

State Prosecutors A Statutory History

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WDAA Executive Board
ASP Executive Board*

3 Areas of Focus

Transition County to State Administration
Legislative History
How State Program Functions DOA
Resources are measured and allocated

Association of State Prosecutors
Founding, Role and Responsibilities

Recent Legislation and Hearings

Transition from County To State Administration

County Administration

Prior to January 1, 1990 County Government maintained responsibility for funding district attorney positions and resources.

District Attorneys
Deputy District Attorneys
Assistant District Attorneys
Appointment Special Prosecutors
DA's Office Support Staff

County Administration

During County Administration:

- Unacceptable **turnover** highlighted in Rural Jurisdictions
- Urban Centers provided examples in **value of career prosecutors**.
- Loss of Experience attributed numerous factors including **disproportionately low salaries and fringe benefits**.

Transition

- Throughout **1980's** significant political efforts to transfer district attorney positions **from County to State employment**.
- Effort was **the State's third of a three-stage process** to assume a major portion of the costs of the justice system.

Transition

Throughout 1980's 3 stage State effort to assume greater responsibility in administering criminal justice system.

Funding Circuit Court Judges

All costs associated w/ SPD

Transition

- In 1989 Wisconsin Act 31 was drafted to transfer district attorney positions from County to State employment.

Legislative Intent:

- 1) Provide Local Property Tax Relief
- 2) Reducing prosecutor turnover.

Transition

- Wisconsin Act 31 Passed 1989.
- *"When the State assumed responsibility for funding district attorney positions it maintained the existing county staffing levels without attempting to establish standards for staff size based on comparative workload."*

1994 Legislative Audit Report.

Transition

- No explicit workload standards or goals were established for prosecutors.
- Instead, available information on the caseload in each county would be used only to compare counties against the Statewide average caseload.

Transition

- Act 31 created the State Prosecutors Office, attached to the Dept. of Administration to assume responsibility over program operations:

Payroll and Benefits

Budgeting

Collective Bargaining

Communications

Transition

Wisconsin Act 31 did not pass in its original form.

State Program operations were originally envisioned to be a joint venture between DOA and Prosecutors.

To equitably administer a State program and resources to unique constitutionally elected district attorney's offices original intent was to ensure that prosecutors directly participated in how the program would be administered.

Transition

Wisconsin Act 31 in its original form
Would have enacted a **prosecutors council**.

Membership **include elected and other
State prosecutors.**

Responsibilities **Budgeting,
Communications etc.**

Transition

- Wisconsin Act 31 passed in original form out of committee sent to Joint Finance.
- **Joint Finance Committee eliminated the State Prosecutors Council** and all responsibility over the administration of the State Prosecution Program was transferred to DOA.

Enactment

- **On January 1, 1990 district attorney positions were transferred from county to state employment** following a transition period completed December 31, 1992.
 - Salaries many counties increased
 - State maintained County staffing levels.
 - Recognized Property Tax Relief.

State Administration

- Concerns soon developed:
 - ◆ **Criticism of method measuring workloads and distributing resources.**
 - From 1990 to 1996 based on Statewide averages rather than direct measures of prosecutors caseloads.
 - From 1990 to 1994 **majority of request for additional positions were denied.**

State Administration

- State Legislative Audit Report 1994:
*“According to State budget materials, **insufficient information** about district attorney workload and a lack of consensus on how to interpret available workload information have contributed to **denials of position requests.**”*

State Administration

- 1990-1997 3 fiscal budgets:

District Attorney’s Requested	<u>42.65 FTE</u>
Governor Recommended	<u>2.00</u>
Legislature Authorized	<u>0.00</u>

State Administration

- 2004 Legislative Audit Report

Recommended **significant improvements to State caseload formula** and these improvements **lead to present formula** used by DOA and SPO today.

Required prosecutors to participate in a system wide **time study**.

State Administration

- **Present Audit Formula** measures prosecutorial resources through a **weighted caseload formula**.
- WDAA and ASP jointly created the Case Management/Time Reporting Committee 1994.

State Administration

<u>Case Type</u>	<u>Hours</u>
■ Class Homicide s. 940.01 and .02	100.00
■ All Other Homicides	50.00
■ Security Fraud	30.00
■ All Other Felonies	8.49
■ Misdemeanors	2.17
■ Criminal Traffic	1.68

State Administration

■ Juvenile Delinquency	3.32
■ Children in Need Protection CHIPS	6.00
■ CHIPS Extensions	3.50
■ Guardianships	3.50
■ Termination of Parental Rights	35.00

State Administration

■ Writs of Habeas Corpus	2.00
■ Inquests	64.00
■ Sexual Predator	100.00

State Administration

- Significantly **Outdated Time** Averages
- **Initial Appearance** Based Audit
 - No Consideration for:
 - Diversion Agreements
 - Investigations
 - NPR decisions in case reviews.
- **Fundamental Flaws** in time consideration.

State Administration

- Sexual Predator Chapter 980 100.00
- Among most undervalued time estimates
- Only recorded once...

State Administration

- Audit improvements applied in 1996 not resulted in improvements in resource allocation.

