

State Criminal Justice Functions

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State Criminal Justice Functions

Law enforcement, prosecution, and public defense are three critical components of the state's criminal justice system. This paper focuses on the involvement of the Department of Justice (DOJ), district attorneys (DAs), the Office of the State Public Defender (SPD), and the Department of Administration's Office of Justice Assistance (OJA) in these three areas.

While local units of government are primarily responsible for providing law enforcement protection, DOJ provides law enforcement services to state and local law enforcement agencies. In addition, DOJ is charged with certain law enforcement responsibilities under state statute. The budget for DOJ in 2008-09 totals \$92,747,600 (all funds) and 579.0 full-time equivalent positions. The Department's total funding is comprised of \$42,016,200 general purpose revenue (GPR), \$41,912,600 program revenue (PR), \$8,463,400 federal revenue (FED) and \$355,400 segregated revenue (SEG). Among the staff authorized for the Department are 139.33 crime laboratory personnel and 94.0 special agents (law enforcement officers). The organizational chart for DOJ is included as Appendix I.

Under state law, criminal prosecutions are primarily the responsibility of locally elected DAs and their prosecutorial staff. The budget for the state district attorneys function in 2008-09 totals \$47,624,600 (all funds) and (as of December 1, 2008) 435.65 positions. The state funded DA function is comprised of \$44,226,500 GPR and \$3,398,100 PR. All of the 435.65 state positions are attorney prosecutors. Other than for the state-funded costs of prosecutors' salaries and fringe benefits, the remaining staff and other costs of DA offices are generally the responsibility of Wisconsin counties. These county-supported costs and positions are not reflected in these figures.

There are 71 elected district attorneys in Wis-

consin. Each county in the state is termed a "prosecutorial unit" except that Shawano and Menominee counties form a two-county prosecutorial unit and jointly elect a single district attorney.

While DAs are primarily responsible for criminal prosecutions in the state, DOJ is responsible for: (a) representing the state in all appeals of felony convictions, as well as in appeals of other significant criminal and juvenile delinquency cases; (b) representing the state in prisoner and sexually violent person (sexual predator) conditions of confinement suits; (c) assisting DAs, when requested, in certain criminal prosecutions; and (d) initiating criminal prosecutions and sexual predator commitments under certain circumstances. Among the staff authorized for DOJ are 89.9 attorneys, some of whom are responsible for meeting these obligations of the Department.

Both the United States Constitution and the Wisconsin Constitution provide the right to counsel for individuals accused of a crime. The SPD is generally responsible under state law for providing this required counsel to the indigent. The budget for the SPD in 2008-09 totals \$81,472,400 (all funds) and 535.45 positions. The Office's total funding is comprised of \$80,053,200 GPR and \$1,419,200 PR. Among the staff authorized for the SPD are 316.5 attorney positions in the trial and appellate divisions. The SPD also contracts with private bar attorneys to address a portion of the agency's caseload. The organizational chart for the SPD is included as Appendix II.

The Office of Justice Assistance administers federal criminal justice and homeland security-related grant funding. In addition, OJA collects and reports crime and arrest data, facilitates the integration of criminal justice-related databases across the state, and administers state funded criminal justice-related grant programs. The OJA budget in

2008-09 totals \$63,240,000 (all funds) and 33.0 positions. The Office's total funding is comprised of \$58,116,500 FED, \$2,808,100 PR and \$2,315,400 GPR.

The criminal justice functions of these agencies are summarized in the following six chapters of this paper. The first two chapters focus on the law enforcement services and responsibilities of DOJ.

The third chapter focuses on OJA's statewide criminal justice database integration efforts, its crime and arrest data, and state grant program administration responsibilities. The fourth and fifth chapters discuss the prosecutorial functions of DAs and DOJ. The final chapter provides a discussion of the state's public defender function as carried out by the SPD.

SERVICES TO LAW ENFORCEMENT AGENCIES BY THE DEPARTMENT OF JUSTICE

Wisconsin law requires counties, cities, and those villages with a population of more than 5,000 to provide law enforcement services to their citizens. Towns and smaller villages are also permitted to provide law enforcement services to their residents. In addition, certain state agencies have specifically defined law enforcement responsibilities. These agencies include: (a) DOJ's Division of Law Enforcement Services and its Division of Criminal Investigation; (b) the State Patrol under the Department of Transportation; (c) the State Capitol Police; (d) the UW Police under the University of Wisconsin System; and (e) the Bureau of Law Enforcement under the Department of Natural Resources.

The Department of Justice's Division of Law Enforcement Services is generally charged with meeting the agency's statutory responsibilities to state and local law enforcement agencies. The budget for the Division in 2008-09 is \$33,108,600 (all funds) and 220.0 positions. The Division is organized into five bureaus. These are the: (a) Training and Standards Bureau; (b) Crime Information Bureau; (c) Milwaukee Crime Laboratory; (d) Madison Crime Laboratory; and (e) Wausau Crime Laboratory.

The Department of Justice's Division of Management Services is generally responsible for: (a) developing and monitoring the Department's budget and finances; (b) providing human resource services to the Department; and (c) providing information technology services to the Department. The Division of Management Services is also responsible for administering three grant programs intended to support law enforcement services on tribal lands and in counties bordering tribal reservations. The budget for these three grant

programs in 2008-09 totals \$2,132,100 PR and 1.0 PR position. In addition, the Division of Management Services is responsible for administering the Law Enforcement Community Policing Grants program, which provides \$250,000 GPR annually in grant funding to the City of Milwaukee for decentralized law enforcement and crime prevention efforts.

Training and Standards Bureau

The Division's Training and Standards Bureau has the following responsibilities: (a) staffing the Law Enforcement Standards Board; and (b) administering the training and certification requirements for law enforcement, tribal law enforcement, jail, and secure juvenile detention officers.

The Bureau's budget in 2008-09 is \$83,800 GPR, \$8,730,700 PR and 25.67 PR positions. The Bureau's staff consists of education consultants or training officers (10.0), attorneys (2.0), and other supervisory and support personnel (13.67). Much of the Bureau's funding supports reimbursements for: (a) preparatory training by new law enforcement recruits; and (b) annual recertification training by certified officers.

The Bureau's program revenue-funded budget is supported by the penalty surcharge (\$8,730,700 and 25.67 positions). The penalty surcharge supports the Bureau's law enforcement training and certification activities. Under current law, whenever a court imposes a fine or forfeiture for most violations of state law or municipal or county ordinance, the court also imposes a penalty

surcharge of 26% of the total fine or forfeiture. Approximately 43% of all penalty surcharge revenues are allocated to DOJ to fund the costs of recruit training and annual recertification training.

Law Enforcement Training and Certification

Statutory Authorization. The Law Enforcement Standards Board (Board) is established under ss. 15.255(1) and 165.85 of the statutes and is attached to DOJ. The Board consists of the following 15 members: (a) six local law enforcement officers, including one sheriff and one chief of police; (b) two local government officials who occupy executive or legislative posts; (c) one district attorney; (d) one public member not employed in law enforcement; (e) the designee of the Secretary of the Department of Transportation; (f) the designee of the special agent in charge of the Milwaukee office of the FBI; (g) the designee of the Attorney General; (h) the designee of the Secretary of the Department of Natural Resources; and (i) the Executive Director of the Office of Justice Assistance. The representative of the FBI acts in an advisory capacity only and has no vote.

When the Board was created, the Legislature included the following policy statement relating to the Board's responsibilities: "The legislature finds that the administration of criminal justice is of statewide concern, and that law enforcement work is of vital importance to the health, safety and welfare of the people of this state and is of such a nature as to require training, education and the establishment of standards of a proper professional character. The public interest requires that these standards be established and that this training and education be made available to persons who seek to become law enforcement, tribal law enforcement, jail or secure detention officers, persons who are serving as these officers in a temporary or probationary capacity and persons already in regular service."

The Board has the following duties: (a) ensure that law enforcement, tribal law enforcement, jail, and secure juvenile detention recruits meet the

minimum qualifications for recruitment; (b) oversee and fund the training of such recruits; (c) certify such recruits as officers upon the successful completion of their training; (d) oversee and fund the annual recertification training of certified law enforcement, tribal law enforcement, jail, and secure juvenile detention officers; (e) certify schools and instructors that provide preparatory training to recruits and recertification training to certified officers; and (f) maintain an updated statewide record of all certified officers.

Under s. 165.86 of the statutes, the Department is to supply the staffing needs of the Board, and is to coordinate all preparatory, recertification, advanced, and special training activities in law enforcement in the state.

Minimum Qualifications for Recruits. Law enforcement, tribal law enforcement, jail, and secure juvenile detention recruits generally must meet the following minimum qualifications: (a) possess a valid driver's license; (b) be 18 years of age; (c) not have been convicted of any federal felony or any offense which, if committed in Wisconsin, could be punished as a felony; (d) possess a high school diploma; (e) possess either a two-year associate degree or a minimum of 60 fully accredited college level credits; (f) be of good character; (g) be free from any physical, emotional or mental condition which might adversely affect the performance of one's duties; and (h) submit to and satisfactorily complete an oral interview with the employing authority.

Preparatory Training of Recruits. Law enforcement, tribal law enforcement, jail, and secure juvenile detention recruits must all successfully complete a minimum requirement of preparatory training in order to be certified as an officer in Wisconsin. Officers receive this training through academies certified by the Board based on adequacy of facilities and competence of instructional staff. The Department provides reimbursement to law enforcement agencies which provide this preparatory training to recruits.

Law enforcement and tribal law enforcement recruits must successfully complete a minimum of 400 hours of preparatory training. Under 2001 Wisconsin Act 16, the Legislature increased funding to permit the Department to reimburse law enforcement agencies for providing up to 520 hours of preparatory training. All certified academies in the state now offer at least a 520 hour curriculum. Table 1 identifies the amounts expended by the Board in 2007-08 to provide reimbursement for this training to law enforcement agencies for 530 recruits. The reimbursements covered the recruits' tuition, lodging, meals, and mileage costs.

Table 1: DOJ Reimbursement of Law Enforcement Recruit Training (2007-08)

Type of Law Enforcement Recruits	Reimbursement
Local	\$889,300
State	220,400
Tribal	<u>19,800</u>
Total	\$1,129,500

Jail and secure juvenile detention recruits must successfully complete a minimum of 120 hours of preparatory training in order to be certified. [Under a 2007 pilot program, the Board authorized a revised curriculum increasing preparatory jail training to 160 hours.] In 2007-08, the Department provided reimbursements totaling \$285,600 (\$226,600 PR and \$59,000 GPR) to law enforcement agencies for providing this preparatory training to 309 jail and secure juvenile detention recruits. The reimbursements covered costs for tuition, lodging, meals, mileage, salary and fringe benefits.

Annual Recertification Training. Law enforcement, tribal law enforcement, jail, and secure juvenile detention officers must complete a minimum of 24 hours of additional training each year in order to maintain their certification. In 2007-08, this recertification requirement applied to 16,590 certified officers.

Under 2001 Wisconsin Act 16, the Legislature

provided additional permanent funding to increase the reimbursement rates for annual recertification training from \$160 to \$220 per law enforcement officer. In 2007-08 these reimbursements totaled \$3,342,800 PR (an average of \$200 per eligible officer).

Act 16 also provided DOJ with funding of \$350,000 PR annually, which enabled the Bureau to offer a law enforcement management training program. Additional funding of \$150,000 PR annually was also provided to expand training for specialized law enforcement officers. In 2007-08, the Bureau sponsored 87 law enforcement management and specialized and advanced criminal justice training events which were offered to approximately 6,000 participants at a cost of \$1,092,300 PR.

Certification of Schools and Instructors to Train Recruits and to Provide Recertification Training. The Board certifies schools based on the adequacy of facilities and the competency of staff and faculty. A new instructor must complete a an instructor development course and other specialized instructor training as designated by the Board. Table 2 identifies the number of academies and instructors (including the number of new instructors) certified to provide preparatory training and recertification training in 2007-08. The table also identifies the number of law enforcement agencies that are authorized to provide recertification training to their officers. Currently, state and local law enforcement agencies may provide recertification training to their own officers and are only required to utilize certified training instructors for courses employing Board approved training guides or curriculum. Law enforcement agencies are not required to utilize Board-approved training guides or curriculum for recertification training. Individual agencies may specify the content of their 24-hour annual recertification training, although many agencies do use Board approved curriculum. Table 3 identifies the 22 academies that were certified by the Board in 2007-08 to provide preparatory training.

Table 2: Number of Certified Academies and Instructors (2007-08)

Training Certifications	Number
Academies	22
All Instructors	2,241
New Instructors	361
Agencies Authorized to Train	624

Table 3: Certified Academies

Blackhawk Technical College
 Chippewa Valley Technical College
 Fox Valley Technical College
 Gateway Technical College
 Lakeshore Technical College
 Madison Area Technical College
 Madison Police Academy
 Marian College
 Mid-State Technical College
 Milwaukee Area Technical College
 Milwaukee County Sheriff's Academy
 Milwaukee Police Academy
 Moraine Park Technical College
 Nicolet Technical College
 North Central Technical College
 Northeast Wisconsin Technical College
 Southwest Wisconsin Technical College
 Waukesha County Technical College
 Western Wisconsin Technical College
 Wisconsin Dept. of Natural Resources
 Wisconsin Indianhead Technical College
 Wisconsin State Patrol Academy

Table 4: Number of Active Certified Officers (August, 2008)

Type of Officer	Number
Law Enforcement	12,251
Law Enforcement and Jail	2,048
Jail	2,171
Jail and Secure Juvenile Detention	131
Secure Juvenile Detention	184
Tribal	<u>60</u>
Total	16,845

Statewide Roster of Certified Officers. The Board must maintain a current statewide roster of certified officers. As necessary, new officers must be certified to the list and existing officers must be decertified from the list. Grounds for decertification include: (a) termination of employment with

the law enforcement agency for any reason; (b) failure to comply with a rule or order of the Board relating to curriculum or training; or (c) failure to make child or family support payments. Table 4 identifies the number and type of active certified officers on the roster in August, 2008.

Crime Information Bureau

The Division's Crime Information Bureau has the following responsibilities: (a) administration and maintenance of Wisconsin's criminal history database; (b) administration and maintenance of the Transaction Information for the Management of Enforcement (TIME) System; and (c) operation of the handgun purchaser record check program.

The Bureau's budget in 2008-09 totals \$736,500 GPR and \$7,055,100 PR and 16.0 GPR and 39.0 PR positions. The Bureau's staff consists of criminal history record personnel (26.0), information technology personnel (9.5), identification technicians (8.0), and supervisory and support personnel (11.5).

The Bureau's program revenue-supported budget is funded by criminal history search fees (\$3,878,200 and 25.0 positions), TIME System user fees from law enforcement agencies (\$2,710,000 and 6.0 positions), and the \$8 handgun purchaser record check fee (\$466,900 and 8.0 positions).

The Bureau assesses a number of criminal history search fees to various users who request a search of the state's criminal history database for purposes unrelated to criminal justice. Further, as a part of the TIME System, the Bureau is authorized to assess fees on law enforcement and tribal law enforcement agencies for rentals, use of terminals, and related costs and services associated with the system. Finally, handgun dealers are assessed an \$8 handgun purchaser record check fee for each handgun check completed by the Bureau.

Criminal History Database

Statutory Authorization. Under s. 165.83(2)(a) of the statutes, DOJ is directed to obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in Wisconsin for a variety of offenses. These offenses include:

- An offense which is a felony or which would be a felony if committed by an adult;
- An offense which is a misdemeanor, which would be a misdemeanor if committed by an adult or which is a violation of a local ordinance, and the offense involves burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances or controlled substance analogs, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;
- An offense charged or alleged as disorderly conduct but which relates to an act under the previous bullet point;
- A fugitive from justice; or
- Any other offense designated by the Attorney General.

Within 24 hours of an arrest, the arresting agency must generally forward to DOJ all of the following for inclusion in the criminal history database: (a) fingerprints in duplicate; (b) full face, profile and full length photographs; and (c) other available identifying data. Photographs are forwarded at the discretion of the arresting agency; however, any such photographs retained locally must be available to be forwarded to DOJ if requested by the Department. In calendar year 2007, 201,386 new arrest events were submitted by Wisconsin law enforcement agencies to the Crime Information Bureau. The majority of this information is submitted electronically.

The Department must also accept for the database any fingerprints and other identifying data that have been taken at the discretion of law enforcement agencies relating to persons arrested or taken into custody for offenses other than those previously identified. In addition, the Department must obtain and file fingerprints and other available identifying data on unidentified human corpses found in the state.

Pursuant to s. 165.83(2)(h) of the statutes, DOJ must collect and maintain all of this submitted data and establish a state system of criminal identification. As a part of this criminal history database, the Department is required to collect information on the legal action taken in connection with offenses committed in Wisconsin from the inception of the complaint to the final discharge of the defendant, as well as any other useful information in the study of crime and the administration of justice. The database receives information on prosecution, court findings and sentences through an interface with the state court system's consolidated court automation program.

Section 165.83(2)(j) of the statutes further requires the Department to utilize this database to "compare the fingerprints and descriptions that are received from law enforcement agencies and tribal law enforcement agencies with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement and tribal law enforcement agencies concerned and supply copies of the criminal record to these agencies." The Department is required to operate on a 24-hour-a-day basis, seven days a week in order to comply with this requirement.

Computerized Criminal History Database and Automated Fingerprint Identification System (AFIS). The computerized criminal history database contains detailed information of arrests, arrest charges, prosecution, court findings and sentences, and state correctional system admissions

and releases that are required to be submitted to the Department. All information in the database is linked to specific fingerprint records submitted by arresting law enforcement agencies and stored in the automated fingerprint identification system (AFIS), which is operated and maintained by the Madison Crime Laboratory.

This system is intended to track the history of all arrests in Wisconsin. Beginning in 1971, law enforcement agencies were first required to submit arrest fingerprint cards to DOJ. Arrests without supporting fingerprints are not included in the criminal history database.

The AFIS system was first installed in 1993 and was upgraded during the 2001-03 biennium. The AFIS system stores electronically the fingerprints that are required to be submitted to DOJ. The AFIS system enables law enforcement agencies to run a check either on a fingerprint collected at a crime scene or on a fingerprint collected from an arrested individual against the entire AFIS fingerprint database. Where a matching fingerprint is found in the AFIS database, the system can positively identify the individual whose fingerprint was run. The AFIS system also allows DOJ to electronically store fingerprints collected at crime scenes that cannot be matched to an individual ("latent" fingerprints). If at a later time, the individual's fingerprint is collected by law enforcement because the individual is arrested, the electronic storing of previously unmatched crime scene fingerprints permits DOJ to link the individual to another crime the person may have committed.

Wisconsin law enforcement agencies currently take fingerprint impressions of all ten fingers (called tenprints) when an individual is arrested. As of August, 2008, 1,220,164 tenprints were stored on AFIS. Approximately 3,409 additional tenprints are added to the system monthly. Currently, the system has a storage capacity of 1,500,000 tenprint records and 50,000 latent fingerprint records.

