

W D A A

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WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

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March 3, 2010

Sen. Mark Miller, Co-Chair
Joint Committee on Finance
State Capitol, Room 317 East
P.O. Box 7882
Madison, WI 53707-7882

Rep. Mark Pocan, Co-Chair
Joint Committee on Finance
State Capitol, Room 309 East
P.O. Box 8953
Madison, WI 53708

**RE: Required Request under Section 94 of 2009 Wisconsin Act 100 for
Operating a Motor Vehicle while Intoxicated Funding**

Dear Sen. Miller and Rep. Pocan,

I am writing this letter to provide you with information related to the required request under Section 94 of 2009 Wisconsin Act 100 for Operating a Motor Vehicle while Intoxicated Funding. I respectfully disagree with Secretary Michael L. Morgan's assessment for the reasons presented below.

To provide you with some background, the Wisconsin Legislative Audit Bureau (LAB) properly documented a statewide shortage of prosecutors in a 2007 report, which you may view at <http://www.legis.wisconsin.gov/lab/reports/07-9Full.pdf>. One of the points raised on page thirty-seven in the report noted: "A fiscal estimate for the bill projected a need for 15.0 FTE additional prosecutors, at a total cost of at least \$840,000, . . . [h]owever, although Act 60 provided grants to law enforcement agencies for recording equipment, it did not include any funding for additional personnel."

The passage of 2009 Wisconsin Act 100 creates a similar situation where the legislation increases the demands placed upon prosecutors. The effectiveness of this legislation likely will depend upon whether sufficient resources exist to address these new demands. Equally important, the cases require experienced prosecutors familiar with the complexity of prosecuting these types of cases, including the additional motion hearings that commonly accompany such cases. The lack of pay progression for assistant district attorneys coupled with severe understaffing has resulted in large turnover with fewer experienced prosecutors to handle the cases targeted under this act.

WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

Secretary Morgan wrote that "providing \$700,000 annually . . . provides sufficient resources for the District Attorneys to remain *fully staffed*." See Attachment (emphasis added). This statement ignores the findings of the LAB Report; that is to say, the District Attorneys are currently severely understaffed even without the new demands placed upon them by this new legislation. This recommendation solely attempts to use funding from this act to address a budgetary shortfall from within the biennial budget. There is no correlation between this shortfall and the new demands created under the act other than that failure to provide this funding likely will result in higher turnover from within prosecution, thereby leading to less experience within the profession.

I respectfully ask that you provide the funding needed following the passage of 2009 Wisconsin Act 100. The funding begins by ensuring that the state retains experienced assistant district attorneys to handle these cases. You can achieve retention through pay progression and the elimination of the threat of layoffs. This also involves providing funding for the positions requested. The following is a more accurate cost projection for the needs of the State Prosecutors Office:

	FY10	FY11
Pay Progression	\$1,050,600	\$1,050,600
Budgetary Shortfall	700,000	700,000
11.85 FTE Positions	815,300	815,300
Total:	\$2,565,900	\$2,565,900

The above calculations do not provide full funding for the problems discussed in the LAB Report because that is beyond your current mission of providing funding under 2009 Wisconsin Act 100. The above calculations simply provide an accurate projection of the funds required to ensure that experienced prosecutors exist in sufficient number to address the legal changes created under 2009 Wisconsin Act 100.

If you have any questions or comments, then please do not hesitate to contact me.

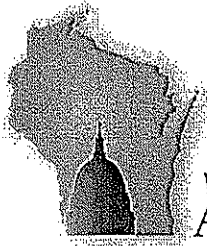
Sincerely,



Ralph M. Uttke, President
Wisconsin District Attorneys Association

cc: Sen. Jim Sullivan, Author of SB-66
Rep. Josh Zepnick, Co-Author of SB-66
Rep. Tony Staskunas, Author of AB-218, AB-274, AB-283, AB-692
Members of the Joint Committee on Finance

Enclosure



WISCONSIN DEPARTMENT OF
ADMINISTRATION

JIM DOYLE
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Date: March 1, 2010

