



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #458

### Internet Crimes Against Children (Justice)

[LFB 2019-21 Budget Summary: Page 253, #7 and #8]

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#### CURRENT LAW

Local units of government are primarily responsible for law enforcement protection and investigating potential crimes. In addition, state statute requires the Department of Justice (DOJ) to investigate crimes that are statewide in nature, importance, or influence. Section 165.70 of the statutes specifically requires DOJ to enforce, among other crimes, the use of a computer to facilitate a child sex crime.

The Internet Crimes Against Children (ICAC) task force unit at DOJ is responsible for investigating internet crimes against children in conjunction with other law enforcement partners in the ICAC Task Force. The budget for the ICAC Unit at DOJ in 2018-19 is \$4,243,700 (all funds) and 35.0 positions. The unit's total funding is comprised of \$2,571,800 GPR, \$1,511,300 PR, and \$160,600 FED, supporting 26.0 GPR, 8.0 PR, and 1.0 FED positions. The unit's program revenue-funded budget is supported by the \$13 crime laboratory and drug law enforcement (CLDLE) surcharge and the deoxyribonucleic acid (DNA) surcharge.

The Department's drug law enforcement, crime laboratories, and genetic evidence activities appropriation is supported by revenue from the c CLDLE surcharge and the DNA surcharge. More specifically, money is transferred from the CLDLE and DNA surcharge fund appropriation to the drug law enforcement appropriation. The drug law enforcement appropriation supports activities relating to drug law enforcement, drug law violation prosecution assistance, criminal investigative operations, and activities of the state and regional crime laboratories. Base funding for the drug law enforcement appropriation is \$9,150,900 PR annually.

## **GOVERNOR**

Provide \$750,000 PR annually from the DNA surcharge to fund one-time supplies and services costs related to the ICAC Task Force.

Provide \$84,600 PR in 2019-20 and \$112,800 PR in 2020-21 and 2.0 PR positions annually for the ICAC Task Force. Funding for the positions would come from the \$500 per image or copy child pornography surcharge imposed on a defendant who is sentenced or placed on probation for sexual exploitation of a child or possession of child pornography.

## **DISCUSSION POINTS**

1. The Wisconsin ICAC task force was created in 1998 with federal funding to counter the threat of offenders using online technology to sexually exploit children. The task force conducts investigations, provides investigative, forensic and prosecutorial assistance to police agencies and prosecutors, encourages statewide and regional collaboration, and provides training for law enforcement, prosecutors, parents, teachers, and other community members. The task force also coordinates with the Wisconsin Clearinghouse for Missing and Exploited Children to provide support services to children and families that have experienced victimization. As of August, 2018, there were 253 law enforcement agencies, including DOJ, participating in the Wisconsin ICAC task force.

2. Internet crimes against children cases generally fall into four broad categories: (a) investigations of cyber-tips received from individuals and internet service providers through the National Center for Missing and Exploited Children; (b) online child enticement investigations; (c) "peer-to-peer" 34 investigations; and (d) cases involving other law enforcement agencies. In 2016-17, the ICAC task force opened 2,260 ICAC investigations, while in 2017-18 the ICAC task force opened 2,326 ICAC investigations. The Division took the lead on 668 investigations in 2016-17 and 635 investigations in 2017-18.

3. All 253 law enforcement agencies participating in the Wisconsin ICAC task force have a capacity to conduct "reactive" ICAC investigations, responding to tips or information that an Internet crime against a child may have occurred. In addition, many of these agencies can also conduct "proactive" investigations, such as peer-to-peer investigations and online child enticement investigations.