The AFIS system permits the Department to also electronically store palm prints. Palm prints

provide an additional law enforcement tool to positively identify an individual. As of August, 2008, 212,976 sets of palm prints were stored on AFIS. Approximately 1,638 additional palm sets are being added to the system monthly.

The palm print database is being built in cooperation with the Department of Corrections. The Department of Corrections takes palm prints when new prisoners are admitted to the state correctional system.

As of August, 2008, there were 12,667 cases with latent fingerprint or latent palm print records stored on AFIS. There were 35,889 latent lifts associated with these cases. On average, approximately 135 cases involving 400 latent finger and palm prints are added to the AFIS system monthly.

In addition to Department personnel, access to AFIS has been granted by the agency to 25 law enforcement agencies across the state through fully functional AFIS workstations. These law enforcement agencies include five county sheriff's departments or joint services agencies (Brown, Kenosha, Milwaukee, Racine and Waukesha Counties) and 20 municipal police departments (Ashwaubenon, Burlington, Caledonia, Delafield, East Troy, Fitchburg, Green Bay, Hartland, Kenosha, Madison, Milwaukee, Middleton, Mount Pleasant, New Berlin, Oak Creek, Racine, St. Francis, Sun Prairie, Waukesha, and Wauwatosa).

This access enables these local agencies to independently solve crimes using the AFIS tenprint, palm print, and latent fingerprint/palm print databases and positively identify arrested individuals. This linkage also allows these local users to update the state AFIS and linked criminal history databases.

During calendar year 2007, Department and local law enforcement personnel completed: (a) 153,427 tenprint to tenprint verifications; (b) 104,200 tenprint to unsolved latent fingerprint verifications; (c) 51,789 palm print to unsolved latent

palm print verifications; (d) 2,227 latent fingerprint to tenprint verifications; and (e) 144 unsolved latent palm print to palm print verifications.

In order to expand accessibility and usability of AFIS, the Department has provided 65 Fast ID devices to law enforcement agencies across the state. In addition, individual agencies have separately acquired 56 Fast ID devices. These two-finger identification systems are capable of transmitting electronic fingerprint images to AFIS. This capability enables local law enforcement agencies to positively identify individuals. Fast ID devices submitted 43,861 searches of AFIS in 2007.

The criminal history database is typically searched by name or by fingerprint. Law enforcement agencies may access the database or may have it searched by Department personnel, at no cost if the search is completed for criminal justice purposes.

Because Wisconsin is an "open records" state, governmental agencies, non-profit organizations and any other requester may also have the Department search the criminal history database for non-criminal justice purposes. Each year, the crime information bureau receives more than 650,000 non-criminal justice search requests of the criminal history database. These types of requests are generally made in connection with an employment or professional licensing application.

Table 5 identifies the fees that are currently authorized for non-criminal justice searches of the criminal history database. In addition to the fees identified in Table 5, a \$5 surcharge is assessed if the requestor must have a paper copy of the results of the search. In 2007-08, the Department received criminal history search fees revenues of \$4,764,400.

Table 5: Criminal History Search Fees

Type of Requestor	Name Check	Fingerprint Check
Nonprofit organization	\$2	\$15
Governmental agency	5	15
Any other requestor	13	13

Transaction Information for the Management of Enforcement (TIME) System

Statutory Authorization. The Transaction Information for the Management of Enforcement (TIME) System provides law enforcement agencies across the state access to a variety of law enforcement-related databases. Under s. 165.83(2) of the statutes, DOJ must: (a) obtain and file information relating to identifiable stolen or lost property; and (b) generally obtain and file a copy or detailed description of each arrest warrant issued in this state but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. In making criminal history information, stolen property, wanted persons and other relevant information available to law enforcement agencies, the statutes further require DOJ to create and administer the TIME System.

The TIME System provides Wisconsin law enforcement agencies electronic access to the following databases:

- State and national wanted, missing and unidentified persons;
- Stolen motor vehicles;
- Identifiable stolen property;
- Driver and vehicle registration files;
- State and national criminal history information;
- The sex offender registry maintained by the Department of Corrections;
- Persons subject to protection orders; and
- Other databases of interest to law enforcement for officer safety.

The relevant data is provided by the TIME System through its access to: (a) DOJ's criminal history, stolen property and wanted persons

databases; (b) the Department of Corrections' sex offender registry and probation and parole files; (c) selected Department of Natural Resources files; (d) the federal National Crime Information Center database; and (e) the National Law Enforcement Telecommunication System, which provides access to out-of-state and Canadian data on criminal history, vehicle registration and driver files.

System Administration. The TIME System consists of 9,700 terminals located in 600 local, state and federal law enforcement agencies in Wisconsin. Approximately 5,000 of these terminals are mobile units that provide information directly to the patrol officer. On an average day, the TIME system processes approximately 381,500 transactions.

The Department is authorized to assess fees to law enforcement agencies for the costs of terminal rental and usage, and related services to support the operation of the TIME System. In 2007-08, the Department collected TIME System user fees of \$2,020,800. The TIME System's 2008-09 budget is \$3,700,600 PR and 10.0 PR positions.

The TIME System's 2008-09 budget includes \$2,710,000 PR and 6.0 PR positions, funded from TIME system user fees, for the crime information bureau to administer the system. The TIME System's 2008-09 budget also includes \$990,600 PR and 4.0 PR positions, funded from the penalty surcharge, for the Division of Management Services' computing services bureau to provide information technology services for the system. Under current law, whenever a court imposes a fine or forfeiture for most violations of state law or municipal or county ordinance, the court also imposes a penalty surcharge of 26% of the total fine or forfeiture. A portion of the surcharge supports the TIME System.

Handgun Purchaser Record Check Program

Statutory Authorization. Under current federal law, states may individually determine whether

they will process background checks on purchasers prior to the transfer of handguns and long guns. States processing these background checks must ensure that the guns are not transferred in violation of federal or state law. If a state does not process background checks, either in whole or in part, the FBI processes those background checks not undertaken by the state.

In Wisconsin, staff in DOJ's Crime Information Bureau processes background checks on purchasers of handguns. The FBI continues to be responsible for background checks on purchasers of long guns in Wisconsin. States which process background checks are also authorized to extend their background checks beyond the requirements under federal law. Currently, Wisconsin handgun background checks include a review of such matters as adjudications of mental illness, certain juvenile convictions and certain domestic abuse, child abuse, and harassment injunctions that are not reviewed as part of a federal background check.

Under s. 175.35 of the statutes, when a firearms dealer sells a handgun in Wisconsin, the dealer may not transfer possession of that handgun until all of the following events occur: (a) the dealer has inspected photographic identification from the purchaser; (b) the purchaser has completed a notification form with the purchaser's name, date of birth, gender, race and social security number so that DOJ may perform an accurate record search; (c) the dealer has submitted the information to DOJ and has requested a firearms restrictions record search; and (d) 48 hours have lapsed (subject to certain extensions) and DOJ has not notified the dealer that the transfer would be a violation of state or federal law.

An \$8 fee is assessed on the dealer (who may pass the charge on to the purchaser) for each background check. These fee revenues are remitted to DOJ and are intended to fund the cost of operating the record check program.

Program Administration. The Bureau's handgun purchaser record check program operates a

handgun hotline between the hours of 9:00 a.m. and 9:00 p.m. on weekdays, and between the hours of 9:00 a.m. and 5:00 p.m. on weekends, so as to be available to receive telephone calls during regular retail hours. The handgun hotline receives telephone inquiries from handgun dealers. The information provided by the dealers during the course of these calls enables Bureau staff to begin the required background checks on handgun purchases.

As a part of the background check approval process, handgun dealers must submit a written notification form to the Bureau. If the information on the written notification forms confirms the information that was provided to the Bureau during the initial telephone call, the background check can normally be completed, based on information that was provided in the initial telephone contact to the Bureau. If the data on the written notification forms contains new information, additional limited or more involved follow-up review may be required before the purchase can be approved. Where an initial telephone inquiry or a subsequent follow-up review discloses a disqualification that would bar handgun ownership, the purchase request is denied.

The handgun hotline received 41,414 calls from dealers in 2007-08. Table 6 indicates the disposition of these background checks.

Table 6: Handgun Hotline Background Checks (2007-08)

	Calls
Instant Approvals	18,588
Limited Follow-up Approvals	20,831
Involved Follow-up Approvals	1,424
Denials	<u>571</u>
Total	41,414

The handgun purchaser record check program's 2008-09 budget is \$466,900 PR and 8.0 PR positions, supported by the \$8 handgun purchaser record check fee. Since its creation under 1991 Wisconsin Act 11, the program has ended each state fiscal year in deficit. During 2007-08, the program

received \$333,900 in record check fees but expended \$430,500. At the end of the 2006-07 fiscal year, the program's cumulative deficit stood at \$947,800 and is projected to end 2008-09 with a deficit of \$1,184,800. As a part of DOJ's 2009-11 biennial budget request, the agency has proposed a fee increase to \$13 to eliminate the deficit.

State Crime Laboratories

Under s. 165.75(2) of the statutes, DOJ is required to locate a state crime laboratory in Madison, Milwaukee, and Wausau. Each crime laboratory is considered a bureau within the Division of Law Enforcement Services. The Madison Crime Laboratory was created by the Legislature in 1947; the Milwaukee Crime Laboratory was opened in 1975; and the Wausau Crime Laboratory began operations in 1991.

The state crime laboratories are responsible for providing scientific and technical assistance to state and local law enforcement agencies, upon their request. The budget in 2008-09 for the state crime laboratories totals \$16,502,500 (all funds) and 139.33 positions. The state crime laboratories' funding is comprised of \$8,889,600 GPR, \$7,542,600 PR, and \$70,300 FED and 82.83 GPR, 55.5 PR, and 1.0 FED positions.

The state crime laboratories' program revenue-supported budget is funded from a variety of sources: (a) an \$8 crime laboratory and drug law enforcement assessment and a \$250 DNA surcharge (\$6,217,800 and 47.5 positions); (b) criminal history search fees (\$772,300 and 7.0 positions); and (c) penalty surcharge revenues (\$552,500 and 1.0 position).

An \$8 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 most violations of state law or municipal or county ordinance. In addition,

a court imposes the \$250 DNA surcharge either when it imposes a sentence or places a person on probation for committing certain sex offenses or when it elects to do so under any circumstance in which the court has imposed a sentence or placed a person on probation for a felony conviction.

The criminal history search fees, described earlier in this section, are imposed whenever DOJ receives a request for a non-criminal justice search of the criminal history database.

As indicated previously, the penalty surcharge is imposed whenever a court imposes a fine or forfeiture for most violations of state law or municipal or county ordinance. The penalty surcharge equals 26% of the total fine or forfeiture.

Statutory Authorization. Under s. 165.75(3)(a) of the statutes, the purpose of the state crime laboratories is to "provide technical assistance to local law enforcement officers in the various fields of scientific investigation in the aid of law enforcement. ...[T]he laboratories shall maintain services and employ the necessary specialists, technical and scientific employees for the recognition and proper preservation, marking and scientific analysis of evidence material in the investigation and prosecution of crimes in such fields as firearms identification, the comparison and identification of toolmarks, chemistry, identification of questioned documents, metallurgy, comparative microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and forensic photography."

Employees of the state crime laboratories may undertake investigation of criminal conduct only upon the request of a sheriff, coroner, medical examiner, district attorney, chief of police, warden or superintendent of any state prison, state agency head, the Attorney General or the Governor. Following such a request, the laboratories must collaborate fully in the complete investigation of criminal conduct and bring to bear the full range of their forensic skills. These efforts may involve field investigations at the scene of the crime. Both the

Wausau and Madison crime laboratories have a mobile unit available for such field investigations 24 hours a day, seven days a week.

DOJ is authorized to decline the provision of laboratory services in any case that does not involve a potential felony charge. The state crime laboratories generally do not accept misdemeanor cases.

State Crime Laboratory Operations. Both the Milwaukee and Madison crime laboratories provide all of the following analytical services to Wisconsin law enforcement agencies:

1. *Drug Identification.* A combination of different tests may be performed on an unknown material until the analyst can identify or eliminate the presence of any controlled substance, narcotic, pharmaceutical, or other ingredient. Controlled substances are those compounds prohibited under Chapter 961 of the statutes.

2. *Toxicology.* An analysis of bodily specimens may be undertaken for the presence of chemicals that are harmful or for which ingestion is in some way defined as a criminal offense. The laboratory identifies and quantifies the amount of drugs, alcohol, and poisons in biological samples such as blood, urine, or tissue.

3. *Trace Chemistry.* A comparison and identification of trace evidence may be undertaken. This includes such substances as paints, soil, plastics, glass, insulation, arson accelerants, fireworks, explosives and synthetic fiber.

4. *DNA.* This type of analysis involves the identification and characterization of biological materials, including blood, semen and other body fluids.

5. *DNA Databank.* These activities involve the development, identification and cataloging of DNA profiles from biological samples collected from convicted offenders.

6. *Firearms/Toolmarks.* This activity involves the examination of firearms and ammunition, toolmarks and suspect tools, serial number restoration, and distance determination tests. To determine whether a firearm recovered in the case was the firearm that fired the bullets and cartridge cases that have been recovered, the laboratory compares the recovered bullets and cartridge cases with laboratory fired bullets and cartridge cases from the suspected firearm. A subsequent microscopic examination permits a final determination to be made.

7. *Identification.* This activity involves an analysis to determine the presence of fingerprints, palm prints, footprints, or tire treads and the comparison of such prints or treads to establish identity.

8. *Document Examination.* This type of analysis permits the comparison of handwriting, typewriting, and printing, and the analysis of inks, paper, and related materials. These services also include the deciphering of charred, obliterated, or indented documents.

9. *Forensic Imaging.* These services provide all laboratory sections with specialized forensic photography support using black and white, color, ultraviolet, digital, infrared and infrared luminescence techniques.

The Wausau Crime Laboratory provides services generally limited to controlled substances identification, fingerprint and footwear identification, and photography. The Wausau Crime Laboratory region is served by the Madison Crime Laboratory for the forensic service areas not otherwise provided at the Wausau Crime Laboratory. Appendix III identifies the geographic areas of the state served by each crime laboratory.

The three state crime laboratories are currently authorized the following types of specialists: (a) DNA analysts (59.0); (b) fingerprint and footwear examiners (14.0); (c) controlled substance analysts (13.0); (d) forensic program technicians (9.0); (e)

forensic imaging specialists (6.0); (f) toxicologists (5.0); (g) firearms and toolmark examiners (4.0); (h) trace evidence examiners (4.0); (i) examiners of questioned documents (2.0); and (j) a forensic science training coordinator (1.0). In addition to these 117.0 specialists positions, an additional 22.33 supervisory and support positions include forensic scientist supervisors (6.0), crime laboratory directors (3.0), office associates (3.0), and assistants office operations associates (2.0).

Table 7 identifies the caseload of the state crime laboratory analysts during 2007-08.

Table 7: Analyst Caseloads in 2007-08

Case Type	Opened	Completed
Bloodstain pattern	25	24
Documents	110	135
DNA	3,027	3,004
DNA databank	234	232
Drugs	5,090	5,018
Firearms	963	1,012
Field photo	53	50
Field response	71	72
Forensic imaging	2,425	2,105
Identification	3,265	3,154
Toolmarks	64	95
Trace Chemistry	308	319
Toxicology	<u>820</u>	<u>810</u>
Total	16,455	16,030

DNA Testing. The analysis of deoxyribonucleic acid (DNA) evidence at crime scenes has become an increasingly important forensic tool for law enforcement agencies in recent years. Under s. 165.77 of the statutes, the state crime laboratories are required to provide DNA analysis and maintain a DNA databank. The laboratories are required to analyze the DNA in a human biological specimen, if requested: (a) by a law enforcement agency regarding an investigation; (b) pursuant to a court order; and (c) by an individual regarding his or her own specimen, subject to rules established by the Department. The laboratories may compare the data obtained from this specimen with data obtained from other specimens, but may not include the data from these specimens in the

state DNA databank.

However, under other provisions of current law, the following persons are required to submit a DNA specimen for inclusion in the state's DNA database:

1. Those found guilty or delinquent of first- or second-degree sexual assault or of engaging in repeated sexual assaults of the same child (this category includes those found not guilty of such crimes by reason of mental disease or defect);
2. Those committed as sexually violent persons;
3. Those in prison for a felony committed in Wisconsin;
4. Those sentenced to prison or placed on probation for a felony conviction;
5. Those convicted of certain serious crimes ordered by a judge to submit a DNA sample; or
6. Those on parole, extended supervision or on probation in another state (but supervised in Wisconsin) for a violation in the other state that the Department of Corrections determines would be subject to 1 or 4 above, if committed in Wisconsin.

As of August 31, 2008, there were 112,600 DNA profiles in the state's convicted offender database. Approximately 800 additional DNA profiles monthly are added to this database. According to FBI statistics, Wisconsin's convicted offender DNA database is the 18th largest database of this type in the country.

"Casework" DNA profiles are developed from biological specimens from crimes scenes that are not tied to a specific individual. As DNA profiles are added to the convicted offender DNA database, DOJ is increasingly able to match "casework" DNA profiles with either known profiles in the convicted offender DNA database or with other "casework" profiles in the casework index. As of August 31, 2008, there were 5,344 casework DNA profiles in

the state database.

The convicted offender DNA database and the casework DNA profiles have become increasingly effective crime-solving tools. In calendar year 2006, there were 195 matches or "hits". These hits matched unknown profiles with 182 known offender profiles and 13 casework profiles, for an average of about 16 hits per month. In calendar year 2007, there were 365 hits matching unknown profiles with, 334 known offender profiles and 31 casework profiles, for an average of about 30 hits per month.

Under 2007 Wisconsin Acts 5 and 20, the Legislature provided additional resources to DOJ to address an increasing DNA analysis caseload/ backlog. Prior to the passage of these acts, the state crime laboratories were authorized 29.0 DNA analysts. Together these acts provided position authority and funding for 31.0 additional DNA analysis-related positions including: (a) 29.0 DNA analysts; (b) 1.0 DNA technician; and (c) 1.0 DNA analysis supervisor. These acts also provided funding to DOJ to acquire robotics technology to automate the middle stages of DNA forensic analysis.

With the additional resources DOJ is reducing the DNA analysis backlog. At the end of 2006-07, there were 1,830 backlogged DNA analysis cases. By the end of 2007-08, this backlog had been reduced to 1,499 cases. The Department has hired the additional DNA analysis staff and brought the new robotics technology online. Of the 31.0 DNA-analysis positions created under Act 5, 22.0 are located at the Madison Crime Laboratory and 9.0 are located at the Milwaukee Crime Laboratory.

**County/Tribal Law
Enforcement Grant Programs**

The budget for the Division of Management Services includes \$2,132,100 PR and 1.0 PR position in 2008-09 to administer three related grant

programs and to provide grant funding to support law enforcement services on tribal lands and in counties bordering tribal reservations. Of these budgeted funds and positions in 2008-09: (a) \$708,400 PR is budgeted for grants under the county-tribal law enforcement grant program; (b) \$780,000 PR is budgeted for grants under the tribal law enforcement assistance grant program; (c) \$550,000 PR is budgeted for grants under the county law enforcement services grant program; and (d) \$93,700 PR and 1.0 PR position is budgeted to permit the Department to administer the county-tribal law enforcement grant program. Funding for the grants and for program administration is provided from tribal gaming revenues.