To: The Honorable Mark Miller, Co-Chair
Joint Committee on Finance

The Honorable Mark Pocan, Co-Chair
Joint Committee on Finance

From: Michael L. Morgan *MM*
Secretary

Subject: Required Request under Section 94 of 2009 Wisconsin Act 100 for
Operating a Motor Vehicle while Intoxicated Funding

Drunk driving has long been identified as a problem in Wisconsin and the nation. 2009 Wisconsin Act 100 was signed into law on December 22, 2009, making several changes to operating while intoxicated laws, with a strong focus on deterrence and treatment. Act 100 does the following:

- Makes first OWI offense a crime if there is a child under the age of 16 in the vehicle.
- Increases mandatory jail time for a third OWI offense from 30 days to 45 days.
- Makes fourth OWI offense a felony if it occurs within five years of a prior offense.
- Increases mandatory prison terms for seventh and higher OWI offenses.
- Requires the court to order the installation of an ignition interlock device (IID) on every vehicle owned by a first offender if their blood alcohol concentration was 0.15 or higher, for all repeat offenders and for those who refuse a chemical test.
- Expands the diversion pilot program in Winnebago County for second and third OWI offenders statewide.
- Provides \$6.6 million to the Department of Corrections to provide community treatment to second and third OWI offenders.
- Provides \$8.8 million to the Joint Committee on Finance's biennial supplemental appropriation to fund increased costs associated with the act.
- Directs the Department of Administration to make a request for funding from the Joint Committee on Finance with assistance from and on behalf of the following agencies: State Public Defender, District Attorneys, Director of State Courts, Department of Justice and Department of Corrections.

- The act is effective July 1, 2010.

Agency Workload Changes

Consistent with the provisions of Act 100, the Department of Administration requested information from the affected agencies on how their workloads could potentially be affected. The information that follows summarizes the agencies' requests.

State Public Defender

The State Public Defender anticipates a workload increase due to several different provisions in the bill including: a reduced prohibited alcohol concentration for drivers subject to an ignition interlock device order; violation of ignition interlock device requirements; increased penalty for certain OWI offenses that cause injury; additional felon in possession of a firearm cases as the result of the increased number of OWI cases charged as felonies; classifying the first OWI offense as a crime if there is a minor passenger; contempt proceedings for nonpayment of financial obligations; revocation cases from longer terms of imprisonment and expanded authority to place people on probation; and reclassifying the fourth OWI offense within five years of a prior OWI offense as a felony.

According to the State Public Defender, the new provisions are estimated to result in 836 new case appointments of private bar attorneys. The State Public Defender estimates an annual cost of \$289,700 and a fiscal year 2010-11 cost of \$144,900.

District Attorneys

District Attorneys estimate workloads will be affected by the following provisions of Act 100. Increasing the penalty for a fourth OWI offense within five years of a previous conviction will result in additional preliminary hearings, more jury trials, additional motions to challenge prior convictions and suppression motions. Making a first OWI offense with a minor passenger a misdemeanor will result in cases being handled by District Attorney offices that may have previously been handled by municipal courts. The option for reduced jail time for second and third OWI offenders will generally require prosecutors to make assessments of offenders to determine eligibility for the program; prosecutors will also need to be involved in the on-going monitoring of those offenders to ensure program compliance. Finally, requirements for installation of ignition interlock devices may lead to the filing of additional complaints if offenders do not install the devices in a timely manner; driving without a required device could result in longer license revocations, ultimately leading to more operating after revocation offenses.

Director of State Courts

The Director of State Courts estimates that the primary impact of Act 100 on the court system would be reclassifying a fourth OWI offense within five years of a prior offense from a misdemeanor to a felony. The courts' estimate used the number of 2008 convictions for fourth OWI offense, multiplied by 65 percent to find the total within five years of a prior offense, for a finding of 1,024 cases. Based on those assumptions, it is estimated that these cases could result in an increased need for 1.57 FTE judgeships statewide. Since it is impractical to spread this figure across all circuit courts, the courts instead estimate additional reserve judge funding of \$185,184 to handle the increased workload. However, if caseload data were recalculated using the State Public Defender methodology (looking at the number of cases instead of convictions, plus using 2007 data), the number of cases would increase to 1,301. Multiplying that number by the difference in time for a misdemeanor versus a felony, the courts would need approximately 1.996 FTE judgeships.

