



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #600

Public Defender Funding (Public Defender)

[LFB 2003-05 Budget Summary: Page 343, #2, Page 344, #3 and Page 344, #4]

CURRENT LAW

State-Funded Indigent Criminal Defense. The cost of providing indigent criminal defense is generally borne by the state through the Office of the State Public Defender (SPD). Adjusting for the deletion of \$6,647,900 GPR in one-time supplemental funding provided to the SPD by 2001 Wisconsin Act 109, the total adjusted base funding for all GPR state operations appropriations under the agency is \$66,440,300 GPR annually.

Mandatory Caseload. The SPD is required to provide representation to indigent criminal defendants facing a sentence that includes incarceration, certain children involved in proceedings under the Children's and Juvenile Justice Codes (Chapters 48 and 938), indigent persons facing involuntary civil commitment and certain appellants. The SPD must provide this counsel, either through SPD staff attorneys or SPD-appointed private bar attorneys.

Indigency Standard. Under s. 977.07(2) of the statutes, if a person's assets, less reasonable and necessary living expenses, are not sufficient to cover the anticipated cost of effective representation when the length and complexity of the anticipated proceedings are taken fully into account, the person is determined to be indigent. "Reasonable and necessary living expenses" is linked to an Aid to Families with Dependent Children cost of living table from September, 1987, adjusted for other specified, emergency or essential costs.

GOVERNOR

Full Funding of the Private Bar Appropriation. Provide \$1,410,700 GPR in 2003-04 and \$4,410,700 GPR in 2004-05 to fully fund the agency's private bar and investigator

reimbursement appropriation. This appropriation is used to reimburse private bar attorneys who accept assignment of defense cases for indigent persons qualifying for SPD representation.

Base Budget Private Bar Reductions. Reduce the private bar and investigator reimbursement appropriation by \$2,648,700 GPR annually and the private bar and investigator reimbursement administrative appropriation by \$30,700 GPR and 0.75 GPR position annually, for a total reduction of \$2,679,400 GPR and 0.75 GPR position annually. The base reductions would be applied to amounts budgeted for payments to private bar attorneys under the former appropriation and to amounts budgeted for salaries and fringe benefits under the latter appropriation. These adjustments would represent a 10.1% reduction to the private bar and investigator reimbursement appropriation and a 5.0% reduction to the associated administrative appropriation.

Base Budget Staffing Reductions. Reduce the agency's GPR state operations appropriations for trial representation by \$735,500 GPR and 14.25 GPR positions annually and for appellate representation by \$85,100 GPR and 1.0 GPR position annually, for a total reduction of \$820,600 GPR and 15.25 GPR positions annually. The base reductions would be applied to amounts budgeted for salaries and fringe benefits. These adjustments would represent a 1.9% reduction to the trial representation appropriation and a 2.0% reduction to the appellate representation appropriation.

The aggregate adjustments under these recommendations are -\$2,089,300 GPR in 2003-04 and \$910,700 GPR in 2004-05 and -16.0 positions annually.

DISCUSSION POINTS

1. Every two years, the SPD estimates the biennial funding amounts required for its private bar appropriation. This appropriation reimburses private attorneys for representing SPD overflow cases and certain cases where SPD representation could raise conflict-of-interest issues. Currently, the statutes prescribe annual caseload requirements that SPD trial staff attorneys are expected to meet. Excess caseload or cases that the SPD cannot represent are assigned to the private bar.

2. The biennial funding requirements for the private bar appropriation are estimated by: (a) projecting the SPD biennial caseload; (b) identifying the number of SPD trial staff attorneys available to handle budgetary caseloads; (c) estimating the number of cases appellate staff attorneys will handle (there is no statutory budgetary caseload for appellate attorneys); (d) identifying the remaining caseload to be assigned to the private bar; and (e) estimating the private bar cost to complete this caseload, based on average cost data collected by the SPD.

3. The adjusted base funding for the private bar appropriation is currently \$18,599,900 GPR annually. At the time the SPD submitted its biennial budget request, the agency projected that base funding for the private bar reimbursement appropriation would need to be increased by \$1,410,700 GPR in 2003-04 and by \$4,410,700 GPR in 2004-05 (for a biennial total of \$5,821,400

GPR) to fully fund such costs during the biennium.

4. Under SB 44, the Governor recommends providing this increase to fully fund the private bar appropriation. However, the bill also includes a recommendation to apply a base level reduction to this same appropriation of \$2,648,700 GPR annually.

5. The bill also reduces the SPD's trial division appropriation by \$735,500 GPR and deletes 14.25 GPR positions annually. Of these amounts, \$697,700 GPR annually is associated with the deletion of 13.25 GPR trial division attorneys.

6. State Budget Office staff indicate that a two-part process was followed to develop these base budget reduction recommendations. First, following a review of the SPD budget, budget staff concurred that \$5,821,400 GPR was required during the biennium to fully fund the SPD's private bar appropriation. However, the SPD, like most state agencies, was also subject to GPR reductions in order to balance the 2003-05 budget. As a part of a second process, GPR reductions were applied to the agency, including \$5,297,400 GPR over the biennium to the same private bar appropriation, notwithstanding the earlier funding need projections.

7. Following introduction of SB 44, the biennial funding needed for the private bar appropriation has been reestimated. It is estimated that an additional \$8,064,600 GPR will be required during 2003-05 to fully fund private bar costs. The revised estimate incorporates the increased cost of caseloads assigned to the private bar as a result of the deletion of 13.25 GPR trial division attorneys under the bill

8. The State Budget Office indicates that the SPD, like other state agencies, is also expected to operate within budgeted resources. However, given the mandatory caseload of the SPD, the Office has little ability to manage a funding shortfall of this magnitude unless caseloads drop significantly. Consequently, unless the funding shortfall is addressed, the SPD will likely return to the Committee during 2003-05 with supplementation requests under s. 13.10.