Statutory Authorization. Section 165.90 of the statutes creates the county-tribal law enforcement grant program, and assigns the program's administrative responsibility to DOJ. In order to receive funding under the program, a county with one or more federally-recognized Indian reservations within or partially within its boundaries must enter into an agreement with an Indian tribe located in the county to establish a cooperative county-tribal law enforcement program. The county and tribe must develop and annually submit to DOJ a joint program plan, and report on the performance of law enforcement activities on the reservation in the previous fiscal year. The joint program plan must identify all of the following: (a) a description of the proposed cooperative county-tribal law enforcement program for which funding is sought, including information on the population and geographic area or areas to be served by the program; (b) the program's need for funding and the amount of funding requested; (c) the governmental unit that will administer the grant funding and the method by which the funding will be disbursed; (d) the types of law enforcement services that will be performed on the reservation and the persons who will perform the services; (e) the individual who will exercise daily supervision and control over law enforcement officers participating in the program; (f) the method by which county and tribal input into program planning and implementation will be assured; (g) the program's policies regard-

ing deputization, training and insurance of law enforcement officers; (h) the record keeping procedures and types of data to be collected by the program; and (i) any other information required by DOJ or deemed relevant by the county and tribe submitting the plan.

Section 165.91 of the statutes creates the tribal law enforcement assistance grant program. Wisconsin tribes are eligible to participate in this grant program. Under the program, a tribe must submit an application that includes a proposed plan for expenditure of the grant funds. DOJ is required to develop criteria and procedures in administering this program.

Section 165.89 of the statutes creates the county law enforcement services grant program. A county is eligible to participate in the grant program if the county: (a) borders one or more federally-recognized Indian reservations; (b) has not established a cooperative county-tribal law enforcement program with each such tribe or band; (c) demonstrates a need for grant-eligible law enforcement services; and (d) applies for a grant and submits a proposed plan showing how the funds will be used to support law enforcement services.

Program Administration. Under section 165.90(3m) of the statutes, DOJ must consider the following factors when determining whether to approve and fund a county/tribal program plan under the county-tribal law enforcement program: (a) the population of the reservation area to be served by the program; (b) the complexity of the law enforcement problems that the program proposes to address; and (c) the range of services that the program proposes to provide. When determining whether to make grants under the county-tribal law enforcement program, the Department also considers the county crime rate and the tribal unemployment rate. The Department further averages the preliminary award for a given year with up to three of the most recent grants for a given tribe, in order to mitigate large grant award fluctuations from year to year.

Table 8 identifies the grant amounts awarded to counties and tribes for calendar year 2008 grant activities. Although some of the grants were awarded to programs that include tribal police departments, most of the grants help pay for services provided by county sheriffs to Indian reservations and communities.

Table 8: Grants Awarded to Counties and Tribes in 2008

County/Tribe	Amount
Ashland/Bad River	\$56,200
Barron/St. Croix	20,280
Bayfield/Red Cliff	58,400
Brown/Oneida	35,300
Burnett/St. Croix	10,400
Forest/Sokaogon	36,200
Forest/Potawatomi	44,200
Jackson/Ho Chunk	33,500
Juneau/Ho Chunk	36,900
Menominee/Menominee	60,900
Monroe/Ho Chunk	24,700
Outagamie/Oneida	37,100
Polk/St. Croix	15,700
Sauk/Ho Chunk	28,000
Sawyer/Lac Courtes Oreilles	76,500
Shawano/Ho Chunk	14,700
Shawano/Stockbridge	53,200
Vilas/Lac du Flambeau	65,100
Wood/Ho Chunk	<u>21,400</u>
Total	\$708,400

Section 165.91 of the statutes delegates the responsibility to DOJ to develop the criteria and procedures to be used in administering the tribal law enforcement grant program. Of the \$780,000 PR in annual grant funding under the program, state statute specifically directs DOJ to allocate \$80,000 annually under the program to the Lac Courte Oreilles Band of Lake Superior Chippewa Indians for tribal law enforcement services. The Department may not consider this designation when determining grant awards from the \$700,000 annually in remaining base funding under the program. DOJ utilizes a three-criteria formula in making the remaining awards that it also utilizes under the county-tribal law enforcement grant program. In evaluating the grant applications and making awards, DOJ considers: (a) reservation population;

(b) county crime rate; and (c) tribal unemployment rate. The Department further averages the preliminary award for a given year with up to three of the most recent grants for a given tribe, in order to mitigate large grant award fluctuations from year to year. Table 9 identifies the grant amounts awarded to tribes for calendar year 2008 activities. All of the grants provided under this program support tribal law enforcement operations.

Table 9: Grants Awarded to Tribes in 2008

Tribe	Amount
Bad River	\$148,100
St. Croix	136,000
Lac du Flambeau	101,500
Menominee	41,000
Red Cliff	93,400
Stockbridge Munsee	63,800
Lac Courtes Oreilles	156,600
Oneida	<u>39,600</u>
Total	\$780,000

As with the tribal law enforcement grant program, section 165.89 of the statutes delegates to DOJ the responsibility to develop the criteria and procedures to be used in administering the county law enforcement grant program. Of the \$550,000 PR in annual grant funding under the program, however, state statute specifically provides that DOJ must allocate \$300,000 PR annually under the program to Forest County to fund law enforcement services. The Department also utilizes its three-criteria formula (reservation population, county crime rate, and tribal unemployment rate) to make awards of the remaining \$250,000 PR annually in funding under this program to Wisconsin counties. As with the other programs, in order to mitigate large grant award fluctuations from year to year, DOJ averages the preliminary award for a given year with up to three of the most recent grants for a given county. Table 10 identifies the grant amounts awarded to counties for calendar year 2008 activities. All counties use these grant funds to support law enforcement services, typically near bordering reservation lands.

Table 10: Grants Awarded to Counties in 2008

County	Amount
Forest	\$300,000
Shawano	50,000
Burnett	47,800
Oneida	50,000
Menominee	35,100
Oconto	37,000
Barron	27,000
Langlade	<u>30,100</u>
Total	\$550,000

**Law Enforcement Community
Policing Grant Program**

The Division of Management Services also ad-

ministers the law enforcement community policing grants program.

With \$250,000 GPR annually in base funding, the program provides grants to the City of Milwaukee for activities related to decentralized law enforcement and crime prevention in targeted neighborhoods that suffer from high levels of violent and drug-related crime. For calendar year 2008, the City of Milwaukee utilized this funding to support its Neighborhood Task Force. The Neighborhood Task Force consists of the Street Crime Unit, Fugitive Apprehension Unit, Motorcycle Unit, Mounted Patrol, Canine Unit and Marine Operations Unit. The objective of the task force is to disrupt the criminal environment and provide a visible, proactive policing presence in neighborhoods with the greatest amount of crime and disorder.

LAW ENFORCEMENT ACTIVITIES OF THE DEPARTMENT OF JUSTICE

Various provisions of the Wisconsin Statutes require DOJ to become involved in active law enforcement activities. Under s. 165.50 of the statutes, DOJ is required to investigate crime that is statewide in nature, importance or influence and to conduct arson investigations.

Further, the Department is specifically authorized to enforce Chapter 108 of the statutes (Unemployment Insurance and Reserves), and selected statutory provisions regulating or prohibiting the following: (a) prostitution; (b) illegal gambling; and (c) smoking.

Finally, under s. 165.70 of the statutes, DOJ is authorized to investigate and enforce selected statutory provisions regulating certain conduct or prohibiting certain crimes that are statewide in nature, importance, or influence. These provisions include: (a) prostitution; (b) illegal gambling; (c) controlled substances; (d) battery or intimidation of jurors and witnesses; (e) machine guns; (f) extortion; (g) usurious loans; (h) loan sharking; (i) obstruction of justice; (j) arson; and (k) use of a computer to facilitate a child sex crime. With respect to these latter provisions, the statutes stipulate that it is not the intent to deprive local law enforcement of its concurrent power and duty to enforce these provisions.

The statutes generally provide DOJ agents the powers of peace officers in carrying out these responsibilities. Under s. 939.22(22) of the statutes, a peace officer is defined as "any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes."

**Law Enforcement Activities of the
Division of Criminal Investigation**

The Department of Justice's Division of Criminal Investigation is charged with the responsibility of carrying out and meeting the statutory law enforcement obligations of the Department enumerated above. In addition, in representing the state, or any state department, agency, official, employee or agent, the Department's Division of Legal Services may utilize the investigative expertise of the Division of Criminal Investigation. Finally, on occasion, the Division of Criminal Investigation will also provide investigative assistance to local law enforcement, when requested, to help solve serious crimes.

The budget for the Division in 2008-09 is \$15,554,500 (all funds) and 128.0 positions. The Division is organized into five bureaus and one separate unit. These are the: (a) Narcotics Bureau; (b) Gaming Bureau; (c) Arson and Special Assignments Bureau; (d) Investigative Services Bureau; (e) Public Integrity Bureau; and (f) a separate administrative services unit.

Narcotics Bureau

The budget for the Narcotics Bureau in 2008-09 totals \$9,464,200 (all funds) and 67.0 positions. The Bureau's total funding is comprised of \$2,534,000 GPR, \$4,970,100 PR, and \$1,960,100 FED and 20.0 GPR, 33.0 PR and 14.0 FED positions. The Bureau's staff consist of special agents (54.0), and

supervisory and support personnel (13.0).

The Bureau's program revenue-funded budget is supported from the \$8 crime laboratory and drug law enforcement assessment and the \$250 DNA surcharge (\$2,410,200 and 21.0 positions) and by the penalty surcharge (\$2,559,900 and 12.0 positions). The \$8 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 most violations of state law or municipal or county ordinance. In addition, a court imposes the \$250 DNA surcharge either when it: imposes a sentence or places a person on probation for committing certain sex offenses; or when it elects to do so under any circumstance in which the court has imposed a sentence or placed a person on probation for a felony conviction.

The penalty surcharge is imposed whenever a court imposes a fine or forfeiture for most violations of state law or municipal or county ordinance. The penalty surcharge equals 26% of the total fine or forfeiture. A portion of the surcharge supports the Bureau.

Statutory Authorization. Under s. 165.70 of the statutes, the Department is charged with enforcing the Uniform Controlled Substance Act (Chapter 961) for violations that are statewide in nature, importance or influence. Further, s. 165.72 of the statutes provides that DOJ must maintain a single toll-free telephone number during normal retail business hours where persons may provide anonymous tips regarding suspected controlled substances violations and where pharmacists may report suspected controlled substances violations. DOJ is required to cooperate with the Department of Public Instruction in publicizing the use of this toll-free telephone number in the public schools.

Program Administration. The Bureau administers a statewide drug enforcement program to stem the flow of drugs into and within the state. The Bureau: participates in cooperative anti-drug efforts with local, state, and federal law enforcement agencies; provides investigative assistance to local

law enforcement; and initiates independent drug investigations.

Organized Crime Drug Enforcement Task Force. The Bureau participates in the federal Organized Crime Drug Enforcement Task Force. This task force is a program administered by the United States Attorneys' Offices in both the Eastern District and the Western District of Wisconsin. The task force targets organized, high-level drug trafficking groups. State and local agencies investigating high-level drug traffickers apply to the United States Attorney for task force funding. Task force funding ordinarily pays for overtime, travel and other expenses related to drug investigations.

High Intensity Drug Trafficking Area Task Force. The Narcotics Bureau is also involved in the Milwaukee High Intensity Drug Trafficking Area Task Force (HIDTA). The goal of this multi-jurisdictional task force is to apply enhanced intelligence processes, a high level of enforcement, coordination, and prosecution to reduce organized drug distribution, drug-related violent crime, and money laundering.

The enforcement component of the HIDTA task force consists of three investigative initiatives: (a) the Common Threat Task Force; (b) the Heroin Initiative; and (c) the Joint Drug Gangs Task Force. The Common Threat Task Force identifies individuals and organizations involved in the importation and distribution of cocaine. The task force is an FBI-supervised, multi-agency initiative that focuses on long-term investigative efforts. The Heroin Initiative is a Narcotics Bureau-supervised initiative that investigates organizations and individuals involved in high-level heroin trafficking in the Milwaukee HIDTA region. Finally, the Joint Drug Gangs Task Force is a multi-agency initiative supervised by the Milwaukee Police Department. The task force focuses on the identification, infiltration, disruption, and dismantling of violent street gangs involved in drug trafficking in the Milwaukee area.

Agents of the Narcotics Bureau are involved as task force members in all three enforcement

initiatives. In addition, a special agent in charge from the Narcotics Bureau serves as the coordinator for all three investigative initiatives and reports directly to the HIDTA Board of Directors. The Bureau also provides clerical and analytical support to the HIDTA Task Force, and provides assistance during wiretap operations.

Cannabis Enforcement and Suppression Effort. The Narcotics Bureau is involved in the Cannabis Enforcement and Suppression Effort (CEASE), which is a law enforcement program directed at the reduction of cultivated and non-cultivated marijuana and marijuana demand. The CEASE program supports federal, state, and local law enforcement efforts to curb marijuana cultivation, distribution and use. The primary goal of the program is to augment local law enforcement efforts in locating indoor and outdoor marijuana grow operations and arresting those responsible. The program also supports efforts to eradicate wild marijuana. The CEASE program informs the public on issues related to marijuana legalization efforts and educates citizens and youth about the dangers associated with marijuana and illegal drug use in general. CEASE program management compiles statewide statistics, intelligence data and distributes funds, equipment and information to be used for the investigation and eradication of domestic marijuana grows. Reports on CEASE activity are prepared and forwarded to the U.S. Drug Enforcement Administration and law enforcement agencies throughout Wisconsin. The Bureau provides training and equipment to local law enforcement agencies throughout the state for their marijuana eradication efforts, and reimburses local agencies for pre-approved overtime expenses involving marijuana eradication efforts.

Clandestine Laboratory Enforcement and Response Team. The Narcotics Bureau has identified as a significant challenge the current proliferation of methamphetamine laboratories, particularly in northwestern Wisconsin. The Bureau identified and decommissioned 27 laboratories in 2006 and 6 laboratories in 2007. The Narcotics Bureau anticipates processing approximately 14 methampheta-

mine laboratories in 2008. The number of criminal cases related to methamphetamine in Wisconsin has decreased from 726 in 2005 to 370 in 2007. The Bureau projects the number of methamphetamine cases declining to 338 cases in 2008.

To combat the spread of methamphetamine, the Bureau has developed the Clandestine Laboratory Enforcement and Response Team (CLEAR). This multi-jurisdictional team of approximately 53 members represents 14 law enforcement agencies across the state, including 27 special agents from the Narcotics Bureau.

Members of the CLEAR team are trained to dismantle methamphetamine laboratories, collect evidence, and prepare these laboratory sites for outside contractors to dispose of hazardous chemicals. The CLEAR team is also involved in community education and prevention efforts.

Drug Tipline and Pharmacy Hotline. Section 165.72 of the statutes requires the Bureau to operate both the drug tipline and the pharmacy hotline from the same toll-free telephone number. All calls made to this telephone number are received by the Dane County Dispatch Center, which operates the tipline and hotline under contract with DOJ. This toll-free telephone number received 415 calls in 2006-07 and 395 calls in 2007-08.

Training. The Narcotics Bureau provides drug enforcement training to law enforcement recruits at nearly all of Wisconsin's police recruit academies. This six-hour block of instruction provides basic knowledge of controlled substance abuse and recognition. In addition, specialized training is provided to certified local law enforcement officers in the form of basic and advanced drug enforcement schools. Topics include specific training in search and seizure law, execution of search warrants, undercover activity, surveillance, consent searches, and the latest drug trends throughout the state.

Local Anti-Drug Task Forces. Under current law, DOJ and the Department of Administration's Office of Justice Assistance (OJA) jointly administer a

program to provide grant funding to local anti-drug task forces. OJA provides funding for the task forces under the federal Byrne Justice Assistance Grant program, while DOJ provides state penalty surcharge funding. The penalty surcharge is assessed whenever a court imposes a fine or forfeiture for most violations of state law or municipal or county ordinance. The penalty surcharge is equal to 26% of the total fine or forfeiture.

In providing funding for local anti-drug task forces, the first priority under the program is to support task forces with a significant multi-jurisdictional component. Priority under the program is also given to those task forces rated high under a threat assessment of drug trafficking.

Appendix IV identifies the grant funding provided to local anti-drug task forces for calendar year 2008. The appendix also identifies budgeted allocations for the task forces for calendar year 2009. For calendar year 2008, an advisory panel, including local law enforcement officials, made recommendations on funding to the Executive Director of OJA. These recommendations were adopted and are reflected in the funding allocations for calendar year 2008. These recommendations continue to be the basis for budgeted calendar year 2009 allocations.

Bureau Caseload. In 2006-07, the Bureau opened 810 narcotics cases and closed 359 narcotics cases, while in 2007-08, the Bureau opened 759 narcotics cases and closed 147 narcotics cases. The Narcotics Bureau is generally the lead agency in these cases.

Gaming Bureau

The budget for the Gaming Bureau in 2008-09 is \$641,500 (all funds) and 5.0 positions. The Bureau's total funding is comprised of \$286,100 PR and \$355,400 SEG and 2.25 PR and 2.75 SEG positions. The Bureau's staff consists of a director and 4.0 special agents.

The Bureau's program revenue-funded budget is supported by pari-mutuel racing revenue (\$151,200 and 1.0 position) and by tribal gaming revenues (\$134,900 and 1.25 positions). The bureau's SEG-supported operations (\$355,400 and 2.75 positions) are funded from lottery fund revenues.

Statutory Authorization. Prior to the enactment of 1991 Wisconsin Act 269, DOJ had enforcement responsibilities relating to bingo control, crane games, racing and pari-mutuel wagering, the lottery, gambling on Indian lands and general gambling prohibitions.

Act 269 specified that DOJ establish a bureau to oversee the Department's gambling-related responsibilities, and provided additional funding and staffing for these enforcement activities. The primary consideration for providing the additional resources appears to have been the increased workload associated with the new tribal gaming compacts.

The legalization of gaming on Indian lands initially raised a number of jurisdictional questions with respect to which federal, state or local entity had primary enforcement authority. On August 26, 1992, the United States Attorneys for the Eastern District and the Western District of Wisconsin, the FBI, and DOJ agreed that the Division of Criminal Investigation, through its gaming enforcement bureau, would be the primary contact for reporting and investigating all alleged criminal activity affecting the operation and administration of Class III (casino) Indian gaming in Wisconsin. This agreement does not preclude criminal investigation by local or tribal law enforcement agencies; however, the Division is to be apprised by local or tribal law enforcement agencies (or others) of criminal allegations and investigations affecting the integrity of Indian gaming in Wisconsin. This notification requirement is intended to ensure the coordination of investigations of common interest and to encourage the prompt dissemination of information that may be of concern to other gaming operations or enforcement agencies.