Department of Justice

The Department of Justice also estimates that the primary impact of Act 100 on the department's workload would be the reclassification of certain fourth OWI offense penalties, resulting in more felony cases. This change is expected to impact the workload of the State Crime Labs and the Division of Legal Services.

The crime labs analyze blood samples for felony OWI violations. Currently the labs analyze approximately 250 samples per year, but this number is expected to increase not only due to additional felony violations, but also as law enforcement increasingly submits samples to the crime labs instead of to the State Lab of Hygiene. Because law enforcement submits samples to both labs, and the State Lab of Hygiene does not screen the samples before processing, the department believes the State Lab of Hygiene is processing samples that involve felony violations. Improved screening and education of law enforcement may result in more samples being sent to the crime labs regardless of the changes in Act 100. However, the department cannot estimate the workload impact at this time. Based only on the Act 100 changes, the department can estimate the new number of samples for fourth OWI offense felony violations (average of 1,312 annually) and project the workload changes for those samples. In order to maintain the current processing time of two to five days, based on the assumed caseload levels, the department estimates the need for two gas-chromatography units and 4.0 FTE toxicology analysts, for a first year cost of \$140,000 for the units and \$340,500 for the positions.

The Division of Legal Services represents the state on appeals of felony convictions and other significant criminal and juvenile delinquency cases. The department estimates that approximately one-third to one-half of the OWI-related convictions covered by Act 100 will be appealed. Using past experience, the department estimates it will handle approximately 546 new felony OWI cases annually. As each criminal appeals attorney handles around 60 cases annually, the department estimates a need for 9.0 FTE assistant attorney general positions and 2.0 FTE legal secretaries. Total first year staffing costs would be \$942,000.

The department estimates a first year need for increased funding of \$1,422,500 and 15.0 FTE positions for the State Crime Labs and the Division of Legal Services.

Department of Corrections

The most immediate workload change affecting the Department of Corrections would be the authority to supervise offenders on probation for a conviction of second and third OWI offenses. Under the law before Act 100, OWI offenders could not be sentenced to probation. The department estimates an increased population supervised in the community of 2,015 OWI offenders by the end of fiscal year 2010-11.

In order to safely and effectively supervise this population, the department estimates it will need \$1,963,000 for equipment (electronic monitoring devices, sobriety and ignition interlock devices) and additional staffing at the monitoring center. This equipment will allow the department to place 25 percent of OWI offenders on the Electronic Monitoring Program for six months, 100 percent of OWI offenders on sobriety for six months and 50 percent of OWI offenders will have an ignition interlock device for one year.

Analysis and Recommendations

Act 100 includes provisions focused on treatment and deterrence, which complicates making an accurate estimate of future workload resulting from sentencing changes. It is unknown how many violations affected by this act will occur, how many convictions will result, how many offenders will qualify for public defender representation, how many will appeal their conviction or how many will be sentenced to probation. It is in the best interest of the citizens of the state if the stiffer penalties, increased funding for treatment and diversions from the traditional criminal justice system result in fewer future violations. However, until the actual effects are known, the agencies impacted by these changes may need additional resources to manage projected caseload growth based on preliminary estimates.

The Department of Administration recommends funding for all the affected agencies as follows:

State Public Defender

The Department of Administration recommends total funding for the State Public Defender of \$144,900 in fiscal year 2010-11 to cover increased appointments of private bar attorneys. The request appears reasonable based on preliminary estimates.

It should be noted that the private bar appropriation is currently in deficit, projected to end the biennium with a shortfall of between \$9 million and \$10 million. The Joint

Committee on Finance could consider allocating some portion of unused funding set aside for Act 100 to address the private bar shortfall in fiscal year 2010-11.