4. In 2000, Congress mandated that all internet service providers register and report any child pornography on their servers to the cyber-tiplines program at the National Center for Missing and Exploited Children. In 2016-17, the Wisconsin ICAC task force received 2,203 cyber tips from the National Center for Missing and Exploited Children. From these cyber tips, the ICAC task force opened a corresponding number of cases, of which 405 were investigated by DOJ and the remaining 1,798 were referred to affiliate law enforcement agencies. In 2017-18, the Wisconsin ICAC task force received 1,507 cyber tips from the National Center for Missing and Exploited Children. From these cyber tips, the ICAC task force opened 1,507 cases, of which 238 were investigated by DOJ and the remaining 1,269 were referred to affiliate law enforcement agencies. When the ICAC task force receives multiple cyber tips involving the same suspect, these cyber tips are consolidated into a single case for subsequent follow-up by DOJ or affiliated law enforcement agencies.

5. The Wisconsin ICAC task force made 505 arrests in 2016-17 and 537 arrests in 2017-18. Of the 505 arrests in 2016-17, 72 were made by DOJ special agents. Of the 537 arrests in 2017-18, 89 were made by DOJ special agents. The Department indicates that it does not currently have an electronic reporting system that would permit it to report the case types to which these arrests could be attributed, either for the ICAC task force as a whole or for DOJ. Further, DOJ indicates that its electronic statistical analysis system does not currently permit it to provide data on annual ICAC case closings.

6. Digital forensic analysis (the recovery and investigation of information from devices such as computers and cell phones) is an important element of ICAC cases. The bill would provide funding to support 3.0 new digital forensic analyst positions. This issue is addressed in more detail in a separate budget paper.

### **ICAC Funding from CLDLE and DNA Surcharge**

7. Under 2017 Act 59, \$750,000 PR was provided in each year of the biennium on a one-time basis. Revenue was transferred from the crime laboratory and drug law enforcement surcharge and the DNA analysis surcharge. Funding was used to support: (a) overtime for DCI and local law enforcement ICAC affiliates to increase the number of cases investigated and ensure prompt investigation of tips; (b) for critical equipment; (c) advanced and basic training for the ICAC task force; (d) vehicles for DCI ICAC to expand on-site evidence previews statewide; (e) staff LTEs to help manage tips from the National Center for Exploited and Missing Children; and (f) to provide investigative support to ICAC investigators through WSIC [Wisconsin Statewide Intelligence Center].

8. The bill would provide \$750,000 PR annually during the 2019-21 biennium only to support law enforcement activities relating to ICAC. The administration intends for program revenue for these costs to be supported from a transfer of monies from DOJ's CLDLE and DNA surcharge fund. Under the bill, the fund is projected to have an opening balance of \$5,111,100 and to conclude the 2019-21 biennium with a balance of \$128,700. It should also be noted that, under the bill, the fund is estimated to operate in a structural deficit during the 2019-21 biennium. In 2019-20, total obligations (\$17,270,600) are estimated to exceed annual revenue (\$15,200,000) by \$2,070,600, and in 2020-21, total obligations (\$18,111,800) are estimated to exceed annual revenue (\$15,200,000) by \$2,911,800.

9. The Department indicates that "approximately half of the funding would continue to support overtime for ICAC investigators statewide to keep up with tips and caseloads." In addition, the funding would be for ongoing training due to high turnover and to expand forensic investigative capacity. Further, funding would be used for ongoing maintenance and licensing on forensic hardware and lifecycle replacement.

10. In order to provide DOJ additional funds for law enforcement activities related to ICAC, the Committee could approve the administration's recommendation and provide \$750,000 PR annually during the 2019-21 biennium only to DOJ's ICAC appropriation [Alternative A1]. Under this alternative, funding for the ICAC appropriation would be supported by a transfer of funds from DOJ's drug law enforcement PR appropriation. Funding would be provided on a one-time basis and,

therefore, would not be included in DOJ's base budget for the 2021-23 biennium.