Under ss. 165.60 and 165.70 of the statutes, the Department, through its gaming enforcement bureau, is granted criminal law enforcement responsibilities relating to pari-mutuel racing, the Wisconsin Lottery, Indian gaming, charitable gaming, bingo and illegal gambling. The Department of Revenue's Division of Lottery and DOA's Division of Gaming are required by statute to report all suspected criminal activity to DOJ.

The Gaming Bureau also conducts background investigations related to major procurement contracts for the Wisconsin Lottery, and assists DOA's Division of Gaming in conducting background investigations of contractors and individuals seeking certification or licensure relating to Indian gaming or pari-mutuel racing. In addition, the Bureau assists local law enforcement in meeting its responsibility to enforce the state's gambling laws.

Program Administration. In 1996, Wisconsin had 16 casinos with 10,000 gaming machines. By 2008, this number had grown to 25 casinos with 15,150 gaming machines.

This growth in casino gambling activity has impacted the level of law enforcement activities by Gaming Bureau staff. The Bureau's staff opened 83 cases and closed 67 cases in 2006-07, and in 2007-08, Bureau staff opened 62 cases and closed 24 cases.

In addition to its statutory law enforcement responsibilities, the Gaming Bureau also provides training for local, state and federal law enforcement officers on matters relating to gaming.

Remaining DCI Operations

The budget in 2008-09 for the remaining Division of Criminal Investigation bureaus and units (the Arson and Special Assignments Bureau, the Investigative Services Bureau, the Public Integrity Bureau, and the administrative services

unit) is \$5,448,800 and 56.0 positions. This funding is comprised of \$5,139,000 GPR, \$99,500 FED, and \$210,300 PR and 52.5 GPR, 1.0 FED and 2.5 PR positions. The staff authorized for these operations consists of special agents (36.0), office operations associates (7.0), investigative associates (3.0), and supervisory and support personnel (10.0).

The program revenue-funded portion of these budgets is supported by inter- and intra-agency assistance funding (\$210,300 and 2.5 positions). Inter- and intra-agency assistance funding represents receipts from DOJ billings of other agencies or units for the Department's services.

Arson and Special Assignments Bureau

Statutory Authorization. Under s. 165.55(1) of the statutes, the fire chief or chief executive of every Wisconsin municipality must investigate all fires in the jurisdiction causing more than \$500 in damage, and report those of suspicious origin to the state fire marshal in the Arson and Special Assignments Bureau.

Program Administration. The Arson and Special Assignments Bureau responds to fatal fires, fires with statewide importance, large commercial structure fires, fires suspected to be arson by local authorities, explosions, and fires involving injury or death to first responders. The Bureau does not respond to requests from insurance companies or private citizens. According to DOJ, most local jurisdictions depend on the bureau to conduct these investigations because the local authorities typically lack the resources to develop a high level of expertise in arson cases.

In 2006-07, the Bureau opened 219 arson cases and closed 178 arson cases, while in 2007-08, the Bureau opened 175 arson cases and closed 107 arson cases. It should be noted that: (a) these figures represent an estimate; and (b) arson cases are often complex and may be investigated for a year or two before charges are filed, much less closed. In addition to this arson caseload, Bureau staff provides fire and arson investigation training

to local fire and law enforcement officials.

The Bureau is also responsible for conducting a broad range of criminal investigations involving crimes of statewide importance or influence. The Bureau may be requested to lead or provide assistance to local law enforcement agencies in major criminal cases. The Bureau's involvement is usually requested when local law enforcement agencies conclude either that the matter under investigation may exceed the capability of local resources or that the seriousness of the offense warrants state intervention.

The Bureau is responsible for maintaining intelligence on subjects involved in organized criminal activity, including those posing a threat to domestic security. The Bureau may also be called on to carry out complex and sensitive criminal investigations requested by the Attorney General, the Governor, or the Legislature.

During 2006-07, the Bureau opened 56 special assignment cases and closed 33 such cases, while in 2007-08, the Bureau opened 72 special assignment cases and closed 36 such cases.

The Bureau collaborates with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) under the federal CEASEFIRE program. The purpose of the program is to reduce gun violence through the aggressive prosecution of crimes involving guns. The bureau's involvement with this program also brings it into collaboration with the U.S. Attorney's Office, the Milwaukee County District Attorney's Office, the Milwaukee Police Department, Milwaukee suburban police departments, and the Firearms Injury Center. The Bureau also serves as the Wisconsin liaison to INTERPOL, which promotes mutual assistance among international law enforcement authorities.

The Bureau staff provides training to other state agencies, law enforcement agencies at all levels, and new law enforcement recruits. The subjects of training include death investigations, organized crime, interviewing of suspects, and report writing

skills.

Investigative Services Bureau

The Investigative Services Bureau provides specialized investigative support services for the Division of Criminal Investigation and to law enforcement agencies statewide. The Bureau is divided into five functional areas.

Wisconsin Statewide Intelligence Center (WSIC). The WSIC is not restricted to a law enforcement or terrorism focus, but rather, at the recommendation of the Department of Homeland Security (DHS), has been developed as an all crimes, all hazards information sharing center that has a broad emergency response focus. In an emergency it is the responsibility of the WSIC to provide "actionable information" to assist Wisconsin Emergency Management or other state and local agencies in coordinated response to the emergency. It is also the responsibility of the WSIC to serve as the state agency intelligence lead for any criminal investigation resulting from a major incident.

The WSIC receives and disseminates law enforcement and threat information, while facilitating information sharing between federal, state and local law enforcement as well as emergency response agencies. In carrying out these functions, most WSIC staff has obtained varying security clearances to receive sensitive information from the federal government. WSIC staff receives daily briefings and intelligence information from the FBI, DHS and other federal agencies engaged in counter terrorism and law enforcement. In turn, WSIC staff provides daily intelligence briefings for the Governor, Attorney General, Adjutant General, members of its governance board and selected executive level law enforcement personnel statewide. In addition, WSIC issues a weekly law enforcement bulletin to all law enforcement agencies across Wisconsin as well as to other state intelligence centers and federal agencies.

WSIC staff is involved in assisting law enforcement agencies and prosecutors across the state

with ongoing criminal investigations. The Intelligence Center coordinates the state's drug task force information sharing initiative and a gang intelligence initiative (both statewide and in the Fox Valley Region).

In carrying out these responsibilities, the WSIC is undertaking the following activities: (a) building a database of threats and intelligence complaint with federal privacy laws; (b) linking state information technology systems, wherever possible, to permit the sharing of data in these disparate systems; (c) conducting threat assessments and critical infrastructure evaluations in cooperation with Wisconsin Emergency Management and establishing a risk analysis database; (d) providing law enforcement agencies broad-level access to the DCI criminal investigation database (although for specific case information law enforcement agencies may need to follow-up with WSIC intelligence analysts); and (e) providing 24-hour per day access for law enforcement agencies to law enforcement bulletins and broader law enforcement and threats information provided by WSIC or by other intelligence centers or the federal government.

The WSIC has also established a terrorism liaison officer program that trains government officials and members of the private sector across the state to: identify potential terrorist activity, report suspicious activity, respond to natural or man made catastrophic events, work to protect critical infrastructure and engage in information sharing across disciplines to benefit the state overall. In carrying out this program, the state has been divided into six regions that mirror the regions developed by Wisconsin Emergency Management. Each region is represented by a coordinating team including a local law enforcement or emergency manager, a member of the FBI and an assigned WSIC analyst.

In 2006-07 the WSIC opened one criminal case and provided intelligence support for an additional 117 criminal cases, while in 2007-08 the WSIC opened five criminal cases and provided intelligence support for an additional 162 criminal cases.

Its primary responsibility, however, remains information sharing.

Technical Services Unit. This unit provides covert surveillance investigative support for all types of criminal investigations. Special agents from this unit install and operate the equipment necessary to gather information on criminal activity. Assistance is available to all law enforcement agencies for nearly all forms of felony criminal investigations. The Division of Criminal Investigation may limit its investigative involvement in a given case to the provision of technical surveillance services. The Department indicates that through partnerships with federal programs and initiatives, the Division has been able to secure state-of-the-art covert surveillance equipment. The technical services unit assisted with 185 investigations in 2006-07, and with 168 investigations in 2007-08.

Analytical Services Unit. This unit provides analysis and specialized investigative support to the Division of Criminal Investigation and to other law enforcement agencies in the state. The unit offers both experienced criminal intelligence analysts and specialized analytical software. Analytical services are normally free of charge to Wisconsin law enforcement agencies and prosecutors for investigations of all types of crime. During 2006-07, the unit initiated 79 new investigations, while during 2007-08, the unit initiated 129 new investigations.

Investigative Records Section. This section provides information gathering, program support and background searches, and manages the Division's investigative records. The section serves as the Wisconsin liaison to the FBI's Violent Criminal Apprehension Program (ViCAP). ViCAP is a national data center organized to collect, collate and analyze specific investigative data. The purposes of the system are to enable local and state law enforcement agencies to link potentially related cases and to establish state and local crime trends.

Wisconsin Clearinghouse for Missing and Exploited Children. The clearinghouse serves as a resource for both law enforcement and affected

families in investigating cases involving missing and abducted children. The state works in conjunction with the National Center for Missing and Exploited Children, and forms part of a nationwide network that works to reunite missing and abducted children with their families.

In 2000, the clearinghouse received two dozen calls for service. The clearinghouse now receives more than 1,000 calls annually for service. In 2006-07, the clearinghouse opened 162 cases and closed 110 cases. In 2007-08, the clearinghouse opened 161 cases and closed 96.

In April, 2003, Congress passed the Protect Act of 2003. This act created the national Amber Alert System. Under Amber Alert, the public is quickly informed through television and radio public service announcements of a child's abduction. This immediate and widespread dissemination of information alerts the public, some of whom may be able to provide relevant and timely information to law enforcement that could end an abduction and result in the apprehension of the perpetrator.

The clearinghouse has been responsible for establishing and monitoring the state Amber Alert System. The Division of Criminal Investigation has entered into a contract with the Dane County Dispatch Center to provide the technical services associated with a statewide Amber Alert. [This same contract provides for the Drug Tipline and Pharmacy Hotline operated by the Division's Narcotics Bureau.] In 2006-07, the clearinghouse evaluated 12 requests for Amber Alert activation, fully activated the system on two occasions, and safely recovered two children. In 2007-08, the clearinghouse evaluated 10 requests for Amber Alert activation, fully activated the system on three occasions, and safely recovered six children.

Public Integrity Bureau

Statutory Authorization. Under s. 165.50 of the statutes, the Division of Criminal Investigation is authorized to investigate crime that is statewide in nature, importance, or influence. While the

Division is not specifically authorized to investigate crimes arising under the Code of Ethics for Public Officials (Chapter 19), bribery and official misconduct provisions (Chapter 946), or violations of state election or campaign laws under the state election code (Chapters 5 through 12), district attorneys may refer cases arising under these statutory provisions to the Department for prosecution. Under such circumstances, the Public Integrity Bureau is authorized to assist DOJ attorneys in the prosecution of the case.

The Department also has primary enforcement responsibility regarding the state's open records and open meetings laws.

Program Administration. The Bureau generally works in cooperation with other agencies such as the Government Accountability Board, local law enforcement agencies, and district attorneys in evaluating and investigating civil and criminal complaints involving state election and ethics laws, campaign finance, and misconduct in public office violations. The Bureau has independent authority to investigate violations of the state's open meetings and open records laws.

Referrals to the Public Integrity Bureau come from a number of sources. These include: (a) internal requests from assistant attorneys general to investigate complaints received from citizens or other sources; (b) requests from local law enforcement agencies or district attorneys for investigative assistance; and (c) requests from other state agencies for investigative assistance with complaints involving matters within their regulatory jurisdiction.

In 2006-07, the Bureau opened 74 public integrity cases and closed 72 public integrity cases. In 2007-08, the Bureau opened 72 public integrity cases and closed 67 public integrity cases.

In addition to the Bureau's public integrity caseload, the Bureau also has responsibilities in three additional functional areas.

Internet Crimes Against Children Task Force.

This task force was created in 1998 with federal funding to counter the emerging 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.

In 2000, Congress mandated that all internet service providers register and report any child pornography on their servers to the Cyber Tips Program at the National Center for Missing and Exploited Children. In 2006-07, the task force received 248 tips, while in 2007-08, the task force received 221 tips. These tips are investigated by the task force or referred to local law enforcement agencies for action.

In addition to cyber tips investigations, the task force conducts investigations involving the illegal file sharing of child pornography images over the Internet, and online child enticement.

In 2006-07, the task force opened 331 cases and closed 329 cases, while in 2007-08, the task force opened 306 cases and closed 286 cases. In 2007-08,

the task force made 103 arrests. These arrests have typically involved using a computer to facilitate a sex crime.

Computer Crimes Unit. This unit investigates crimes committed using the computer and analyzes information contained in electronic formats. The personnel in this section are trained to conduct forensic analysis of computer evidence. In 2006-07 the computer crimes unit conducted 800 forensic computer exams, while in 2007-08, the unit conducted 801 forensic computer exams. In addition, to computer forensic examinations conducted by this Unit, the Internet Crimes Against Children Task Force conducts its own computer forensic examinations associated with its caseload.

Financial Crimes Unit. The financial crimes unit conducts criminal investigations of complaints relating to: (a) economic or "white collar" crimes (such as embezzlement, theft, bank fraud, security fraud, health care fraud, insurance fraud and identity theft); and (b) antitrust violations (such as bid rigging, territory allocation and restraint of trade). The unit generally conducts investigations at the request of local district attorney offices and local law enforcement agencies, as well as through coordination with assistant attorneys general or as a result of citizen reports. In 2006-07, the unit opened 22 cases and closed 21 cases, while in 2007-08, the unit opened 39 cases and closed 23 cases.

LAW ENFORCEMENT RELATED ACTIVITIES OF THE OFFICE OF JUSTICE ASSISTANCE

The Office of Justice Assistance (OJA) was created on October 1, 1987, pursuant to the 1987-89 biennial budget act and was attached administratively to the Department of Administration (DOA). The Office of Justice Assistance was established to replace the former Council on Criminal Justice, which had also been attached to DOA. That legislation provided that OJA would be responsible for: (a) administering three federal grant programs (the Juvenile Justice and Delinquency Prevention Act, the Justice Assistance Act, and the Byrne Anti-Drug Abuse Act); and (b) providing advice and assistance to state and local governments regarding criminal and juvenile justice issues.

In addition, through a gubernatorial veto, the newly created OJA also retained the Council on Criminal Justice's responsibility to administer the state's Statistical Analysis Center (SAC). Under s. 16.964(1)(f) and (g) of the statutes, the SAC is responsible for: (a) serving as a clearinghouse of justice system data and information; (b) conducting justice system research and data analysis; (c) collecting and publishing statewide crime and arrest data from all participating law enforcement agencies (primarily local law enforcement agencies); and (d) forwarding statewide crime and arrest data to the FBI and participating in the FBI's Uniform Crime Reporting (UCR) program.

In subsequent years, the Legislature has also added additional state funded law enforcement-related grant programs to OJA's administrative duties.

Wisconsin Justice Information Sharing Program

Under s. 16.971(9) of the statutes, DOA may maintain, promote and coordinate automated justice information systems between counties and state criminal justice agencies. From 1995 through 2002, the Bureau of Justice Information Systems (BJIS) in DOA and then in the Department of Electronic Government (DEG) furthered this automation. The first major BJIS initiative designed and implemented the statewide prosecutor computer system which has evolved into the district attorney information technology (DA IT) program. [DA IT is discussed in greater detail in Chapter 4—Prosecutorial Responsibilities of District Attorneys.]

In 2002, DEG dissolved BJIS before itself being dissolved and transferred to DOA under the provisions of 2001 Wisconsin Act 109. The Department of Administration's Division of Enterprise Technology subsequently entered into an agreement with OJA to have OJA further the automation of justice information systems, although DA IT remains statutorily under DOA.

This OJA initiative is known as the Wisconsin Justice Information Sharing (WIJIS) program. For 2008-09, the WIJIS program budget is \$1,851,400, including \$1,152,100 FED and \$699,300 PR (additional federal funding received from other state agencies and local units of government to reimburse OJA for WIJIS expenses), and 3.0 FED funded

positions. The two primary IT initiatives of WIJIS are the Justice Gateway and the WIJIS Workflow Engine.

Justice Gateway. The Justice Gateway is a web-based tool which provides law enforcement personnel with a single, secure point of read-only access to information stored in separate justice-related state, local, and tribal databases from communities across Wisconsin. The objective of the Justice Gateway is to improve public safety and domestic preparedness through the sharing of justice information across geographic and organizational boundaries. Only authorized law enforcement and prosecutor personnel are authorized to use the Gateway in the conduct of their official duties. Participating law enforcement agencies decide which records they will make available on the Gateway.

The Gateway permits authorized users to do a name search of law enforcement contact, arrest, and investigation records. [In addition to formal arrest records, law enforcement agencies often make records of non-arrest contacts that their personnel have with individuals.] As of December, 2008, the Gateway contained over 4.2 million accessible records from 82 participating local law enforcement agencies. In addition to local law enforcement records, prosecutor records from the PROTECT system under DA IT are also now accessible to authorized users through the Gateway.

Access to the Gateway is not limited to agencies that make their records accessible. As a result, as of December, 2008, 139 local law enforcement agencies had registered 2,152 users on the Gateway. In an average week, 400 to 500 searches are now being conducted on the Gateway.

As of September, 2008, OJA was working with private vendors and municipal information technology specialists to connect 33 new local law enforcement agencies to the Gateway. In addition, plans are in place to connect the City of Milwaukee Police Department as well as the Milwaukee County Sheriff's Department to the Gateway in 2009.

WIJIS Workflow Engine. The Workflow Engine is designed to support many different types of information exchange securely over authenticated Internet connections. The intent of the Workflow Engine is to streamline the processing of criminal justice records across multiple agencies.

For example, the Workflow Engine supports the secure exchange of electronic citations originated by the Department of Transportation (DOT). The Workflow Engine routes citations to the courts, prosecutors, local municipal court systems, and two tracking/reporting databases at DOT, based on business routing rules established by the users of the system. Projects are also underway to support the transmission of warrants and temporary restraining orders from the courts to the appropriate county sheriff's records management system.

Statistical Analysis Center

As indicated earlier, under s. 16.964(1)(f) and (g) of the statutes, OJA's SAC is responsible for: (a) serving as a clearinghouse of justice system data and information; (b) conducting justice system research and data analysis; (c) collecting and publishing statewide crime and arrest data from all participating law enforcement agencies (primarily local law enforcement agencies); and (d) forwarding statewide crime and arrest data to the FBI and participating in the FBI's Uniform Crime Reporting (UCR) program.

No state funding is budgeted to specifically carry out these functions. As a result, the work of the SAC is completed under the restrictions of utilized federal funding. For 2008-09, the SAC has a budget of \$414,500 (primarily federal funding) and 6.0 FED positions. Office staff indicates that due to funding availability only three of the six FED positions are filled.

Office staff further indicates that state justice system research and data analysis has been limited

due to the lack of specific state funding.

