

# **Criminal Justice Coalition**

## **2023-25 Biennial Budget Proposal**

### **Introduction**

The **State Public Defender’s Office (SPD)**, **Wisconsin District Attorney’s Association (WDAA)**, **Association of State Prosecutors (ASP)**, **Department of Justice (DOJ)**, and **Director of State Court’s Office (DSCO)** have collaborated to present a package of budget proposals that makes an efficient and systemic investment in a core Constitutional function of government - the criminal justice system.

This collaboration offers a thorough review, by all major actors of the criminal justice system, of investments that are critical to ensure that Wisconsin meets its constitutional obligations to all citizens impacted by the justice system.

This package recognizes that the criminal justice system is made up of different actors with different fundamental roles and responsibilities but that are interrelated such that if one part of the system is under-resourced or inefficient, it impacts all others. Combined, all of these areas account for less than 2% of state government spending, but the implication for not providing adequate resources affects countless families, the accused, and victims of crime statewide.

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### **Summary of Wisconsin District Attorneys Association/Association of State Prosecutors Request**

#### **1. Market-based Assistant District Attorney / Deputy District Attorney Salary Adjustments**

Wisconsin’s 71 elected District Attorneys unanimously request that the legislature support a market-based salary adjustment for the state’s Assistant District Attorneys (ADAs) and Deputy District Attorneys (DDAs). This request includes raising the entry level ADA salary, adjusting the pay scale, and equitable placement of each existing ADA/DDA on the new pay scale.

This request comes as our state faces a statewide crisis in our criminal justice system that is due, in part, to a lack of prosecutors across all counties. We have seen increasing case backlogs and incredible delays that both hurt victims and threaten public safety and we

are struggling to retain our current ADAs/DDAs as inflation and cost-of-living increases continue to rise.

In late summer 2022, the Department of Administration, Division of Personnel Management conducted a market study to determine appropriate salary levels for ADAs. The data gathered in the market-based study conducted by the Division of Personnel Management supports a starting wage of \$35.00/hr beginning with the first pay period of FY24. The entry level wage at that time is currently scheduled to be \$27.24/hr. This increase of \$7.76/hr (or \$16,140 annually for a full-time employee) is needed to allow District Attorney offices to compete in the current legal marketplace. This includes a proposal to adjust the attorney step rates by uniformly adding \$7.76/hr to each of the currently scheduled steps beginning with the first pay period of FY24.

The 71 elected District Attorneys have also requested fair and equitable treatment for all existing ADAs and DDAs. To facilitate this, \$7.76/hr shall be added to each existing ADA/DDA salary to ensure that an attorney maintains placement at the same 17-step rate following market-based adjustment of the pay scale.

*2023-25 BUDGET REQUEST:* Provide \$7,128,300 GPR in FY 2023-24 and \$7,194,300 GPR FY 2024-25 to fund a market-based salary increase for all assistant district attorneys and deputy district attorneys. *Proposed non statutory language including a "notwithstanding" provision:* Notwithstanding s. 230.12 (10) (c), a salary adjustment for an assistant or deputy district attorney under this subsection may exceed 10 percent of his or her base pay during fiscal year 2024 and fiscal year 2025.

## 2. Full Funding for Assistant District Attorney Pay Progression

The Wisconsin State Legislature prioritized the function of Wisconsin Assistant District Attorneys (ADAs) when they created the “pay progression” system in 2012 and funded that system in subsequent budgets. (See Wis. Stat. § 230.12 (10) and (12) and 2011 Wisconsin Act 238.) “Pay progression” creates a 17-step *discretionary merit-based* program for providing pay increases to ADAs in an effort to strengthen our law enforcement system by retaining experienced prosecutors in the workforce. We ask that ADA pay progression be fully funded in the 2023-25 budget bill. “Fully funded” means that funding is provided such that each eligible ADA may be awarded up to “one full step” of a pay increase at the discretion of the district attorney.

