
- Act 164 and 2011 Wis. Act 32 authorized 29.7 FTE new attorneys and 15.7 FTE new support staff positions to handle the majority of the additional cases that now meet SPD eligibility criteria. In allocating these staff positions statewide, the SPD considered the number of cases in the area/region, the availability of private bar attorneys, and the availability as well as cost of office space.
- The SPD also received funding in the private bar, through 2011 Wis. Act 32, to reimburse private attorneys for the additional appointments attributable to Act 164. Although this cost-to-continue item funds the incremental change in the number of private-bar appointments, the SPD continues to experience a structural deficit in the overall private-bar appropriation. In the 2009-2011 biennium, the SPD received supplemental private-bar funding of \$5.4 million through the section 13.10 process. This supplemental funding mitigated, but did not eliminate, the deficit.
- Because of the effective date of June 19, 2011, Act 164 did not result in additional cost to the SPD during the 2009- 2011 biennium. The annual cost in FY 2012 is projected to be \$3.8 million. The ongoing annual cost, beginning in FY 2013, is projected to be \$4.1 million. The overall costs to taxpayers will be more than offset by savings in county budgets due to fewer court appointments.

**OFFICE OF THE STATE PUBLIC DEFENDER
PART-TIME POSITIONS AND ALTERNATIVE WORK PATTERNS**

The Office of the State Public Defender offers permanent part-time employment to its staff. Currently, 20 staff attorneys, 43 clerical staff and another 16 support staff are part-time, approximately 13% of the agency employees. Some of these positions also job-share.

Whenever possible and consistent with operational needs, the SPD also accommodates flexible-time work schedules as requested by employees.