In the 1920s the UCR program was first developed by the International Association of Chiefs of Police to create a national uniform collection of crime statistics for trend comparison and data analysis. The initial UCR program tracked offense and arrest data for seven crimes: (a) murder and non-negligent manslaughter; (b) forcible rape; (c) robbery; (d) burglary; (e) aggravated assault; (f) theft/larceny; and (g) motor vehicle theft. In 1978, Congress added arson as a crime to be tracked under the UCR program. Under the UCR program, in a multiple offense case only the most severe offense is counted.

In 1930, the FBI assumed responsibility for the UCR program. The FBI collected, organized, and disseminated criminal offense and arrest data voluntarily submitted by local, state, federal, and tribal law enforcement agencies under the UCR program.

In the late 1970s, the law enforcement community identified a need for a more detailed crime reporting program. In 1988, the National Incident-Based Reporting System (NIBRS) was created. NIBRS expands on the original UCR system, now referred to as the Summary-Based Reporting System (SBR), by increasing the number of crimes for which data is collected and reported from eight to 46. While NIBRS provides information on alleged offenses and arrests (similar to SBR), it also provides additional information on associated victims, offenders, property, and arrestees. In addition, NIBRS does not limit data collection in a multiple offense case to only the most severe offense.

The UCR system now encompasses both the traditional SBR system, as well as the NIBRS system. With slight modifications, Wisconsin adopted NIBRS as the Wisconsin Incident-Based Reporting System (WIBRS).

The Office of Justice Assistance collects, validates, and synthesizes this crime data. There are currently 372 law enforcement agencies in Wiscon-

sin reporting offense and arrest data under the UCR-SBR system and 37 law enforcement agencies reporting this data under the UCR-WIBRS system. Many of these law enforcement agencies submit not only their own offense and arrest data, but also offense and arrest data for other law enforcement agencies who do not report directly to OJA. [There are currently 586 law enforcement agencies in Wisconsin.]

Reports for both systems are collected on a monthly basis, however UCR-SBR reports are submitted by paper and UCR-WIBRS reports are submitted electronically. This data is organized into annual statewide reports, as well as forwarded to the FBI for nationwide trend and comparison reports on crime. Major SAC reports include the annual crime, arrest, and sexual assault reports, as well as a periodic jail report.

In recent years, some federal funding has been utilized to begin WIBRS implementation. As of December, 2008, 37 law enforcement agencies in Wisconsin have been certified to participate in the WIBRS system, including the Milwaukee Police Department. In addition, there are nine law enforcement agencies in the testing phase to join WIBRS. There is currently no federal deadline for states to convert from the UCR-SBR system to the UCR-NIBRS system.

Youth Diversion Grant Program

Under s. 16.964(8) of the statutes, OJA is required to utilize \$1,200,000 annually (\$380,000 GPR and \$820,000 PR) in funding provided to its GPR and PR youth diversion program appropriations to enter into contracts with organizations for the diversion of youths from gang activities into productive activities, including placement in appropriate educational, recreational, and employment programs. The statutes specifically direct OJA to enter into the following contracts for the following amounts: (a) \$500,000 to an organization in Mil-

waukee County; (b) \$150,000 to an organization in Racine County; (c) \$150,000 to an organization in Kenosha County; (d) \$150,000 to an organization located in Ward 2 in the City of Racine; (e) \$150,000 to an organization in Brown County; and (f) \$100,000 to an unspecified organization (which OJA has awarded to the City of Racine).

The program revenue funding is provided from the penalty surcharge. Under current law, whenever a court imposes a fine or forfeiture for most violations of state law or municipal or county ordinance, the court also imposes a penalty surcharge of 26% of the total fine or forfeiture.

The statutes further specify that OJA may not distribute more than \$300,000 PR annually in funding from its interagency and intra-agency aids appropriation to the organization it has contracted with in Milwaukee County for alcohol and other drug abuse education and treatment services for participants in that organization's youth diversion program. These funds are provided by the Department of Health Services from federal funds that it administers.

Table 11 identifies awarded youth diversion grants for 2007-08, including the county in which the grantee operates, the amount of the award, and a description of the youth diversion project for 2007-08. For 2007-08, full grants were not awarded under the program as penalty surcharge funding was reduced to partially address a deficit in the penalty surcharge fund.

The law enforcement programs and youth diversion-administration appropriation under OJA is budgeted a 0.5 PR grant specialist position and \$24,800 PR in 2008-09, to permit the Office to administer the youth diversion program. The program revenue funding is again provided from the penalty surcharge.

Law Enforcement Officer Grants

Under 1993 Wisconsin Act 193, the Legislature created a law enforcement officer supplement grants program under OJA. Act 193 initially appropriated \$1,000,000 GPR in 1994-95 to fund grants under the new program. This annual level of grant funding was maintained in each succeeding fiscal year through 2006-07. Under this program, OJA provides grants to cities to employ additional uniformed law enforcement officers whose primary duty is beat patrolling.

A city is eligible to apply for a grant under this program if it has a population of at least 25,000. The Office of Justice Assistance must make grant awards to the ten eligible cities submitting applications that have the highest rates of violent crime index offenses in the most recent full calendar year for which data is available from the FBI's UCR system. OJA may not award an annual grant in excess of \$150,000 to any one city.

A city applying for a grant under the program must include a proposed plan for expenditure of the grant monies. Such funding may be utilized only for salary and fringe benefits costs; further, the grantee must provide a 25% local match to any grant funds received under the program. Cities may generally not utilize the grant funding to pay for overtime costs (except in the first year of a city's initial grant under the program), and the grant funding must result in a net increase in the number of uniformed law enforcement officers assigned to beat patrol duties.

Under 2007 Wisconsin Act 20, an additional \$450,000 GPR annually was provided to increase the available grant funding under the program. As a result, Table 12 indicates that for the 2007-08 fiscal year, the Cities of Madison and Milwaukee each received a maximum \$150,000 grant under the program. The remaining eight cities receiving grant funding under the program in 2007-08 each received grants totaling \$143,750. Table 12 identifies

for 2007-08, the cities receiving grant funding, the amount of the state grant, the amount of the local match, and a project description for the grant.

Table 11: Youth Diversion Grants Awarded in 2007-08

County	Award	Project Description
Brown	\$147,000	The Brown County Ties project is a gang diversion initiative for Brown County youth involving collaboration between local youth service agencies and law enforcement. Project activities include educational, recreational, and employment readiness programs. Youth development staff of the Green Bay Boys and Girls Club target at-risk youth and slot them into structured programs best suited to their needs. The program also provides culturally appropriate services for youth susceptible to recruitment by Asian and Hispanic gangs and works with the Green Bay Police Department to enhance the relationship between youth and law enforcement officers during outings and recreational programming.
Kenosha	\$147,000	The Kenosha County Gang Prevention Committee oversees gang prevention programming and strategies facilitated by three community-based provider agencies. Kenosha officials have found that a significant number of delinquent cases in their courts are gang-related. This project supports a Gang Prevention Committee that oversees programs provided by several local organizations including the Kenosha Boys and Girls Club, the Spanish Centers of Kenosha, Racine, and Walworth counties, and the Racine and Kenosha Urban Leagues.
Milwaukee	\$490,000	The Community Relations-Social Development Commission's (SDC) project continues programs that target at-risk youth through its Youth Development Program (YDP). The YDP's clients include juvenile law offenders, substance users/abusers, gang members or any youth considered at-risk for any of these behaviors. Youth are referred to the YDP by the Milwaukee Police Department, City Attorney's Office, municipal court systems, other juvenile authorities, school officials, and community based organizations of parents. This specific project expands use of wrap-around programs to meet the multiple needs of low income juveniles. Project elements include peer training, education opportunities, targeting of youth with prior records and aggressive family-based services including family prevention.
Milwaukee	\$300,000	The Community Relations-SDC will continue providing programs that target at-risk youth through its YDP. This specific project is designed to reduce the incidence of drug use among youth and reduce the number of juvenile arrests for narcotics, drugs and alcohol use.
Racine	\$147,000	The George Bray Neighborhood Center received funds to divert youth from gang activity. Activities focus on improving academic performance and strengthening personal skills. Youth are helped to make better choices and follow through in living up to those choices. The program serves 100 gang involved youth.
Racine	\$96,900	The City of Racine works closely with Racine's Youth Gang Diversion Collaborative to provide a community-wide model to prevent and reduce youth gang involvement. The Collaborative includes the following organizations: Racine Vocational Ministry, Safe Haven Gang /Crime Diversion Task Force, and Why Gangs. Each organization works in partnership with the criminal justice system, Racine Police Department, Racine Unified School District, faith-based organizations, social service organizations, mental health agencies, and government to provide wrap-around services to youth offenders and at-risk youth.
Racine	\$147,000	This grant supports Racine's efforts to improve low income, minority segments of the community. Three sites of the Youth Leaders Academy, a community-based organization, work with the City of Racine's Park and Recreation Department to increase programming to improve academic achievement and behavior of at risk, inner city minority youth.
\$1,474,900		

Table 12: Law Enforcement Officer Supplement Grants Awarded in 2007-08

Grantee	Award	Local Match	Project Description
Madison	\$150,000	\$50,000	Madison Police Department funds salary and fringe benefits of four officers.
Milwaukee	150,000	50,000	City of Milwaukee funds a portion of salary and fringe benefits of six officers assigned to beat patrol duties.
Beloit	143,750	47,917	Beloit funds a portion of three beat patrol officers.
Green Bay	143,750	47,917	Green Bay maintains five officers to perform beat patrol duties.
Janesville	143,750	47,917	Janesville supports two beat patrol officer positions.
Kenosha	143,750	47,917	Kenosha funds support four beat patrol officer positions.
Racine	143,750	47,917	City of Racine Police department funds two beat patrol officers.
Stevens Point	143,750	47,917	Stevens Point pays the salary and fringe benefits of three officers.
Wausau	143,750	47,917	Wausau Police Department supports portions of the salary and fringe benefits of four officers.
West Allis	<u>143,750</u>	<u>47,917</u>	West Allis funds a portion of the salary and fringe benefits of two officers assigned to daily patrol duties.
Total	\$1,450,000	\$483,336	

Treatment Alternatives and Diversion Program

Provisions of 2005 Wisconsin Act 25 created the Treatment Alternatives and Diversion (TAD) grant program under OJA. The program is intended to provide grants to counties to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, which provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs.

Act 25 created an annual GPR appropriation under OJA for making grants and evaluating the TAD program, but provided no funding. Act 25 also created a continuing PR appropriation under OJA for grant funding and program evaluation and estimated that \$755,000 PR would be available for these purposes in 2006-07. Program revenue for this latter appropriation is provided from: (a) the drug abuse program improvement surcharge; and (b) a \$10 drug offender diversion surcharge assessed for property crime convictions under Chapter 943 of the statutes created by Act 25.

The Office of Justice Assistance made grants totaling \$747,450 PR in 2006-07 under the TAD program to the following counties: (a) \$163,725 to Dane County; (b) \$156,814 to Rock County; (c) \$148,936 to Burnett and Washburn Counties; (d) \$147,025 to Wood County; and (e) \$130,950 to Washington County. Further, OJA made commitments to these counties to continue funding for these programs through the 2007-09 biennium, and estimated an ongoing need of \$755,000 PR annually to honor these commitments. Table 13 identifies the PR-funded TAD awards made by OJA to these counties in 2007-08. In addition, \$7,550 was transferred to the Department of Corrections to conduct an evaluation of the program.

Table 13: Treatment Alternatives and Diversion Grants Awarded in 2007-08

Burnett, Washburn	\$148,936
Dane	163,725
Rock	156,814
Washington	130,950
Wood	<u>147,025</u>
Total	\$747,450

Program expenditures for TAD have exceeded program revenues leading the program to operate in deficit. In 2006-07, the program received \$14,600 in program revenues, while in 2007-08, the program received \$25,700 in program revenues. The Department of Administration estimates revenues of \$45,300 for the program in 2008-09, and further estimates that the program will conclude the 2007-09 biennium with a deficit of \$2,116,000.

In addition to PR funding provided under its TAD grant program, in 2006-07 OJA provided a grant of \$275,400 FED in federal Byrne Justice Assistance Grant funding directly to Milwaukee County for its TAD program. Under 2007 Wisconsin Act 20, Milwaukee County received additional funding for its TAD program of \$375,000 GPR in 2007-08 only. On December 17, 2008, the Joint Committee on Finance approved the release of \$187,000 GPR in 2008-09 to Milwaukee County to provide additional funding for its TAD program through June 30, 2009.

Digital Recording of Custodial Interrogations Grant Program

On July 5, 2005, the Wisconsin Supreme Court

held in *State v. Jerrell* that custodial interrogations of juveniles must be electronically recorded when feasible, and when the interrogation occurs in a place of detention, must be recorded without exception. In response to this decision, 2005 Wisconsin Act 60 created the grants for digital recording of custodial interrogations by law enforcement grant program. Under this program, OJA must provide grants to law enforcement agencies for the purchase, installation, or maintenance of digital recording equipment for making recordings of custodial interrogations or for training personnel to use such equipment.

Current funding priorities for the program include: (a) providing basic recording equipment; (b) upgrading recording equipment to include a video functionality; and (c) providing technology solutions for the efficient storage and retrieval of recordings. Office staff indicates that requests for funding in 2007-08 were less than budgeted grant funding under the program. The program has \$750,000 PR annually in base grant funding supported by the penalty surcharge. Table 14 identifies the \$580,700 in grants made to law enforcement agencies under the program in 2007-08.

Table 14: Digital Recording of Custodial Interrogations Grants Awarded in 2007-08

Grantee	Award	Grantee	Award
Altoona Police Department	\$2,500	Lodi Police Department	\$2,100
Appleton Police Department	23,100	Marathon County Sheriff's Department	26,200
August Police Department	3,300	McFarland Police Department	4,300
Barneveld Police Department	1,000	Menominee County Sheriff's Office	2,400
Brillion Police Department	5,000	Mequon Police Department	9,400
Brookfield Police Department	11,000	Middleton Police Department	4,100
Brooklyn Police Department	5,000	Milwaukee Police Department	30,000
Brown County Sheriff's Department	3,800	Minocqua Police Department	23,800
Butler Police Department	14,000	Oregon Police Department	3,300
Cameron Police Department	1,700	Ozaukee County Sheriff's Department	4,000
Cashton, Village Police Department	5,800	Palmyra Police Department	700
Chenequa Police Department	5,000	Park Falls Police Department	9,700
Clintonville Police Department	2,000	Phillips Police Department	10,100
Cottage Grove Police Department	5,100	Portage Police Department	12,200
Cudahy Police Department	11,400	Rhineland Police Department	10,500
Dane, Village Police Department	5,200	City of Rice Lake Police Department	5,000
Department of Justice/DCI	31,800	Richland Center Police Department	1,300
Door County Sheriff's Department	4,000	Rock County Sheriff's Department	25,700
Douglas County Sheriff's Department	4,000	Rome, Town Police Department	5,600
Eagle, Village Police Department	2,900	Shawano Police Department	2,900
East Troy, Village Police Department	12,500	Shorewood Hills Police Department	4,900
Eau Claire Police Department	12,200	Silver Lake Police Department	5,400
Elkhorn Police Department	8,000	Spencer Police Department	5,600
Fitchburg Police Department	8,300	Spring Green Police Department	5,000
Fox Point Police Department	5,000	St. Croix Falls Police Department	1,700
Glenwood City Police Department	5,000	St. Francis Police Department	10,400
Hales Corners Police Department	5,100	Thorp Police Department	3,600
Hammond Police Department	500	Trempealeau Police Department	2,500
Hartford Police Department	2,100	UW-Eau Claire Police Department	2,900
Jackson Police Department	10,700	UW-Green Bay Police Department	2,400
Juneau Police Department	2,500	UW-La Crosse Police Department	1,000
Kaukauna Police Department	1,800	UW-Stout Police Department	2,300
Kenosha County Sheriff's Department	6,700	UW-Whitewater Police Department	3,700
Kronenwetter Police Department	6,800	Washburn County Sheriff's Department	6,100
La Crosse Police Department	9,400	Washington County Sheriff's Department	6,100
Lake Delton Police Department	7,500	Waterford, Town Police Department	2,200
City of Lake Geneva Police Department	5,700	Waupun Police Department	8,500
Lake Mills Police Department	6,800	Wausau Police Department	32,100
Langlade County Sheriff's Department	1,800	Westby Police Department	1,600
Linn Police Department	5,600	Winnebago County Sheriff's Department	<u>7,800</u>
		Total	\$580,700

PROSECUTORIAL RESPONSIBILITIES OF DISTRICT ATTORNEYS

There are 71 district attorneys in Wisconsin. Beginning with the general election in November, 2008, under Article VI, Section 4 of the Wisconsin Constitution, a district attorney (DA) will be elected to a four-year term at the general election held in each presidential election year. Previously, district attorneys were elected to two-year terms. Each county in the state is termed a "prosecutorial unit" except that Shawano and Menominee counties form a two-county prosecutorial unit and jointly elect a single district attorney. Under current law, district attorneys are part-time positions in Buffalo (0.5), Florence (0.5), and Pepin (0.8) Counties, and are full-time in all other prosecutorial units.

**Duties and Responsibilities
of District Attorneys**

District attorneys are required to perform the following duties within their respective prosecutorial units:

1. Prosecute all criminal actions in state courts.
2. Except as otherwise provided by law, prosecute all state forfeiture actions, county traffic actions and actions concerning violations of county ordinances which are in conformity with state criminal laws.
3. Participate in John Doe proceedings (proceedings to determine whether a crime has been committed and by whom).

4. When requested, appear before grand juries to examine witnesses and provide advice and legal services to the grand jury.

5. Assist the Departments of Children and Families and Health Services in conducting welfare fraud investigations.

6. At the request and under the supervision of the Attorney General, brief and argue felony and other significant criminal cases, brought by appeal or writ of error or certified from a county within the DA's prosecutorial unit, to the Court of Appeals or Supreme Court.

7. Commence or appear in certain civil actions.

8. Commence or appear in sexually violent person commitment proceedings.

9. Perform duties in connection with certain court proceedings under the Juvenile Justice Code (Chapter 938), including juvenile delinquency actions.

10. Enforce certain provisions relating to the sale, transportation and storage of explosives.

In addition to these duties, a county has the option of designating the district attorney as its representative in certain proceedings involving children or juveniles. These proceedings include matters relating to: (a) children or juveniles alleged to have violated civil laws or ordinances; (b) children alleged to be in need of protection or services; (c) the termination of parental rights to a minor; (d) the appointment and removal of a guardian; and (e) the adoption of children.

District Attorney Funding and Staffing

While some counties have a single district attorney to perform the duties identified above, most DAs have one or more assistant DAs who are also authorized to perform the duties. If a county has a population of 100,000 or more, the DA may appoint between one and five deputy DAs, depending on the county's total population. Deputy DAs perform supervisory and administrative responsibilities in addition to prosecuting cases.

Prior to January 1, 1990, district attorneys, deputy DAs, and assistant DAs were county employees. Under 1989 Wisconsin Act 31, prosecutors became state employees on January 1, 1990, and the state now pays for prosecutors' salaries and fringe benefits.