*2023-25 BUDGET REQUEST:* Provide \$3,740,100 in FY 2023-24 and \$7,854,200 in FY 2024-25 to fund the Assistant District Attorney pay progression program. (Wis. Stat. § 20.475 (1) (em).) *This estimate is approximate because it is based on current ADA staffing levels. This amount should be adjusted if any additional ADA positions are approved in the 2023-25 biennial budget.*

3. Conversion of Part-Time Assistant District Attorneys to Full-Time Positions

Three District Attorneys have requested part-time assistant district attorney positions be converted to full-time FTE positions totaling 1.4 FTE.

*2023-25 BUDGET REQUEST:* Provide \$111,000 GPR in FY 2023-24 and \$111,000 GPR FY 2024-25 in Wis. Stat. § 20.475(1)(d) to fund an additional 1.4 FTE.

4. IT Services – Equipment and Licenses

District Attorney offices receive information technology services from DOA's District Attorney IT Program (DAIT). Overall funding for DAIT has declined by \$1,000,000 annually over the past 20 years. Due to the increase in the user base, industry move to subscription-based licenses, and increased bandwidth and storage requirements due in part to the proliferation of digital evidence, DAIT funding is no longer sufficient to provide core services including end user hardware and software licenses that are essential to operations of each district attorney office.

*2023-2025 BUDGET REQUEST:* Provide \$1,400,000 in FY 24 and \$1,400,000 in FY 25 in Wis. Stat. § 20.475 (1)(d) for laptops to be replaced on a 4-year cycle, Office 365 G3 licenses, and legal research tools. Funding would be included in the District Attorney GPR budget, which would restore DAIT Program Revenue Program revenues which are no longer sufficient to fund on-going basic services.

## **Summary of State Public Defender Request**

1. Staff Compensation

A significant component in addressing the availability of attorneys to provide representation to indigent defendants is the retention and recruitment of SPD staff attorneys through funding an established pay progression system and increasing the starting salary. A merit-based pay incentive system covers assistant state public defenders as well as assistant district attorneys and assistant attorneys general. Retaining staff attorneys with knowledge and experience is especially critical in the face of the lack of available private attorneys. With skill and experience comes efficiency and ability to handle a high and complex caseload. Similarly, offering a starting salary that is more in line with similar agencies regionally and nationally will increase the ability to hire for vacant positions. This reduces delays in cases moving forward.

*2023-25 BUDGET REQUEST:* Provide \$5,311,800 in FY 24 and \$8,292,800 in FY 25 to fund the Assistant State Public Defender pay progression system and to increase the starting salary from \$26.70 to \$35 per hour.

## 2. Staff Support

Over the last several years there has been a significant increase in the workload associated with cases. With a staffing ratio of approximately one support staff for every two attorneys, SPD attorneys perform ministerial tasks that require a significant amount of time that could be spent in direct representation of individual clients. The low staffing ratio is made worse by the amount of time that support staff must spend attempting to appoint cases to the private bar which further decreases the amount of support they can provide to staff attorneys.

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.

*2023-25 BUDGET REQUEST:* Provide \$3,755,700 in FY 24 and \$4,828,800 in FY 25 to fund the 67 FTE positions to provide adequate support staffing to SPD attorneys.

## 3. Private Bar Rate

The 2019-21 biennial budget raised the rate that the SPD pays to certified private bar attorneys who handle SPD cases from \$40 an hour (at that point the lowest rate in the nation) to \$70 an hour. In the short term, this had a positive impact on the number of certified private bar attorneys. At the same time, the Supreme Court raised the rate for an attorney appointed at county expense from \$70 to \$100 an hour. This, coupled with the pandemic and workload impact on private bar attorneys, has significantly decreased the number of certified private bar attorneys and the number of cases that they will accept.

A lack of private bar attorneys delays the appointment of cases which negatively impacts clients, victims, and ultimately public safety. The inability to make timely appointments also has a direct fiscal impact on counties when courts are forced to appoint at county expense.

*2023-25 BUDGET REQUEST:* Provide \$12,235,100 in FY 24 and \$12,235,100 in FY 25 to increase the private bar rate to \$125 an hour for in-court work, \$100 an hour for out-of-court work, and \$50 an hour for travel.

## **Summary of Department of Justice Request**

### **1. Sustainable and Predictable Funding for County Victim and Witness Service Programs**

Under current law, counties are eligible to receive reimbursement for not more than 90% of the costs of providing victim and witness services. However, the percentage of reimbursed costs is dependent upon the availability of state surcharge revenue funding, which has declined substantially over the years. DOJ administers reimbursement payments for local county victim and witness programs.