2003	447.70 FTE Positions
2004	431.50 FTE Positions
2005	427.15 FTE Positions
2006	424.65 FTE Positions

Changes in Staffing Levels and Caseloads

- Authorized positions have declined 4.4% since 2002
- Population has increased 3.7 %
- Criminal caseloads have increased 11.5%
- Since 2001 prosecutor turnover now exceeds 50%

Program Revenue-Funded Prosecutor Positions

County	Program Revenue Funded Positions	% of Total Positions
Milwaukee	37.00	29.8%
St. Croix	1.00	17.5%
Marathon	1.50	15.0%
Outagamie	1.50	14.3%
Dane	4.25	13.7%
Kenosha	2.00	13.3%
Waukesha	1.00	6.5%

State Administration

- 2007 Legislative Audit Bureau Report

“Use of the formula is limited.” p. 11

“... only occasionally used to guide decisions regarding where to add new positions or eliminate existing ones...” p. 11

“Most elements of the weighted caseload formula have not been updated since 1994.” p. 34

History Association of State Prosecutors

ASP President Catharine White

PRESENT LEGISLATIVE ACTION

WDAA Exec. Board Member and
Green Lake DA Winn Collins

LAB Report (1995)

- Title: *An Evaluation of Allocation of District Attorney Positions*
- Number: 95-24
- Date: December 1995

LAB Report (1995)

“At the directive of the Joint Legislative Audit Committee . . . we reviewed options for measuring prosecutorial workload, as well as for improving the State’s current system for assessing the need for prosecutorial resources.”

Page 3

LAB Report (1995)

“On January 1, 1990, district attorney positions were transferred from county to state employment, largely as a means of providing local property tax relief and **reducing turnover** in prosecutor positions.”

Page 9

LAB Report (1995)

“As a result, district attorneys in some counties believe the current comparisons of relative workload among counties are inaccurate and that their offices are **understaffed** to handle their prosecutorial responsibilities.”

Page 3

LAB Report (2007)

- Title: *An Evaluation: Allocation of Prosecutor Positions*
- Number: 07-9
- Date: July 2007

LAB Report (2007)

The original intent of the audit was to complete “an evaluation of the allocation of prosecutor positions, as requested by the Joint Legislative Audit Committee.”

LAB Letter (July 24, 2007)

LAB Report (2007)

- Felony cases prosecuted by district attorney’s offices increased by **16.2 percent** from 2001 to 2005.
- Wisconsin’s population increased by **3.7 percent** (from 5.4 to 5.6 million people) from 2001 to 2005.
- The number law enforcement officers statewide increased by **1.3 percent** from 2001 to 2005.

Pages 20-21, 53

LAB Report (2007)

- The number of prosecutor positions decreased by **6.0 percent** (from 447.40 to 420.65 prosecutors) from 2003 to 2006.
- The information technology expenditures for district attorneys’ offices decreased to **71.2 percent** of their original expenditures when comparing 2001-02 to 2005-06.
- Additional reductions are likely as a result of declines in federal grant funding.

Pages 4, 14, App. 5-2

LAB Report (2007)

■ Turnover & Experience:

“Responsibility for funding county-level prosecutors . . . was transferred to the State . . . largely as a means of . . . re-ducing turnover in prosecutor positions.”

“. . . experienced prosecutors may handle cases more efficiently.”

Page 10, 34

LAB Report (2007)

■ Understaffing:

“Using the current formula, the State Prosecutor Office calculated in August 2006 . . . a net statewide need of an additional **117.33** FTE positions.”

2005 Wisconsin Act 60 contained a fiscal estimate projecting “a need for **15.0** FTE additional prosecutors.”

Pages 5, 37

LAB Report (2007)

■ Prosecutor Positions:

- 376.40 GPR Funded
- 48.25 Program Revenue

Page App. 2-3

LAB Report (2007)

- GPR (Funded) = 376.40 (67.6%)
- Program Revenue (Funded) = 48.25 (8.6%)
- Work Formula (Unfunded) = 117.33 (21.1%)
- Statutory Change (Unfunded) = 15.00 (2.7%)

LAB Report (2007)

■ Solutions:

“First, the Legislature could consider whether current staffing levels and the consequences of understaffing justify adding new prosecutor positions.”

“As an alternative, given limited resources and other funding priorities, the Legislature could consider ways to lessen prosecutors’ workloads.”

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LAB Hearing (2007)

- Date: October 18, 2007
- Chairs:
 - Sen. Jim Sullivan
 - Rep. Suzanne Jeskewitz
- Speakers:
 - 18 Speakers in Total

LAB Hearing (2007)

- The 18 Speakers at the LAB Hearing
 - Legislative Audit Bureau (2)
 - Department of Administration (2)
 - Presidents of ASP & WDAA (2)
 - District Attorneys (5)
 - Assistant District Attorneys (4)
 - Law Enforcement (2)
 - Victim Advocacy (1)

LAB Hearing (2007)

- Attorney General (10/18/07):

“The prosecutor shortage is among the most pressing public safety issues facing Wisconsin today.”
- Victim/Witness Professionals (10/18/07):

“... even the most competent professionals cannot completely fulfill their obligations [because of] understaff-[ing] and . . . a high turnover rate.”
- Coalition Against Sexual Assault (10/19/07):

“A shortage of prosecutors means fewer prosecutions of sex offenders, a decrease in community safety, and a loss of trust in the justice system by victims.”

Wisconsin Lawyer (2008)

- Title: *Empty Pockets and Overfilled Dockets: Prosecutors Leaving the Profession*
- Number: Vol. 81, No. 3
- Date: March 2008

Wisconsin Lawyer (2008)

■ Turnover Rate:

Approximately 50 percent over Six Years

■ Program Revenue Positions:

Funding cuts likely so future positions reductions very probable.

Legislative Update

■ 2007 Wisconsin Act 28

- Wisconsin Statutes Chapter 753
- Create Additional Circuit Court Branches
- Enacted: November 12, 2007

■ 2007 Senate Bill 321 / Assembly Bill 576

- Wisconsin Statutes Chapter 977
- Create Additional Public Defenders
- Failed to Pass