11. The Committee could also approve a reduced level of funding for the ICAC appropriation, as compared to the amount recommended by the administration. Specifically, the Committee could provide DOJ with \$500,000 PR annually (two thirds of the funding recommended by the administration) or \$250,000 PR annually (one third of the funding recommended by the administration) [Alternatives A2a and A2b]. Under Alternatives 2a and 2b, as recommended by the administration, funding for ICAC would be supported by a transfer of funds from DOJ's drug law enforcement appropriation. Further, funding would be provided on a one-time basis, and, therefore, would not be included in DOJ's base budget for the 2019-21 biennium. Alternative A2a would result in a concluding 2020-21 revenue balance of \$628,700 and alternative A2b in a balance of \$1,128,700.

12. The Committee could also modify the administration's recommendation and specify that funding be provided on an ongoing basis, as opposed to a one-time basis. The administration indicates that it recommends providing funding on a one-time basis due to the uncertainty of future revenue from the CLDLE surcharge and the DNA surcharge after the 2019-21 biennium. However, funding provided under the bill is intended to support overtime costs at DCI for ICAC related activities, as well as grants to local law enforcement agencies that participate in the Wisconsin ICAC task force for overtime and training costs. It is anticipated that these costs will continue after the 2019-21 biennium. Therefore, an argument can be made that an ongoing funding source should be provided to support these costs. Given the structural funding of the program, GPR rather than PR could be provided to support ICAC supplies and other costs. [Alternative A3]

13. The Committee could also maintain current law and not provide DOJ additional resources at this time for the ICAC appropriation [Alternative A4]. Providing funding for the ICAC appropriation by transferring funds from DOJ's CLDLE and DNA surcharge fund appropriation would reduce the balance in the fund and increase the fund's estimated structural imbalance during the 2019-21 biennium. This alternative would reduce funding under the bill by \$750,000 PR annually.

### **ICAC Funding from Child Pornography Surcharge**

14. The bill provides \$84,600 PR in 2019-20 and \$112,800 PR in 2020-21 and 2.0 PR program and policy analyst positions annually for the ICAC Task Force. Funding for the positions would come from the \$500 per image or copy child pornography surcharge imposed on a defendant who is sentenced or placed on probation for sexual exploitation of a child or possession of child pornography.

15. The Department indicates that an additional 2.0 program and policy analysts (PPAs) are needed to manage the cyber tip referral, administrative subpoena, and tip tracking workloads in order to ensure all referred cases are investigated properly and timely. In addition, the positions would allow DOJ to expand outreach efforts to meet the demand for updated and timely information on risks in order to prevent the sexual exploitation of children. The Department currently has two PPAs in DCI performing these responsibilities. Additional resources are intended to allow current program staff to devote more time to outreach.

16. In order to provide DOJ additional funds for ICAC PPAs, the Committee could approve

the administration's recommendation and provide \$84,600 PR in 2019-20 and \$112,800 PR in 2020-21 and 2.0 PR positions annually to DOJ's ICAC appropriation. [Alternative B1] Under this alternative, funding for the ICAC appropriation would be supported by a transfer of funds from DOJ's PR child pornography surcharge appropriation.

17. *Condition of Child Pornography Surcharge.* Under the bill, the fund is projected to conclude the 2019-21 biennium with a balance of \$599,400. It should also be noted that, under 2013 Act 20, funding for sexual assault victim services grant program (SAVS) is provided from GPR and revenue from the child pornography surcharge. The administration indicates "Based on projections in the next biennium [2019-21], the existing revenue stream is not sufficient to support the current commitment to the SAVs grants and the additional expenditures long-term."

18. In 2018-19, \$2,138,700 GPR is appropriated for providing SAVS grants and administering the program. In addition, in 2018-19, DOJ estimates that the child pornography surcharge will generate \$215,500. Since awards are made on a calendar year (CY) basis, DOJ obligated \$126,800 PR in CY 2019 for the SAVS grant.