At the same time as reimbursement rates for county victim witness programs have decreased, caseloads for victim witness professionals and demand for their services has markedly increased. In 2020, Wisconsin voters ratified an amendment to the Wisconsin State Constitution, also known as Marsy's Law, providing additional rights to crime victims. The responsibility for providing these additional victims' rights has largely fallen upon victim witness professionals. In addition, in the past two state budgets Wisconsin has added over 70 additional state prosecutor positions but did not substantially increase state funding for victim witness professionals. This has resulted in more prosecutors to handle criminal caseloads, but a static amount of victim witness staff to assist prosecutors in working with victims and witnesses. With the state reimbursement rate being dependent on the fluctuating and decreasing nature of surcharge revenue, counties are reluctant to add additional victim witness staff despite the growing need and demand for their services.

This issue was partially addressed in the 2021-2023 biennial budget, which provided an additional \$1,548,000 GPR for victim witness reimbursements. However, without additional funding, the reimbursement rate will again drop from 49% of cost in FY 2020-2021 to 45% in FY 24-25.

*2023-2025 BUDGET REQUEST:* Provide \$5,724,700 in FY 24 and \$6,004,200 in FY 25 to raise reimbursement rates to the statutory maximum of 90%.

### **2. Funding for Four Additional Toxicology Positions for Wisconsin State Crime Laboratories (WSCL)**

DOJ's Forensic Toxicology program identifies and quantifies drugs and alcohol in biological samples submitted by law enforcement agencies related to felony investigations. Dangerous synthetic drugs continue to evolve in chemical composition and are increasing in prevalence. Law enforcement must have the tools and resources necessary to keep pace with enterprising criminals to keep our communities safe. DOJ requests additional position authority to meet the demand for forensic toxicology testing performed by the state crime laboratories.

*2023-25 BUDGET REQUEST:* Provide \$237,900 in FY 24 and \$310,500 in FY 25 to fund 4.0 FTE positions.

3. Funding for Ten Additional DNA Section Positions for Wisconsin State Crime Laboratories (WSCL)

DOJ is requesting additional position authority to meet the demand for forensic DNA testing performed by the state crime laboratories resulting from advancing scientific knowledge and technology, including probabilistic genotyping and forensic investigative genetic genealogy.

The DNA Section consists of DNA Analysis Units and the DNA Databank Unit. The DNA Analysis Units analyze and compare biological material connected with crimes to characterize genetic information about the source of the material. DNA profiles obtained from crime scene evidence are also stored locally in the Combined DNA Index System (CODIS). The DNA Databank Unit receives, verifies acceptability of, analyzes, and maintains a repository of Wisconsin reference DNA samples in CODIS. Law enforcement agencies submit evidence for DNA analysis in felony investigations and lawfully owed DNA samples to the DNA Databank.

Over the past ten years the number of sexual assault cases submitted for DNA analysis has dramatically increased. Sexual assault evidence takes much longer to analyze as it often contains mixtures of DNA, which require a greater amount of interpretation due to complexity.

*2023-25 BUDGET REQUEST:* Provide \$594,600 in FY 24 and \$776,200 in FY 25 to fund 10.0 FTE positions (8.0 analysts and 2.0 supervisors).

4. Funding for Two Additional Positions for Forensic Science Crime Scene Response

DOJ requests two additional positions for its Crime Scene Response (CSR) Unit to meet the increased demand for services requested by local law enforcement agencies.

The CSR Unit responds to major crime scenes, including homicides and officer involved critical incidents, at the request of local law enforcement agencies throughout the state. The CSR Unit also provides technical assistance at scenes involving human remains, autopsies, vehicle examinations, and missing persons cases.

The CSR Unit has six full-time staff members. The rest of the unit, which is 20 additional staff members, is supplemented by volunteers throughout the WSCL. The 20 additional staff members are primary staff members of the other units of the WSCL – DNA, Controlled Substances, Toxicology, Firearms & Toolmarks, Latent Prints, and Forensic Imaging.