9. Although there is a projected private bar appropriation shortfall of \$8,064,600 GPR during the 2003-05 biennium, balances of \$2,775,000 PR during the biennium will be available from crime laboratory and drug law enforcement assessment receipts.

10. Under current law, the crime laboratory and drug law enforcement assessment is applied if a court imposes a sentence, places a person on probation, or imposes a forfeiture for a violation of state law or municipal or county ordinance (other than for nonmoving traffic or smoking violations). Currently, the assessment supports: (1) the DNA databank; (2) District Attorney DNA evidence prosecution efforts; (3) the crime laboratories; and (4) Department of Justice drug law enforcement efforts.

11. The Committee could consider utilizing these available assessment balances to reduce the projected private bar shortfall and to lessen the likelihood that the SPD would be required to seek a s. 13.10 supplementation during 2003-05.

12. As one alternative, the Committee could consider restoring the deleted positions by providing \$736,800 PR and authorizing 13.25 PR trial division attorneys annually under a new SPD trial division PR annual appropriation supported by available crime lab assessment and DNA surcharge revenues.

13. While these positions would require \$1,473,600 PR in crime lab assessment and DNA surcharge funding over the biennium, it is estimated that the restored state staffing would reduce the projected private bar shortfall by \$1,951,000 GPR during the biennium. If the Committee chooses to adopt this approach, the remaining shortfall for the biennium would then be \$6,113,600 GPR.

14. SPD staff have indicated that an additional 12.0 FTE trial division attorney positions could be authorized without the need for additional space rental. Further, the agency anticipates that this level of additional trial attorney staffing could meet the statutory annual caseload requirements without the need for authorizing additional agency support staff. As a further alternative, the Committee could consider providing an additional \$574,800 PR in 2003-04 and \$681,600 PR in 2004-05 and authorizing 12.0 PR trial division attorneys annually under a new SPD trial division PR annual appropriation supported by crime lab assessment and DNA surcharge revenues.

15. While these positions would require \$1,256,400 PR in crime lab assessment and DNA surcharge funding over the biennium, it is estimated that the additional caseload assumed by 12.0 PR new trial attorney positions would reduce the identified private bar shortfall by \$1,413,600 GPR during the biennium. The remaining projected shortfall for the biennium under this alternative would then be \$4,700,000 GPR.

16. The compensation and supplies and services costs associated with funding 25.25 PR trial attorney positions under the previous two alternatives would commit \$1,311,600 PR in 2003-04 and \$1,418,400 PR in 2004-05 of the available crime lab assessment and DNA surcharge balance. The remaining balance of \$45,000 PR could be retained as a small reserve.

17. If the Committee chooses to adopt the above alternatives, an additional \$2,730,000 PR from crime lab assessment and DNA surcharge revenues would be committed during the biennium to SPD operations, and the projected shortfall in the private bar reimbursement appropriation would be reduced by \$3,364,600 GPR (from \$8,064,600 GPR to \$4,700,000 GPR) during the biennium.

18. In order to completely address the remaining projected private bar deficit for 2003-05, the Committee could consider providing an additional \$4,700,000 GPR in 2003-04. (The private bar appropriation is a biennial appropriation and funds appropriated in each fiscal year may be expended at any time during the biennium.)

19. On the other hand, SPD staff have indicated that the Office would work to carry out agency functions within the budgeted resources provided. Therefore, the Committee could consider not providing the remaining \$4,700,000 GPR in 2003-04. Given the mandatory nature of the SPD's

workload, however, the Office may still need to receive supplemental funding under s. 13.10 during the course of the biennium.

ALTERNATIVES

1. Approve the Governor's recommendations to: (a) provide \$1,410,700 GPR in 2003-04 and \$4,410,700 GPR in 2004-05 to fully fund the SPD's private bar and investigator reimbursement appropriation; (b) reduce the SPD's private bar and investigator reimbursement appropriation by \$2,648,700 GPR annually; (c) reduce the SPD's private bar and investigator reimbursement administrative appropriation by \$30,700 GPR and 0.75 GPR FTE annually; (d) reduce the SPD's trial representation appropriation by \$735,500 GPR and 14.25 GPR FTE annually; and (e) reduce the SPD's appellate representation appropriation by \$85,100 GPR and 1.0 GPR FTE annually.

2. *In addition to Alternative 2*, provide one of the following:

a. \$736,800 PR annually and restore 13.25 PR trial division attorney positions deleted under the bill.

<u>Alternative 2a</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$1,473,600
2004-05 POSITIONS (Change to Bill)	13.25

b. \$574,800 PR in 2003-04 and \$681,600 PR in 2004-05 for an additional 12.0 PR trial division attorney positions.

<u>Alternative 2b</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$1,256,400
2004-05 POSITIONS (Change to Bill)	12.00

c. Provide \$1,311,600 PR in 2003-04 and \$1,418,400 PR in 2004-05 and 25.25 PR trial division attorney positions. *[This alternative combines 2a and 2b].*

<u>Alternative 2c</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$2,730,000
2004-05 POSITIONS (Change to Bill)	25.25

3. Provide \$4,700,000 GPR in 2003-04 to the private bar and investigator reimbursement appropriation.

<u>Alternative 3</u>	<u>GPR</u>
2003-05 FUNDING (Change to Bill)	\$4,700,000

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