District Attorneys

The Legislature made reductions to all state agencies in 2009 Wisconsin Act 28, including a reduction that assumes all state employees will take eight furlough days in each fiscal year. By only committing to five furlough days for assistant district attorneys, the District Attorneys are only following through on a portion of the requirements in the budget. As with all state agencies and positions, the District Attorney budget was reduced by 1 percent across-the-board and is obligated to fund from base funding levels a 2 percent pay raise to assistant district attorneys. The reductions and unfunded pay increases add up to a shortfall of approximately \$3 million over the biennium.

The Department of Administration recommends providing \$700,000 annually from Act 100 funding, for a total of \$1.4 million over the biennium. This amount represents the remaining shortfall after factoring in savings from eight furlough days in each fiscal year for assistant district attorneys. This funding provides sufficient resources for the District Attorneys to remain fully staffed. Without this funding, approximately 9.7 FTE assistant district attorney positions will need to be laid off or remain unfilled for fiscal year 2010-11 to make up the shortfall.

Director of State Courts Office

Although the Director of State Courts Office requested funding for the equivalent of 1.57 FTE judgeships, this request arguably underestimates the workload increase by only factoring in convictions, instead of total cases charged. By using the number of cases from 2007 and then using the judicial workload methodology, the courts would need an increase of 1.996 FTE judgeships. This higher number equates to reserve judge funding of \$231,100, instead of the requested amount of \$185,200.

The Department of Administration recommends funding at the higher amount of \$231,100 to ensure adequate resources for the circuit courts in fiscal year 2010-11.

Department of Justice

The Department of Justice requested resources to address workload changes in the crime labs and Division of Legal Services. Act 100 becomes effective on July 1, 2010, and it will take several months before appeals of OWI convictions begin reaching the department. If an emergency situation arises and cases are appealed more quickly than expected, the department could make a request under the s. 13.10 process for increased funding and position authority in the Division of Legal Services.

The Department of Administration recommends funding for the crime labs at this time, which includes \$140,000 for equipment and \$340,500 to support 4.0 FTE

toxicology analyst positions. Total recommended funding for the department is \$480,500.

Department of Corrections

The Department of Corrections requested resources to safely supervise offenders sentenced to probation for second and third OWI offenses. Placing the offenders on sobriety, electronic monitoring devices or equipping them with ignition interlock devices increases public safety and, coupled with treatment in the community, should reduce the incidence of future offenses. The department's request is sufficient to cover the purchase of equipment and personnel costs of limited term employees (LTEs) in the monitoring center to track compliance with the monitoring devices. As it is unknown how many offenders will be sentenced to probation, use of LTEs is a short-term staffing strategy while data is collected to form the basis for adding permanent staff in future budgets.

The Department of Administration recommends funding the department's request for \$1,963,000.

Summary

The Department of Administration's total request for funding and positions is \$4,219,500 and 4.0 FTE, with \$700,000 of the total allocated to the District Attorneys in fiscal year 2009-10. This is less than the \$8.8 million allocated in Act 100. As this is a biennial appropriation, additional requests for funding may be made in fiscal year 2010-11 if an emergency occurs for an agency and increased workloads cannot be absorbed within current budgets.

The Department of Administration will be working with all departments to closely monitor workload changes and collect data to document the actual effects of Act 100. Any future requests for increased funding will need to be predicated on information collected and analyzed, and all agencies will need to share this information with the executive and legislative branches along with their funding requests.

Summary of Agency Requests and DOA Recommendations

Agency	Requested Funding	Requested Positions	Recommended Funding		Recommended Positions
			FY10	FY11	FY11
State Public Defender	\$144,900	0.00		\$144,900	0.00
District Attorneys*	\$815,300	11.85	\$700,000	\$700,000	0.00

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Director of State Courts	\$185,184	0.00		\$231,100	0.00
Department of Justice	\$1,422,500	15.00		\$480,500	4.00
Department of Corrections	<u>\$1,963,000</u>	<u>0.00</u>	<u> </u>	<u>\$1,963,000</u>	<u>0.00</u>
Total	\$4,530,884	26.85	\$700,000	\$3,519,500	4.00

*Request is based on estimates submitted by 12 counties.