Since 2019, the CSR Unit has seen a 46% increase in requests for their services. The increase in the requests for the services of the CSR Unit impacts all units of the WSCL as

most of the staff that support the CSR Unit are volunteers with full-time obligations in other units of the WSCL.

More resources in the CSR Unit will have a positive impact on resources throughout the WSCL and will benefit law enforcement agencies investigative efforts.

*2023-25 BUDGET REQUEST:* Provide \$159,000 in FY 24 and \$195,300 in FY 25 to fund 2.0 FTE positions.

5. Funding for Five Additional Positions for Technical Assistance and Evaluation of Treatment Alternatives and Diversion (TAD) Program

Wisconsin's successful TAD program has grown from approximately \$1 million annually in fiscal year 2013 to over \$9.5 million annually in fiscal year 2022, including 86 participating treatment courts and diversion programs in 53 counties and 3 tribes. Unfortunately, this growth has not been coupled with a corresponding increase in the resources available to administer the program. Resources are needed to better develop best practices through enhanced evaluation and to assist programs with implementing those practices. DOJ requests five additional positions to support the administration of the TAD program. These positions would provide program development and technical assistance services; administer grants to local agencies operating diversion and treatment programs; and ensure effective outcome reporting.

*2023-25 BUDGET REQUEST:* Provide \$397,300 in FY 24 and \$488,100 in FY 25 to fund 5.0 FTE positions.

6. Funding to Convert a Sexual Assault Prosecutor from a Project Position to a Full-Time Position

DOJ requests permanent position authority so that this existing position can continue providing expert assistance to local district attorneys and law enforcement agencies related to the investigation and prosecution of sexual assaults. This position was originally created in the 2019-2021 biennial budget as a four-year project position expiring June 30, 2023.

*2023-25 BUDGET REQUEST:* Provide \$82,600 in FY's 24 and 25 to fund 1.0 FTE position.

7. Funding for an Additional Crime Victim Compensation Specialist

DOJ requests permanent position authority to ensure the timely processing of reimbursement claims from victims of crime.

The number of claims coming into Wisconsin Crime Victim Compensation program have increased significantly over the years. In addition, there has been a noticeable increase in

the level of complexity of claims, resulting in high workload volumes and more time spent processing claims. An additional claims specialist would decrease claim processing times to directly benefit victims.

To process claims within a reasonable time frame for victims, a caseload for a full-time claims specialist should be at most 175-200 claims. DOJ currently has multiple claims specialists handling more than 300 claims, delaying claims processing.

*2023-2025 BUDGET REQUEST:* Provide \$59,500 in FY 24 and \$77,700 in FY 25 to fund 1.0 FTE position.

## **Summary of Director of State Court's Request**

### **1. Position Authorization and Funding for Increase in Number of Circuit Court Branches**

2019 Wisconsin Act 184 authorized the creation of 12 additional circuit court branches, four branches began operations on August 1, 2021 and four on August 1, 2022, with the last four branches beginning operations on August 1, 2023. 2019 Act 184 requires the DSCO to request position authority and funding through the biennial budget process. 2021 Wisconsin Act 58 provided position authority and funding for the eight circuit court branches that began operations on August 1, 2021 and August 1, 2022. 2019 Act 184 requires DSCO to request position authority and funding for the remaining four circuit court branches to comply with the requirements of the Act.

A new circuit court branch requires a circuit court judge and a court reporter. To meet the implementation date set forth in 2019 Wisconsin Act 184, ongoing authority for 8.0 FTE GPR unclassified positions (4.0 judges and 4.0 circuit court reporters) are needed in FY 24. The four counties have demonstrated judicial need, county board resolutions of support, and a commitment to have facilities ready before the statutory deadline of May 31, 2022. This position authority request includes: 4.0 judges and 4.0 circuit court reporters each year; and on-going funding for salaries, fringe benefits, and supplies and services, as well as one-time set-up costs (e.g. computer equipment, books, etc.).

*2023-2025 BUDGET REQUEST:* Provide position authority for 8.0 FTE GPR unclassified positions and associated funding of \$1,246,100 GPR FY 24 (ongoing and one-time costs) to establish each branch and \$1,223,200 GPR in FY25, in the appropriation under s. 20.625 (1) (a). The funding in the second year of the biennium (FY25) includes the ongoing costs for the positions created in FY24.