A court may appoint a special prosecutor on its own motion to perform the same duties as a state-employed prosecutor. In addition, a district attorney may request that the court appoint a special prosecutor to assist the district attorney in a prosecution, grand jury or John Doe proceeding, sexually violent person commitment proceeding, or in investigations. The state pays for the compensation of special prosecutors, while other expenses reimbursed to special prosecutors are paid by counties. A special prosecutor may typically be appointed when: (a) there is no district attorney; (b) the district attorney is absent; (c) the district attorney or a member of his or her staff have a conflict of interest; (d) the district attorney is unable to attend to his or her duties; (e) the district attorney is serving in the armed forces; (f) the district attorney is charged with a crime; or (g) the district attorney cannot perform his or her duties due to a medical situation. In 2006-07, the state incurred \$329,000 GPR in special prosecutor expenses, while in 2007-08, the state incurred \$394,900 GPR in special prosecutor expenses.

Other than for the state-funded costs of prosecutors' salaries and fringe benefits, the remaining

staff costs of DA offices are generally the responsibility of counties. The only exception is that 6.5 clerk positions in the Milwaukee County District Attorney's office are supported through a special prosecution clerks fee. This \$3.50 fee is assessed only in Milwaukee County whenever a person pays: (a) a fee for any civil, small claims, forfeiture (except for safety belt use violations), wage earner or garnishment action; or (b) files an appeal from municipal court, a third party complaint in a civil action, or a counterclaim or cross complaint in a small claims action. The fee supports staff serving prosecutors who handle violent crime and felony drug violations in Milwaukee County's speedy drug and violent crime courts (4.5 clerks) and violations relating to the unlawful possession or use of firearms (2.0 clerks). In 2008-09, \$311,100 PR is budgeted to fund the salary and fringe benefit cost of these clerk positions.

In order to administer the state's responsibility as employer of DAs, deputy DAs and assistant DAs, Act 31 created the State Prosecutors Office in the Department of Administration (DOA). The State Prosecutors Office is responsible for coordinating DOA administrative duties relating to district attorney offices. Major responsibilities of the Office include: (a) payroll; (b) fringe benefits; (c) budgets; (d) billing counties for program revenue positions; (e) collective bargaining; (f) advising elected DAs on their rights and responsibilities under the assistant DA collective bargaining agreement; (g) producing fiscal notes and bill analyses for legislative proposals affecting DAs; and (h) serving as a central point of contact for all prosecutors. The State Prosecutors Office is budgeted \$122,300 GPR in 2008-09.

Through, DOA, the state also provides funding and staff for computer automation in district attorney offices statewide, including the development of a DA case management system, and the development of integrated justice information systems shared by DAs, the courts, law enforcement, and other justice agencies. These systems are being implemented on a county-by-county basis. Budgeted funding for the DOA program in 2008-09 is

\$4,461,600 PR supported from a portion of the \$5 justice information fee (\$3,729,100), and from the federal Byrne anti-drug grant program (\$732,500). Through July, 2008, the state has installed: (a) local area networks and related hardware and software in 70 DA offices statewide; (b) the DA case management system in 67 DA offices; (c) a connection to the state court system's database (CCAP) in 67 DA offices; and (d) a computerized criminal history report (for criminal background checks) in 67 DA offices. Counties continue to have financial responsibility for all other costs related to the operation of a district attorney's office.

On the date of transition to state service, 332.05 prosecution positions became state employees. As of December 1, 2008, 435.65 prosecutor positions were authorized, including 377.9 funded from general purpose revenue and 57.75 funded from program revenue. Of the 435.65 prosecutors statewide, 69.8 are elected DAs, 21.0 are Deputy DAs, and the remaining 344.85 are ADAs. Funding for DAs in 2008-09 is \$44,266,500 GPR and \$3,398,100 PR.

In addition to the general prosecutor positions authorized for county DA offices, there are currently two types of specialized state-funded prosecutor positions. First, 1.0 GPR-funded sexually violent person commitment prosecutor position has been assigned, by statute, to Brown County and to Milwaukee County, respectively. By statute, these two positions may only engage in proceedings related to the civil commitment of sexually violent persons. While these positions are primarily responsible for such proceedings in Brown and Milwaukee Counties, these prosecutors may also be assigned to similar types of cases in other counties in the state. In calendar year 2007, the Brown County sexually violent person commitment prosecutor handled 16 cases while the Milwaukee County sexually violent person commitment prosecutor handled 13 cases. Second, 1.0 PR-supported statewide DNA evidence prosecutor position has been assigned to Milwaukee County. This position is funded from a portion of the \$8 crime laboratory and drug law enforcement assessment and from the \$250 DNA surcharge, which

are imposed in certain criminal and forfeiture actions. This PR-funded DNA evidence prosecutor position is primarily responsible for: (a) prosecuting criminal cases where DNA evidence plays a critical role; (b) developing and presenting appropriate training sessions statewide relating to the use of DNA evidence; and (c) providing expert advice on DNA evidence to a variety of criminal justice agencies in the state.

The three most significant sources of support for program revenue-funded prosecutor positions are the Edward Byrne Memorial Justice Assistance Grant Program, the Violence Against Women Act (VAWA) grant program originally created under the federal Violent Crime Control and Law Enforcement Act of 1994, and federal Title IV-E funding under the Social Security Act. These three revenue sources provide support for approximately two-thirds of the PR funded prosecutorial positions.

Federal Byrne Justice Assistance Grant funds, which are administered by OJA, may be used to address drug control, violent and serious crimes. The funding of positions to prosecute these types of crimes is an authorized use of Byrne grant monies. As of December 1, 2008, 15.0 PR authorized prosecutor positions were supported with Byrne funds.

There are a number of grant programs authorized under the Violence Against Women Act, including both the STOP Violence Against Women Formula Grants and the Judicial Oversight Demonstration Project. The purpose of these grant programs is to develop and strengthen the criminal justice system's response to violence against women and to support and enhance services for victims. As of December 1, 2008, 15.0 authorized prosecutor positions were supported with funds from these VAWA grant programs.

Title IV-E funds under the federal Social Security Act are available to support prosecutorial positions providing legal services for child welfare actions under the Children's Code (Chapter 48 of

the statutes), primarily involving children in need of protection and services and termination of parental rights actions. As of December 1, 2008, 9.5 authorized prosecutor positions were supported with Title IV-E funding.

Under current law, the salaries of district attorneys are established under the biennial state compensation plan. The compensation plan must establish separate salary rates for DAs depending on the population size of each prosecutorial unit. For DA terms beginning January 5, 2009, the rates have been established as shown in Table 15.

Table 15: District Attorney Salaries

Prosecutorial Unit Population	Salary
More than 500,000	\$129,010
250,000 to 500,000	116,465
100,000 to 250,000	110,474
75,000 to 100,000	110,474
50,000 to 75,000	105,069
35,000 to 50,000	105,069
20,000 to 35,000	93,662
Not more than 20,000	93,662

Assistant district attorney compensation is established under a collective bargaining agreement with the state. Beginning April 1, 2007, the minimum annual assistant DA salary is \$47,036 and the maximum is \$113,435.

Table 16 shows the number of prosecutor positions authorized for each county as of December 1, 2008.

Prosecutorial Workload

Every two years during budget deliberations, the Governor and Legislature assess the need for additional prosecutors in the 71 separate DA offices across the state. The caseload of these DA offices, both individually and collectively, has been viewed by the Legislature as an important factor in

Table 16: State Prosecutor Positions – 2008-09

County	Positions	County	Positions
Adams	1.20	Marathon	10.75
Ashland	1.75	Marinette	2.50
Barron	3.00	Marquette	1.00
Bayfield	1.00	Milwaukee	118.50
Brown	14.00	Monroe	3.00
Buffalo	1.00	Oconto	1.50
Burnett	1.00	Oneida	2.50
Calumet	2.00	Outagamie	10.00
Chippewa	6.00	Ozaukee	3.00
Clark	2.00	Pepin	0.80
Columbia	4.50	Pierce	2.50
Crawford	1.00	Polk	2.00
Dane	30.60	Portage	4.00
Dodge	4.00	Price	1.00
Door	2.00	Racine	18.00
Douglas	3.50	Richland	1.80
Dunn	3.00	Rock	14.00
Eau Claire	8.00	Rusk	1.50
Florence	0.50	Saint Croix	7.20
Fond du Lac	6.00	Sauk	4.50
Forest	1.00	Sawyer	2.00
Grant	2.00	Shawano/Menominee	3.00
Green	2.00	Sheboygan	7.50
Green Lake	1.50	Taylor	1.00
Iowa	1.75	Trempealeau	2.00
Iron	1.00	Vernon	2.00
Jackson	2.00	Vilas	2.00
Jefferson	5.30	Walworth	5.00
Juneau	2.50	Washburn	1.50
Kenosha	15.00	Washington	5.00
Kewaunee	1.50	Waukesha	15.50
LaCrosse	8.00	Waupaca	3.50
Lafayette	1.00	Wausara	1.50
Langlade	1.50	Winnebago	10.00
Lincoln	2.00	Wood	<u>4.00</u>
Manitowoc	5.00	Total	435.65

determining the allocation of additional prosecution staff to these DA offices. In two audits in 1995 and 2007, the Legislative Audit Bureau (LAB) has reviewed the caseload measurement of prosecutorial workload utilized by DA offices. The workload measurement identifies the number of prosecutors that could be added to or deleted from DA offices across the state to permit prosecutors, on average, to work 40-hour work weeks.

Legislative Audit Bureau Audit December, 1995—Allocation of District Attorney Positions.

In 1995, a number of legislators and district attorneys raised questions about the caseload measurement of prosecutorial workload that was

in place at the time. In response to those concerns, the Joint Legislative Audit Committee directed the LAB to review options for measuring prosecutorial workload and improving the system for assessing the need for prosecutorial resources.

The results of the LAB findings were released in December, 1995, and identified a number of problems with the caseload weighting system then in use. After reviewing Wisconsin's and other states' methods of measuring prosecutorial caseload, the LAB made a number of recommendations, including improving the caseload measurement to: (a) use currently available data to express caseload in hours (for example, assign a Class A Homicide a weight of 100 hours to complete); (b) recognize that certain types of cases within a broader category may take more time than other cases within that category (for example, homicides require more time than other felonies); and (c) use a three-year average for case filing data.

The LAB also recommended that once a more accurate case measurement system was developed, a productivity standard be created for prosecutors to determine the time that a prosecutor has available to prosecute cases. The LAB conducted the first step of the calculation by estimating the average number of state holiday hours, personal hours, sick leave, and vacation time per prosecutor. This total, estimated at 300 hours per year, was then subtracted from 2,088 hours (the total number of full-time hours per prosecutor position per year) to derive a 1,788 working hours per year standard. The LAB recommended that either a Legislative Council special committee be established or a committee be organized by the SPO with appropriate prosecutor representation to estimate the average time spent on other duties such as administrative and investigative work, training, and reviewing cases that are never charged. The average time spent on these other duties could then be subtracted from the available working hours estimate to calculate the average number of hours actually available to prosecute cases on an annual basis.

Response to the 1995 LAB Audit. In response

to the LAB's recommendations, the Wisconsin District Attorneys Association (WDAA) appointed a committee to rework the measurement of prosecutor position allocation, taking into account some of the LAB recommendations. The WDAA is an association of elected district attorneys that meets to discuss various issues that affect DAs. Since DAs do not have an official state governing board, the WDAA acts, de facto, on behalf of elected district attorneys.

The WDAA committee estimated the amount of time spent by prosecutors on various activities such as administrative work, community service, search warrants, appeals, contested ordinance and civil traffic cases, training and other such duties that are not counted as part of a specific case. The estimate was then reviewed by all district attorney offices. The resulting estimate indicated that prosecutors spend approximately 561 hours per year on these other activities as identified in Table 17.

Table 17: WDAA Estimate of Annual Time Commitments Per Prosecutor on Non-Case Specific Responsibilities

Activity	Hours Annually
Investigations with law enforcement	100
Contested ordinance and civil traffic cases	100
General administrative duties	50
Criminal appeals	50
Prosecutor training	40
Community service	30
Review of law enforcement referrals not charged	30
Search warrants	30
Service on boards and commissions	25
Post-conviction hearings	25
Providing training for law enforcement	24
John Doe proceedings	20
Document subpoenas	20
Wage claims, public record requests, writs, weatherizations, and probation revocations	12
Deferred prosecution cases prior to charging	<u>5</u>
Total	561

The above estimates of time spent on non-case specific responsibilities have not been updated since adoption in 1996. Subtracting the WDAA estimate of time spent on these activities (561 hours per year) from the LAB's baseline estimate of 1,788

annual working hours available per full-time prosecutor, 1,227 hours per year per full-time prosecutor were projected as being available for prosecution.

The WDAA committee also estimated prosecutorial hours required for different types of cases. This estimate was based: (a) in part, on information resulting from a time study conducted by prosecutors in 1993-94 for which prosecutors recorded hours spent on various cases; (b) in part, on information provided by a survey of prosecutors; (c) on various modifications to the time study as recommended by the WDAA committee; and (d) on recommendations of the WDAA committee made independent of the time study or survey.

The WDAA committee adopted the time estimates for completing certain types of cases as identified in Table 18. Except for termination of parental rights (TPR) and children in need of protection and services (CHIPS) cases, these case weights have not been updated since adoption in 1996. The WDAA has subsequently increased the weight for a TPR case from 7.0 hours per case to 35.0 hours per case, and has increased the weight for a CHIPS case from 2.61 hours per case to 6.0 hours per case.

Table 18: Case Weights Adopted by the WDAA After the 1995 LAB Audit

Case Type	Hours Per Case
Class A homicides	100.00
Class B homicides	100.00
Inquests	64.00
All other felony cases	8.49
Termination of parental rights	7.00
Juvenile delinquency	3.32
Children in need of protection and services	2.61
Misdemeanors	2.17
Writs of habeas corpus	2.00
Criminal traffic	1.68

Further WDAA Modifications to the Caseload Measurement of Prosecutorial Workload. In subsequent years, additional categories of cases have been created by the WDAA. These new categories of cases either credit prosecutors for work on cases for which no credit was provided in the past, or

break out subsets of cases that were previously a part of the "all other felonies" category. These new case categories, and the estimated time to complete these cases, are specified in Table 19. These changes were primarily adopted based on a WDAA conducted survey.

Table 19: Additional WDAA-Created Case Types

Case Type	Hours Per Case
Sexual predator	100.00
Homicides, other than Class A and B homicides	50.00
Second and third strike non-homicide cases	50.00
Security fraud	30.00
Children in need of protection and services extensions	3.50
Guardianships	3.50

LAB Audit July, 2007—Allocation of Prosecutor Positions. In response to renewed concerns about the caseload measurement of prosecutorial workload, the Joint Legislative Audit Committee again directed the LAB to review the allocation of prosecutor positions, including the caseload measurement for prosecutor workload. The LAB completed this updated audit in July, 2007.

In its 2007 audit, the LAB found that the current caseload measurement of prosecutorial workload uses incomplete data and out-of-date measures of the time required to prosecute cases. The current caseload measurement divides the caseload of prosecutors into 16 categories including Class A homicides, Class B homicides, all other felonies, misdemeanors, and juvenile delinquency. Only five of these 16 categories have case weights that were determined based on a 1994 time study in which prosecutors tracked the amount of time actually spent on these case types (all other felonies, misdemeanors, criminal traffic, juvenile delinquency, and CHIPS cases). The results of this time study have not been updated.

The estimate of prosecutor time spent on other activities such as administrative and investigative responsibilities (561 hours per year for a full-time prosecutor) also dates to 1996. This estimate was not created utilizing data from a time study on

how much time, on average, prosecutors spend on these other activities.

In addition to utilizing dated measures of the time required to both prosecute cases and complete

other prosecutorial responsibilities, the audit also identified that variations in charging practices between DA offices may lessen the reliability of the current caseload measure.

PROSECUTORIAL AND RELATED RESPONSIBILITIES OF THE DEPARTMENT OF JUSTICE

While district attorneys are primarily responsible for prosecuting criminal and juvenile delinquency offenses at the trial or hearing level, the Department of Justice's Division of Legal Services represents the state in felony and other significant criminal and juvenile delinquency cases on appeal. In addition, the Division: (a) represents the state in prisoner and sexually violent person ("sexual predator") conditions of confinement suits; (b) assists DAs, when requested, in certain criminal prosecutions; and (c) initiates criminal prosecutions and sexual predator commitments under limited circumstances.

These prosecutorial and related functions constitute only a portion of the work of the Division and are primarily the responsibility of the following units in the Division: (a) criminal appeals; (b) civil litigation and employment; and (c) criminal litigation, antitrust, consumer protection, and public integrity. This chapter discusses the prosecutorial and related workload of each of these units. In addition, this chapter discusses the criminal caseload of the Medicaid fraud control unit and the environmental protection unit.

The criminal justice workload of the Division is GPR funded, supported by the Division's general program operations appropriation.

Criminal Appeals Unit

Statutory Authorization. Under s. 165.25(1) of the statutes, DOJ is required to represent the state in all appeals of felony convictions to the state Court of Appeals or Supreme Court. Under s.

165.25(1) of the statutes, DOJ also represents the state in appeals of significant criminal and juvenile delinquency cases. However, at the request of and under supervision of the Attorney General, a district attorney may brief and argue before the state Court of Appeals or Supreme Court a felony or other significant criminal or juvenile delinquency case on appeal from his or her jurisdiction.

Under s. 752.31 of the statutes, misdemeanor, juvenile delinquency, and traffic appeals are normally decided by a single Court of Appeals judge. However, any party to the appeal may request that the case be decided by a three-judge panel.

A district attorney who filed a misdemeanor, juvenile delinquency, or traffic case that is on appeal to a single Court of Appeals judge, must represent the state. However, if a request for a three-judge panel is granted in such an appeals case, the district attorney must transfer all relevant files and papers relating to the case to the Attorney General.

Because of these responsibilities, the criminal appeals unit has a significant criminal justice workload.

Program Administration. While most initial felony prosecutions are handled by the district attorney of jurisdiction, the criminal appeals unit is charged with preparing briefs and presenting arguments before state appellate or any federal court hearing a challenge to a felony conviction.

The unit also represents the state in these courts on appeals arising from sexual predator commitments, and on appeals of selected misdemeanor, traffic, and juvenile delinquency cases.

While district attorneys are authorized to accept felony and other significant criminal and juvenile delinquency cases on appeal, at the request and under the supervision of the Attorney General, this delegation to district attorneys is only rarely done.

The criminal appeals unit also defends state criminal convictions in federal habeas corpus proceedings. In a petition for federal habeas corpus relief, a convicted criminal defendant argues in federal district court that his or her conviction and/or sentence should be overturned because it was obtained in violation of the defendant's federal constitutional rights. Attorneys from the criminal appeals unit also represent the state when these habeas corpus cases are appealed to the United States Court of Appeals and to the United States Supreme Court.

The criminal appeals unit prepares and distributes training materials, briefing memoranda, and other publications to assist local prosecutors. Staff of the unit also review and draft legislation affecting the criminal justice system and advise the Governor on extradition matters.