19. Under 1993 Wisconsin Act 16, a sexual assault victim services grant program (SAVS) was created, beginning January 1, 1995. Grants are provided by DOJ to eligible nonprofit corporations or public agencies to provide (or subcontract to provide) all the following services for sexual assault victims: (a) advocacy and counseling services; (b) 24-hour crisis telephone services; (c) educational programs on professional intervention and community prevention; and (d) services for persons living in rural areas, men, children, elderly or physically disabled persons, minority groups or other groups of victims that have special needs within the service area of the nonprofit corporation or public agency.

20. An eligible organization may not receive more than 70% of its operating budget from grants provided under this program and may not contract, subcontract or enter into agreements with other organizations or individuals to provide all of the required services. When DOJ reviews grant applications, it must consider local needs for sexual assault victim services, the coordination of the applicant's services with other victim resources, the needs of rural and urban communities, and the needs of existing and proposed programs and services.

21. Given the need to balance funding for ICAC with funding for SAVs, the Committee may wish to provide a more moderate increase in funding and positions. If half of the amount provided in the bill was approved, \$42,300 PR in 2019-20 and \$56,400 PR in 2020-21 and 1.0 PR position annually would be provided to DOJ's ICAC appropriation. [Alternative B2] While the provided amount would be less than recommended in the bill, more funding may be available for SAVs grants.

22. On the other hand, given concerns regarding the balancing of funding for ICAC with funding for SAVs, the Committee may wish to prioritize funding to SAVs and not provide additional positions or funding to ICAC. [Alternative B3]

## ALTERNATIVES

### A. ICAC Funding from CLDLE and DNA Surcharge

1. Provide DOJ's ICAC appropriation \$750,000 PR annually during the 2019-21 biennium only. Funding for the ICAC appropriation would be supported by a transfer of funds from DOJ's CLDLE surcharge and the DNA surcharge.

ALT A1	Change to	
	Base	Bill
PR	\$1,500,000	\$0

2. Provide the Department a reduced level of funding for the ICAC appropriation, in either of the following manners. Funding for ICAC activities provided under Alternatives 2a or 2b would be supported by a transfer of funds from DOJ's drug law enforcement appropriation. Alternatives 2a and 2b would modify the bill to authorize such a transfer of funds. Funding provided under Alternatives 2a or 2b would be provided during the 2019-21 biennium only and, therefore, would not be included in DOJ's base budget for the 2019-21 biennium.

a. Provide \$500,000 PR annually for the ICAC appropriation. This alternative represents two-thirds of the funding recommended.

ALT A2a	Change to	
	Base	Bill
PR	\$1,000,000	-\$500,000

b. Provide \$250,000 PR annually for the ICAC appropriation. This alternative represents two-thirds of the funding recommended in the bill.

ALT A2b	Change to	
	Base	Bill
PR	\$500,000	-\$1,000,000

3. Modify the bill and provide DOJ's ICAC program \$750,000 GPR annually on an ongoing basis. Reduce funding by \$750,000 PR annually funded from DOJ's CLDLE surcharge and the DNA surcharge.

ALT A3	Change to	
	Base	Bill
GPR	\$1,500,000	\$1,500,000
PR	0	-1,500,000
Total	\$1,500,000	\$0

4. Take no action.

ALT A4	Change to	
	Base	Bill
PR	\$0	-\$1,500,000

**B. ICAC Funding from Child Pornography Surcharge**

1. Provide DOJ's ICAC appropriation \$84,600 PR in 2019-20 and \$112,800 PR in 2020-21 and 2.0 PR positions annually. Funding for the ICAC appropriation would be supported by a transfer of funds from DOJ's child pornography surcharge.

ALT B1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR	\$197,400	2.00	\$0	0.00

2. Provide DOJ's ICAC appropriation \$42,300 PR in 2019-20 and \$56,400 PR in 2020-21 and 1.0 PR position annually. Funding for the ICAC appropriation would be supported by a transfer of funds from DOJ's child pornography surcharge.

ALT B2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR	\$98,700	1.00	-\$98,700	- 1.00

3. Take no action.

ALT B3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
PR	\$0	0.00	-\$197,400	- 2.00

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