### **2. Funding to Counties for Increase in Number of Circuit Court Branches**

In Wisconsin, funding of the circuit courts is a shared responsibility of the state and of the counties. To assist the counties, DSCO makes payments to counties for circuit court costs, pursuant to s. 758.19(5)(b), Wis. Stats. The Director apportions the payments



among the counties based, in part, upon the number of circuit court branches in the county. Under the terms of 2019 Wisconsin Act 184, the number of circuit court branches in Wisconsin increased from 249 to 253 on August 1, 2021, and from 253 to 257 on August 1, 2022, and will increase from 257 to 261 on August 1, 2023. The 2021 Act 58 also provided additional support to counties by increasing the Circuit Court Cost payment funding \$438,700 GPR in FY 22 and \$877,400 GPR in FY 23, maintaining FY21 per branch funding. Assuming the same method of distribution of these funds, the amount available for distribution to the counties will need to be increased in order to prevent a substantial number of counties from receiving lower payments. DSCO estimates that an additional \$110,000 per year per new branch would effectively hold the counties harmless.

*2023-2025 BUDGET REQUEST:* Provide \$438,700 GPR in FY 24 and \$438,700 GPR FY 25 as funding for counties to hold them harmless for the additional costs incurred by the increase in the number of circuit court branches.

### 3. Digital Audio Recording (DAR) and Sum-Sufficient Re-Estimate

Since 2019, DAR has been recognized as an official method of taking the circuit court record, and digital court reporters serve as official, district, and per diem court reporters around the state. Digital court reporters can take the record for any type of proceeding, and if given access, are able to take the record across county lines. Digital court reporting is a flexible method for covering courts on a regular basis and when an emergency coverage issue occurs. Over the past two years, the majority of new court reporter hires have been digital, not stenographic, court reporters. The number of stenographic court reporters nationwide has significantly decreased over the past ten years and the number of new stenographic reporters available for hire is not sufficient to fill current vacancies.

With the expansion of digital court reporting in Wisconsin, it is critical that the tools to take the record are available in every courtroom and hearing room around the state. The digital court reporter can only cover in courtrooms if a DAR system has been installed. Since fiscal year 2019, over \$5.7 million has been expended to purchase new digital audio recording systems, and CCAP-PR funding has been used for over \$3.3 million of these new DAR systems. Currently there are over 260 installations in the circuit courts with approximately 115 installations remaining. Each installation costs approximately \$16,000. The additional funding will enable the court system to expedite this installation process and maintain the DAR systems on a permanent basis. Installing additional DAR systems into courtrooms gives the court the opportunity to staff court reporter vacancies with digital court reporters, which is necessary due to the shortage of qualified stenographic court reporters and the increase in retirements among existing stenographic court reporter staff.

*2023-2025 BUDGET REQUEST:* Provide \$790,000 in FY 24 and \$790,000 in FY 25 in additional sum sufficient expenditure authority on the Circuit Court budget (20.625(1)(a)) to support the installation of 100 additional digital audio recording devices and associated hardware and related accessories annually.

#### 4. Cybersecurity Program

In January 2020, CCAP established a small cybersecurity team with a focus on implementing many additional security systems and new procedures to keep the court system infrastructure and data secure. The need for a comprehensive cybersecurity program has continued to increase significantly. Cybercrime will continue to escalate, and digital records provide potential vulnerabilities for these cyber criminals to exploit. The initial cybersecurity program was funded through CCAP-Program Revenue, but there are additional tools that should be implemented that require a dedicated, sustainable funding base. Many of these tools require ongoing annual licensing costs. For the court system to realize a fully mature cybersecurity posture, there are several additional programs and tools that should be implemented over the next several years.

*2023-2025 BUDGET REQUEST:* Provide \$1,832,100 in FY 24 and \$2,092,100 in FY 25 in 20.680(2)(a) for new and ongoing cybersecurity initiatives and related maintenance. This would cover the costs of a mature cybersecurity program as well as the costs for the current program. Funding would be included in the DSCO 20.680(2)(a) GPR budget, which would relieve pressure on CCAP Program Revenue Program revenues.