In 2006-07, the criminal appeals unit opened 1,920 cases and closed 1,764 cases. In 2007-08, the unit opened 1,839 cases and closed 3,029 cases.

Civil Litigation Unit

Statutory Authorization. The civil litigation unit is responsible for representing the state in prisoner and sexual predator conditions of confinement suits. Under ss. 801.02(7) and 893.82(3) of the statutes, a prisoner condition of confinement suit generally may not be brought against an officer, employee or agent of the state for an act committed by such an individual in the performance of his or her duties unless the claimant in the matter serves written notice of the claim on the Attorney General within 120 days of the event. Section 893.82(3m) further stipulates that

where the claimant is a prisoner, an action may not be commenced until the earlier of the Attorney General's denial of the claim or 120 days after the notice has been served on the Attorney General.

Under s. 165.25(6) of the statutes, the head of any department of state government may request the Attorney General to defend any state department, officer, employee, or agent in a civil action or other matter in a court or administrative agency relating to any act committed by the state department, officer, employee, or agent in the lawful course of their duties.

Program Administration. The nature of the prisoner and sexual predator conditions of confinement lawsuits and the focus of the unit's work are substantially the same for both types of cases.

Typically, these types of lawsuits involve one or more allegations of the following acts committed by state officers, employees, or agents: (a) allegations of religious discrimination; (b) failure to provide adequate medical care; (c) excessive force by staff; (d) denial of access to court; (e) interference with privacy of mail communications; (f) failure to allow mailings of certain kinds of literature; (g) denial of access to a notary public; (h) failure to follow due process and administrative rule requirements in imposing discipline; (i) erroneous application of administrative code or prison policy when imposing discipline; (j) erroneously calculating prison release date; (k) illegal revocation of probation or parole; (l) negligence; (m) unconstitutional strip search; (n) harassment and retaliation for suing staff; (o) cruel and unusual punishment; (p) unlawful denial of visitors; (q) invalid transfer from one facility to a more restrictive facility; (r) erroneous security classification; (s) denial of the right to speak in a foreign language in the presence of officers; (t) denial of access to rehabilitation programs necessary to enhance parole eligibility; (u) errors in denying discretionary parole; and (v) invalid confiscation of contraband.

The civil litigation unit normally seeks dismissal of these suits before they reach the trial stage, either through motions to dismiss for failure to state a claim or failure to exhaust administrative remedies, or by a motion for summary judgment. If such motions are denied, the case proceeds to trial. Cases are tried in both state and federal courts. Any appeals from such cases are also handled by the unit's attorneys.

In 2006-07, the unit opened 323 prisoner conditions cases and closed 243 such cases, while in 2007-08, the unit opened 333 prisoner conditions cases and closed 321 such cases.

During 2006-07, the unit opened 24 sexual predator condition of confinement cases and closed 17 such cases, while in 2007-08, the unit opened 20 sexual predator condition of confinement cases and closed 26 such cases.

Criminal Litigation, Antitrust, and Consumer Protection Unit

Statutory Authorization. Attorneys in the criminal litigation, antitrust, consumer protection, and public integrity unit frequently act as "special prosecutors."

Under s. 978.045 of the statutes, a court may appoint a special prosecutor either on its own motion or at the request of a district attorney. A special prosecutor has all of the powers of a district attorney and may assist a district attorney in the prosecution of persons charged with a crime, in grand jury or John Doe proceedings, in sexually violent person commitment proceedings, or in investigations.

Further, before a court makes a special prosecutor appointment that exceeds six hours per case, the court or the requesting district attorney must request assistance from staff in other prosecutorial units or from an assistant attorney

general in DOJ's criminal litigation, antitrust, and consumer protection.

Typically, a special prosecutor may be appointed when: (a) there is no district attorney; (b) the district attorney is absent; (c) the district attorney or a member of his or her staff has a conflict of interest; (d) the district attorney is unable to attend to his or her duties; (e) the district attorney is serving in the armed forces; (f) the district attorney is charged with a crime; or (g) the district attorney cannot perform his or her duties due to a medical situation.

Section 165.255 of the statutes provides that DOJ may represent the state in commitment proceedings for sexually violent persons under Chapter 980.

Under s. 165.25(3) of the statutes, DOJ is required to consult and advise with district attorneys, when requested by them, in all matters pertaining to the duties of their office. This consultation frequently involves the criminal litigation, antitrust, consumer protection, and public integrity unit.

Program Administration. Unit attorneys act as "special prosecutors" throughout Wisconsin by court motion or at the request of a district attorney. Frequently, these appointments involve homicide and white-collar crime cases, and other cases where the district attorney is unable to act. Most of the unit's criminal prosecutions result from such "special prosecutions."

Of the 54 criminal referrals made to the unit in 2006-07, 51 were "special prosecutions" for a variety of offenses. The remaining three referrals were for security fraud and tax cases where the Department had original jurisdiction to initiate the criminal case. Of these 54 referrals, 26 individuals were charged with crimes, and 28 were not charged or remain under investigation.

In 2007-08, 48 criminal referrals were made to the unit. Some 42 of the referrals were "special

prosecutions" for a variety of offenses. The remaining six referrals were for security fraud and tax cases where the Department had original jurisdiction to initiate the criminal case. Of these 48 referrals, 19 individuals were charged with crimes, and 29 were not charged or remain under investigation.

Unit attorneys also handle sexual predator commitments and currently process a significant portion of all such commitments in the state. Under current law, a petition alleging that an individual is a sexually violent person may be filed by either: (a) DOJ at the request of the "agency with jurisdiction" (either the Department of Corrections or the Department of Health Services); or (b) a district attorney. If an individual is found guilty of a sexual violent offense, he or she is sentenced to prison, while if an individual is found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, he or she is committed to an institution under the Department of Health Services (DHS). Subsequent to an individual serving a prison sentence or being released from the care of DHS for having committed a sexually violent offense, the individual may be committed to DHS as a sexually violent person based on the petition filed by DOJ or a district attorney. If, after a trial, an individual is determined to be a sexually violent person, the court must enter a judgment on the finding and commit the person as a sexually violent person. In that event, the court must order the person committed to the custody of DHS for control, care, and treatment until the person is no longer a sexually violent person.

In 2006-07, the unit assumed responsibility for 20 of the 52 sexually violent person referrals it received. In 2007-08, the unit assumed responsibility for 10 of the 31 sexually violent person referrals it received. The remaining sexually violent person commitments are being handled by district attorneys. Sexual predator commitment cases assumed by the Department generally stay open for an extended period of time as there are ongoing annual evaluations of sexual predator commitments. In 2007-08, the unit handled 141 sexually violent per-

son post-commitment proceedings.

The criminal litigation, antitrust, and consumer protection unit meets the Department's statutory responsibility to consult and advise with district attorneys, in part, through the staffing of an on-call service that state prosecutors can contact for advice. Further, the unit targets publications and training sessions to local prosecutors. For example, the unit sponsors training for newly elected district attorneys prior to their assuming office. This training reviews the duties of the office of district attorney and highlights the resources that are available through DOJ and other state and federal agencies.

Medicaid Fraud Control Unit

Statutory Authorization. The Medicaid fraud control unit investigates and prosecutes crimes committed against vulnerable adults in nursing homes and other facilities, as well as fraud perpetrated by providers against the Wisconsin Medicaid program. Under ss. 49.49 and 49.495 of the statutes, DOJ is responsible for prosecution of criminal laws affecting the medical assistance program including Medicaid fraud, as well as the health, safety and welfare of recipients of medical assistance.

Program Administration. The Department of Justice is the state agency responsible for conducting a statewide program for the investigation and prosecution of providers that defraud the Wisconsin Medicaid program. In 2007-08, the unit received 165 referrals, opened 93 cases, closed 64 investigations, and obtained 13 criminal convictions for fraud and abuse. Unit attorneys are also periodically appointed special prosecutors by district attorneys for Medicaid-related offenses. During 2007-08 the unit recovered a total of \$6,235,500 in restitution, fines and forfeitures for fraudulent Medicaid activities.

Environmental Protection Unit

Statutory Authorization. Under s. 299.95 of the statutes, the Attorney General is required to enforce several environmental law chapters which include criminal provisions. In addition, s. 978.05(8)(b) of the statutes provides that district attorneys may request DOJ to assist in the investigation and prosecution of any matter for which a district attorney has jurisdiction. District attorneys have duties to prosecute criminal violations of certain fish, wildlife and environmental laws. Typically a district attorney will request that DOJ prosecute a case when: (a) the district attorney or a member of the staff has a conflict of interest; (b) the case is of such a magnitude or specialty that the district attorney could not adequately attend to his or her other duties upon attending to the case; (c) the case is outside the area of the district attorney's expertise and is within the expertise of the assistant attorney general; or (d) the case involves the same crime committed in several counties.

Program Administration. The Department of Natural Resources' (DNR) environmental wardens and environmental enforcement specialists, assisted by regulatory program staff, perform audit, investigation and enforcement functions with respect to state environmental laws. Generally, DNR applies a "stepped enforcement" process with the violator in an attempt to obtain compliance, prevent further violations, and avoid escalation of enforcement measures. However, if there are serious, damaging, continuous, or repetitive violations, the staff present their evidence and facts in an enforcement referral packet to DNR Division of En-

forcement and Science staff for review and recommendation to the DNR Secretary. If approved, the DNR Secretary sends a letter requesting enforcement, copied to the violator, to the Attorney General with an accompanying confidential investigation packet of evidence and materials that justify the prosecution request.

When received by DOJ, DNR's enforcement "referral packet" is sent to the Legal Services Division Administrator for referral to the unit. The unit director assigns the case to an appropriate assistant attorney general (AAG) for review and potential prosecution. If, after review and consultation with DNR staff as necessary, the AAG believes prosecution is justified, the AAG prepares a justification memorandum and draft complaint for prosecution. Depending on the circumstances, the AAG may have pre-filing discussions of the matter with the accused and his or her attorney. Upon approval of the justification memo by the unit director and the Legal Services' administrator or deputy administrator, the case is commenced. A judgment may be entered upon stipulated settlement between the defendant and DOJ in consultation with DNR enforcement staff, or the case may go to trial and appeal. The unit handles its own criminal appeals. The environmental protection unit brought three criminal prosecutions in calendar year 2005, five in 2006, six in 2007, and five as of September 1, 2008.

Unit attorneys may also occasionally act as special prosecutors upon request of district attorneys under s. 978.05(8)(b) of the statutes. In calendar year 2006 the unit handled no criminal cases as special prosecutors, in 2007 two criminal cases as special prosecutors, and as of September 1, 2008, no criminal cases as special prosecutors.

Representation of the Indigent

Both the United States Constitution and the Wisconsin Constitution provide the right to counsel for individuals accused of a crime. The Sixth Amendment to the United States Constitution provides, in part, that, "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." In *Gideon v. Wainwright* (1963), the United States Supreme Court held that the constitutional right to counsel guaranteed by the Sixth Amendment requires the government to provide counsel to indigent criminal defendants.

Article I, Section 7 of the Wisconsin Constitution provides, in part, that, "In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel,..." As early as 1859, the Wisconsin Supreme Court determined that an indigent defendant was entitled to counsel at county expense for his or her defense (*Carpenter v. Dane County*).

However, under subsequent United States and Wisconsin Supreme Court decisions there is no absolute right to the appointment of counsel in non-criminal cases carrying no threat of loss of physical freedom. Nevertheless, both courts have concluded that due process requires an individualized determination of the necessity for appointment of counsel under the circumstances presented by a particular case. Finally, in the case of *Malmstadt v. Wisconsin* (1996), the Wisconsin Supreme Court ruled that under the separation of powers doctrine the Legislature may not prohibit the courts from appointing counsel for certain classes of individuals.

The cost of providing required counsel to the indigent in Wisconsin is generally the responsibility of the state through the Office of the State Public Defender (SPD). The SPD provides legal representation for indigent persons: (a) facing a possible sentence that includes incarceration; (b) involved in certain proceedings under the Children's and Juvenile Justice Codes (Chapters 48 and 938); (c) subject to petitions for protective placement (Chapter 55); (d) facing involuntary commitment; and (e) involved in certain post-conviction or post-judgment appeals.

The SPD determines indigency based on an analysis of the applicant's income, assets, family size and essential expenses. If a person's assets, less reasonable and necessary living expenses (both factors as determined by Wisconsin statutes and administrative rules), are not sufficient to cover the anticipated cost of effective representation when the likely length and complexity of the proceedings are taken into account, the person is determined to be indigent. If an individual does not meet the statutory indigency standard, but is nonetheless determined by a circuit court to have a constitutional right to counsel, the court may appoint an attorney at county, rather than state, expense.

The SPD is required to determine whether a person has the ability to pay the costs of representation. The Public Defender Board is required to establish, by rule, fixed payments for the cost of SPD representation in various types of cases. Known as the prepayment option, an indigent defendant may elect to prepay the amount (or amounts, if several different types of proceedings are involved) if a determination has been made that the person has some ability to pay for his or her representation. If an indigent person elects to

pay this fixed amount, the individual cannot be held liable for any additional payment for counsel. However, the indigent client must pay this fixed amount within 60 days of appointment of counsel by the SPD. Table 20 identifies the current optional prepayment amounts for the different types of SPD representation, as established by rule by the Public Defender Board.

Table 20: Prepayment Options for SPD Representation

Case Type.	Amount
First-Degree Intentional Homicide	\$600
Other Class A, B or C Felony	120
Sexual Predator under s. 980.02	120
Trial Appeal	120
Other Felony	60
Misdemeanor	60
Plea Appeal	60
Parole/Probation Revocation	60
Termination of Parental Rights	60
Paternity	60
Special Proceeding	30

Persons determined to be indigent who receive SPD representation and do not exercise the prepayment option are required to pay for the cost of SPD representation, subject to their ability to pay. Table 21 summarizes the fee schedule established by rule by the Public Defender Board. These fee amounts are based on the average costs for representation for the type of case, as determined by the Board.

In 2007-08, the SPD received \$1,849,400 PR in payments from its indigent clients, including receipts from court-ordered recoupments. These amounts are used primarily to offset the cost of retaining private bar attorneys to represent individuals qualifying for SPD representation.

Table 21: Schedule for Repayment of SPD Costs by Clients Determined to Have an Ability to Pay

Case Type.	Amount
First-Degree Intentional Homicide	\$7,500
Other Class A, B or C Felony	1,200
Sexual Predator under s. 980.02	1,200
Trial Appeal	1,200
Other Felony	480
Plea Appeal	480
Termination of Parental Rights	480
Juvenile Felonies	480
Misdemeanor	240
Parole/Probation Revocation	240
Other Juveniles	240
Paternity	240
Special Proceeding	120

Creation of the State Public Defender Function

Chapter 479, Laws of 1965 first created the State Public Defender position under the Wisconsin Supreme Court. The duties of the early SPD were limited to post-conviction appeals for indigent persons. Counties retained the sole responsibility for providing constitutionally required counsel to indigent persons at the trial level. Counties generally met this responsibility through court-appointed private counsel.

Under Chapter 29, Laws of 1977, the SPD was transferred from the judicial branch to the executive branch and became an independent agency under the Public Defender Board. Chapter 29 also provided funding for a phase-in of the state's public defender program at the trial level. The SPD was directed to phase-in its services at the trial level over the biennium to the extent that funding and position authority permitted. The SPD provided representation at the trial level both through the use of staff attorneys as well as through the retention of private counsel.

Chapter 418, Laws of 1977, directed that the state assume responsibility for indigent trial defense in all counties, effective July 1, 1979. Chapter 34, Laws of 1979, subsequently provided funding for the 1979-80 fiscal year to implement the statewide public defender system. However, appropriations for the SPD for the 1980-81 fiscal year were vetoed with the exception of funding for the retention of private counsel. Nonetheless, by the 1979-80 fiscal year, the SPD had established 31 district offices providing indigent trial defense services in all 72 Wisconsin counties.

Chapter 356, Laws of 1979, restored funding for the SPD for program administration and for both trial and appellate representation by SPD staff for the 1980-81 fiscal year. Chapter 356 also mandated that 100% of the indigency cases at the trial level in 25 counties be assigned to private counsel. The remaining 47 counties were assigned to three statutory groups with not less than 15%, 25%, or 50% respectively, of these cases assigned to private counsel, with the remaining balance of cases assigned to SPD staff. Further, Chapter 356 requested the Legislative Council to study the state public defender program and to report its findings and recommendations to the Legislature no later than January 1, 1985. Finally, Chapter 356 sunsetted the SPD on November 15, 1985.

Under 1985 Wisconsin Act 29, all requirements mandating that a certain percentage of cases in each county be assigned to private counsel were repealed, again permitting public defender staff attorneys to represent the indigent in all 72 counties. Act 29 also created annual caseload standards for SPD trial attorneys and repealed the sunset provision for the SPD.

Provisions of 1995 Wisconsin Act 27 significantly revised the operation of the state public defender program and imposed a series of cost-cutting measures described as follows:

1. *SPD Representation.* Act 27 eliminated SPD representation in the following cases where there is no clear constitutional right to representation:

- all conditions of confinement cases;
- situations where adults and juvenile persons, suspected of criminal or delinquent acts, have not yet been formally charged with a crime (subsequently restored in 2001 Wisconsin Act 16);
- sentence modification actions which are filed outside of the statutory time limit for such actions;
- probation and parole modification and revocation cases unless the modification or revocation is contested and jail or prison time is sought;
- appeals cases which are filed after the statutory time limit, unless the Court of Appeals extends the time limit;
- contempt of court for failure to pay child or family support, if the matter was not brought by the state, and the judge or family court commissioner certifies that the person would not be incarcerated if found in contempt;
- paternity actions, except actions to determine paternity where an initial blood test indicates a greater than 0%, but less than 99% probability of fatherhood; and
- representation for parents whose children are alleged to be in need of protection or services (CHIPS), except for parents who are themselves minors.

2. *Client Reimbursement.* Act 27 newly required the SPD to determine each client's ability to pay for representation and to collect for the cost of that representation. Under these client reimbursement provisions, a represented person must be permitted to meet his or her reimbursement obligations to the SPD either by: (a) paying a non-refundable, reasonable fixed fee within the first 60 days of representation, set by the Public Defender Board by rule; or (b) being charged a fee based on the average cost of representation for the client's case type, but considering the client's ability to pay.

3. *Workload.* Act 27 also reinstated higher workload standards for trial staff attorneys that had been modified under 1991 Act 39. The caseloads for the following types of cases were adjusted as follows: (a) felony caseloads increased from 166.8 cases per year to 184.5 cases per year; (b) misdemeanor caseloads increased from 410.9 cases per year to 492.0 cases per year; and (c) juvenile caseloads increased from 228.4 cases per year to 246.0 cases per year.

4. *Private Bar Compensation.* Act 27 reduced, in part, the compensation paid to private bar attorneys retained by the SPD. Prior to Act 27, private attorneys were paid \$50 per hour for in-court time, \$40 per hour for out-of-court time and \$25 per hour for certain travel. Under Act 27, the in-court rate was reduced to \$40 per hour.

5. *Fixed-Fee Contracts with Private Attorneys.* Finally, Act 27 required the State Public Defender Board to enter into annual fixed-fee contracts with private attorneys and law firms for some cases. The maximum number of cases assigned in this manner cannot exceed one-third of the total number of cases at the trial level. The SPD entered into fixed-fee contracts for up to 10,083 misdemeanor cases in 2008-09.

The provisions of 2007 Wisconsin Act 20 (the 2007-09 biennial budget act) eliminated the requirement that the SPD make a finding of indigency prior to representing adults subject to involuntary civil commitment, protective placement, or involuntary administration of psychotropic medication. Instead during or after relevant court proceedings, the court may inquire as to the individual's ability to reimburse the state for the cost of representation. If the court determines that the individual is able to make reimbursement for the costs of representation, the court may order the individual to reimburse the state an amount not to exceed the maximum amount established by the SPD Board, by rule, for the type of case at issue.

Current Public Defender Operations

A nine-member Public Defender Board oversees the operation of the Office of the State Public Defender. Members of the Board are appointed by the Governor to staggered three-year terms, with the advice and consent of the Senate. At least five of the nine Board members must be members of the State Bar of Wisconsin.

The principal duties of the Board are the following: (a) appointment of a State Public Defender; (b) promulgation of administrative rules for determining financial eligibility; (c) promulgation of administrative rules establishing procedures to assure that the representation of indigent clients by the private bar is at the same level as the representation provided by SPD staff; and (d) supervision of the administration of the Office.

In 2007-08, state SPD expenditures totaled \$83,852,800 to provide legal representation for eligible indigent persons in Wisconsin. Of that amount, \$27,594,900 (32.9%) was paid to private attorneys for their time and certain legal expenses (investigators and expert witnesses). The remaining \$56,257,900 (67.1%) funded staff attorneys, their legal expenses and program overhead. The SPD has been budgeted \$80,053,200 GPR and \$1,419,200 PR in 2008-09 and is currently authorized 530.45 GPR and 5.0 PR positions.

The Office is organized into four divisions: trial, appellate, assigned counsel and administrative. As previously indicated, the current organizational chart for the agency is included as Appendix II.

The trial division consists of 463.3 positions, including 289.0 attorneys and attorney supervisors. The trial division is housed in 35 district offices across the state. (See Appendix V for the location of these trial division offices). Each trial division at-

torney (and generally each attorney supervisor) must meet one of the following annual statutory caseload requirements: (a) 184.5 felony cases; (b) 15.0 homicide or sexual predator cases; (c) 492.0 misdemeanors cases; (d) 246.0 other cases; or (e) some combination of these categories. The SPD has interpreted these caseload standards as representing the workload averages that must be achieved by all the trial attorneys in the agency collectively, as opposed to a standard that is applied to each individual attorney. In practice, most staff attorneys work on a variety of case types during the year, with some (such as new attorneys) taking fewer cases than the statutory requirement and others taking more in order to meet the overall requirement for the agency. In 1999 Wisconsin Act 9, 10 attorney supervisor positions were exempted from the statutory caseload requirement. This caseload exemption is spread among 49.85 supervising attorneys. In practice, most supervisors are relieved of some portion of their caseload responsibilities.

The appellate division consists of 42.95 positions, including 27.5 attorneys and attorney supervisors who provide assistance to eligible indigents involved in appeals, including postconviction and

postcommitment proceedings. The SPD sets the caseload standard for each appellate attorney between 54 and 60 cases per year, depending on the complexity of the attorney's case mix and the attorney's level of experience.

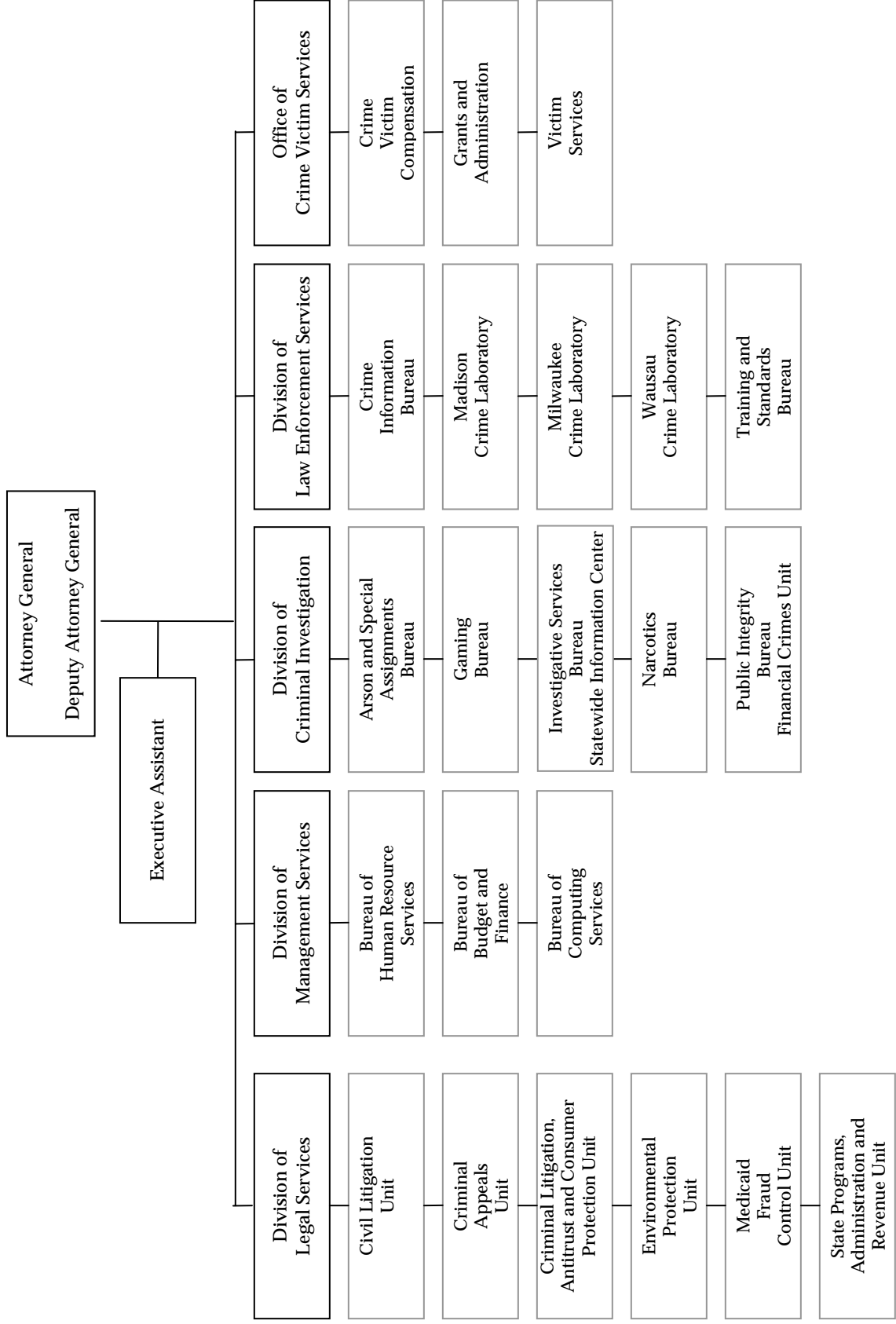
Staff attorneys in the trial and appellate divisions have been represented by a collective bargaining unit since the 1997-99 biennium.

The assigned counsel division consists of 5.7 positions that oversee certification, appointment, and payment of the private attorneys who represent eligible indigent clients. Private attorneys are paid in two ways: (a) an hourly rate (generally \$40 per hour); or (b) for some misdemeanor cases, a flat, per case contracted amount. As of July 1, 2008, 1,079 private attorneys were certified by the SPD to represent indigent clients. In 2007-08, 59,023 new SPD cases were accepted by private attorneys.

The administrative division consists of 23.5 positions that oversee the general administration of the Office. In particular, this staff provides support services in the areas of budget preparation, fiscal analysis, purchasing, payroll and personnel.

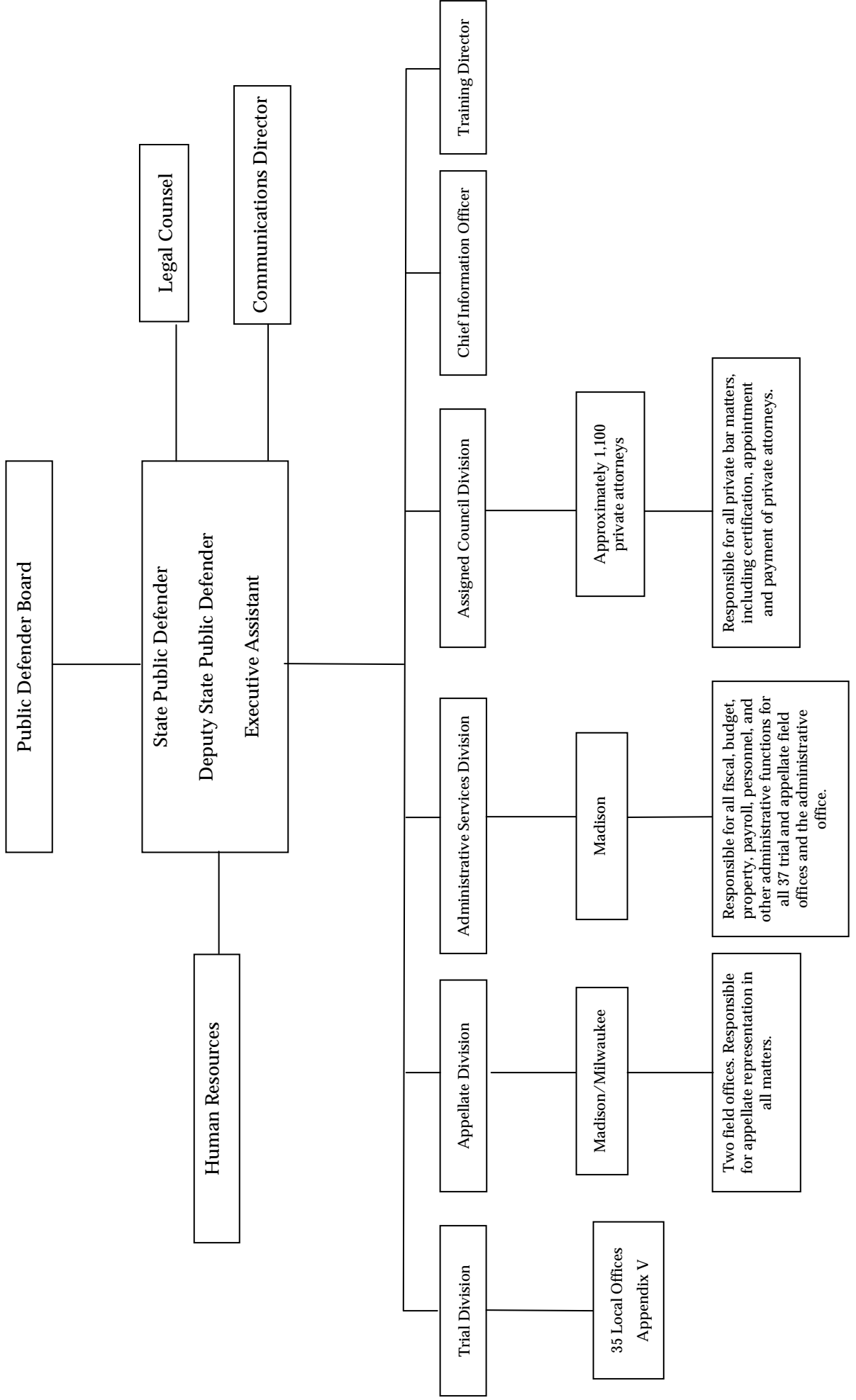
APPENDIX I

Department of Justice Organizational Chart



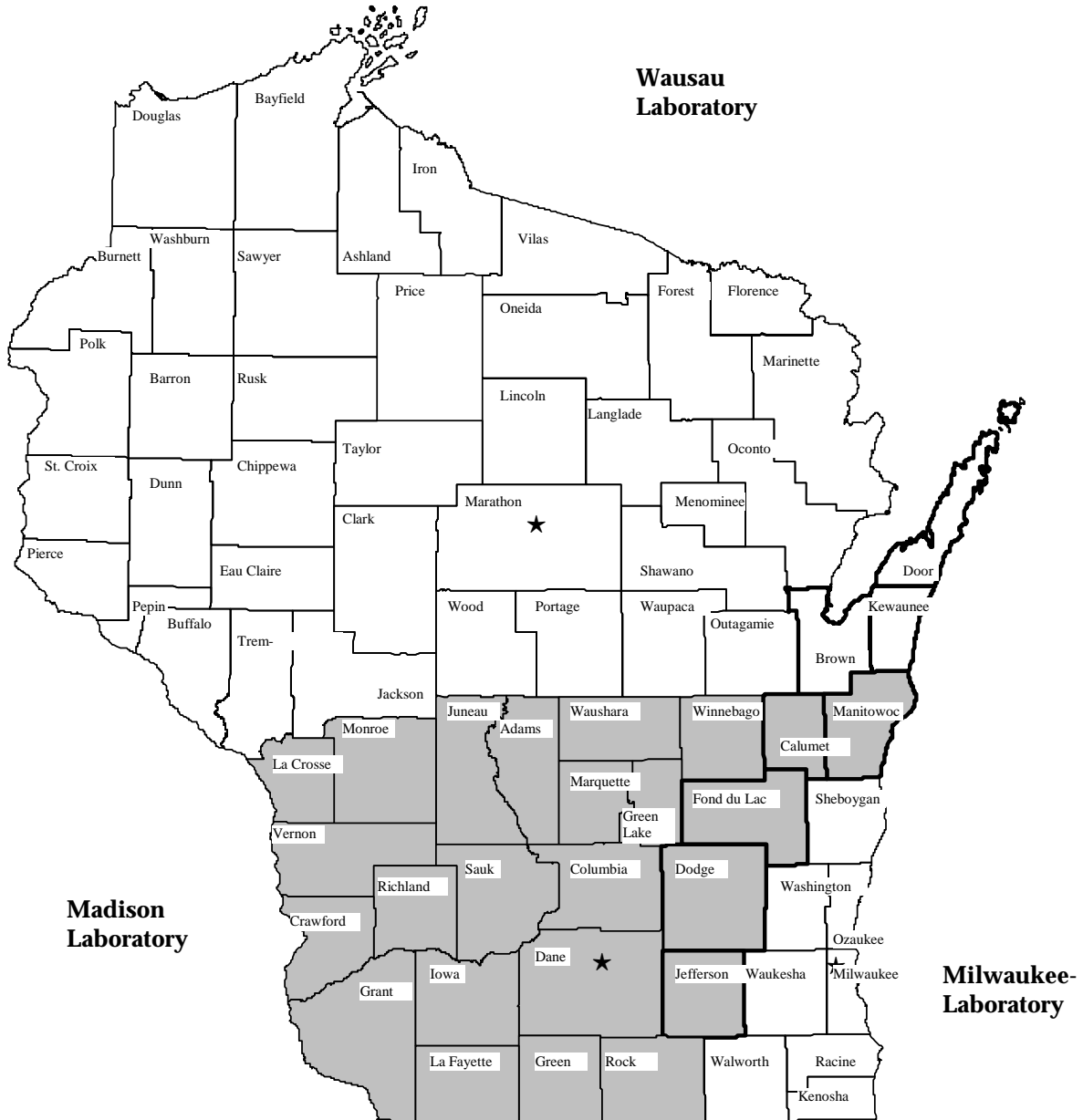
APPENDIX II

Office of the State Public Defender Organizational Chart



APPENDIX III

State Crime Laboratory Service Areas



The state is served by three crime laboratories located in Madison, Milwaukee, and Wausau. This appendix shows the service area for each lab. The Milwaukee lab serves the southeast corner of the state, generally taking cases from an eight county area. The only exception is Milwaukee's Questioned Document unit, which serves an additional eight counties marked off in bold above.

APPENDIX IV

Local Anti-Drug Task Force Funding

Task Force	Participating Counties	Lead Agency*	2008 Funding		2009 Funding	
			Byrne	Penalty Surcharge	Byrne	Penalty Surcharge
Milwaukee Metropolitan Drug Enforcement Group	Milwaukee	Milwaukee County	\$319,760	\$220,810	\$289,926	\$216,097
South East Area Drug Operations Group	Dodge, Jefferson, Kenosha, Racine, Walworth	Kenosha County	124,636	86,067	113,007	84,230
Lake Winnebago Area MEG Unit	Calumet, Fond du Lac, Outagamie, Winnebago	Winnebago County	78,419	54,152	71,103	52,996
Dane County Narcotics and Gang Task Force	Dane	Dane County	77,804	53,727	70,545	52,581
Central Wisconsin Drug Task Force	Adams, Green Lake, Juneau, Marquette, Portage, Waupaca, Waushara, Wood	Portage County	53,743	37,112	48,729	36,320
Waukesha County Metropolitan Drug Enforcement Unit	Waukesha	Waukesha County	52,643	36,353	47,731	35,577
Brown County Drug Task Force	Brown	Brown County	48,812	33,707	44,258	32,988
West Central Drug Task Force	Buffalo, Clark, Chippewa, Dunn, Eau Claire, Pepin	Eau Claire County	41,580	28,713	37,701	28,100
NADGI Tribal Task Force	Wisconsin Tribes	Lac du Flambeau	37,670	26,013	34,155	25,458
St. Croix Valley Drug Task Force	Pierce, Polk, St. Croix	Pierce County	33,235	22,950	30,134	22,460
North Central Drug Enforcement Group	Forest, Langlade, Lincoln, Oneida, Price, Taylor, Vilas	Oneida County	30,171	20,835	27,356	20,390

Task Force	Participating Counties	Lead Agency*	2008 Funding		2009 Funding	
			Byrne	Penalty Surchage	Byrne	Penalty Surchage
Central Area Drug Enforcement Group	Marathon	Marathon County	\$26,155	\$18,061	\$23,715	\$17,676
Northwest Area Crime Unit	Ashland, Bayfield, Burnett, Douglas, Iron, Sawyer, Washburn	Douglas County	24,183	16,700	21,927	16,343
West Central MEG Drug Task Force	Jackson, La Crosse, Monroe, Trempealeau, Vernon	La Crosse County	23,073	15,933	20,920	15,593
Washington County Multi-Jurisdictional Drug Unit	Washington	Washington County	18,948	13,085	17,180	12,805
Manitowoc County Metro Drug Unit	Manitowoc	Manitowoc County	14,560	10,054	13,202	9,840
Sheboygan County MEG Unit	Sheboygan	City of Sheboygan	14,190	9,799	12,866	9,590
Richland-Iowa-Grant Drug Task Force	Iowa, Grant, Richland	Iowa County	<u>13,437</u>	<u>9,279</u>	<u>12,183</u>	<u>9,081</u>
Total			\$1,033,019	\$713,350	\$936,638	\$698,125

*Lead law enforcement agencies for some of the task forces may change in calendar year 2009.

APPENDIX V

**State Public Defender
Trial Division Offices**

