



WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

Testimony before the Assembly Committee on Judiciary Assembly Bill 33

Rep. Amy Loudenbeck and Sen. Jerry Petrowski

Good morning, Mr. Chair and members, thank you for having this hearing today. Before I get started I also want to thank- Rep. Ramthun and Rep. Cabrera for co-sponsoring this very important bill to help get the pay increases to our state public defenders that they desperately need.

Significant progress and investments were made during the last legislative session to ensure Wisconsin's criminal justice system functions efficiently and effectively and that each of the three legs of the criminal justice stool (Courts, Prosecutors, and Public Defenders) are adequately resourced and balanced.

Unfortunately, the long-standing practice of linking the pay progression funding for Assistant District Attorneys (ADAs) to the level of pay progression funding for State Public Defenders (SPDs) did not continue in the 2019-2021 budget process.

To address this unfinished business, we introduced 2019 AB 501/SB 468 in October of 2019 to provide additional funding for pay progression for SPDs to maintain parity with ADAs. SB 468 passed the Senate unanimously in January of 2020. The bill was amended before being passed in the Assembly in February of 2020. Unfortunately, it did not receive final concurrence in the Senate as their last session day was suspended due to COVID-19.

Throughout the pandemic, SPD attorneys have been working; their offices have remained open and staffed throughout the pandemic. The global pandemic has not paused the Constitutional rights of poor and indigent clients, which means that SPD attorneys have continued to appear in court, visit clients in custody, and provide professional representation.

SPD vs. ADA pay disparity was already having a negative impact on retention, and the pandemic exacerbated that discrepancy. **Since March 2020, 78 staff have left the Office of the State Public Defender.** It has been even more difficult than normal to recruit and hire during the pandemic, and while positions are vacant, cases and clients continue to wait. This causes delays throughout the criminal justice system, particularly in more



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rural areas. Many counties are now experiencing significant delays that are creating a multitude of issues for judges, jails, prosecutors, clients, and victims.

Due to the vacant positions and the impact of the pandemic, the SPD has enough money to fund the pay progression increase that would have been approved in our bill last session. However, under current law they are prohibited from giving raises over 10%. Assembly Bill 33 includes non-statutory language that would allow the SPD to go over the 10% limit for ONLY the 2021 fiscal year, which would allow them to catch their attorneys up to where they should be, and hopefully increase their ability to retain and recruit staff.

Thank you for your time today, I'd be happy to answer any questions at this time. I will also note that Kelli Thompson, the State Public Defender, will be testifying today, and she'll be able to answer more specific questions as well.



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State Public Defender Testimony on Assembly Bill 33
Assembly Committee on Judiciary
Tuesday, February 16, 2021

Good afternoon Chair Tusler and Members,

Thank you very much for having this hearing on Assembly Bill (AB) 33, related to merit pay for assistant state public defenders. My name is Kelli Thompson and I am the State Public Defender. We are grateful to Representative Loudbeck and Senator Petrowski for again offering this legislation. While we were able to get a unanimous vote on 2019 Assembly Bill 501 in the Assembly, the bill was part of the legislative calendar for a final concurring vote on March 24, 2020, but that session was cancelled due to the pandemic.

The difference between last session's version and this bill is entirely related to funding. Last session's bill appropriated approximately \$3 million in additional general purpose revenue funding. Assembly Bill 33 authorizes SPD to use already appropriated funding and allows us to achieve hourly pay parity with our prosecutor counterparts.

The intent of the merit pay system was to retain staff in both the public defender and prosecutor's offices who the state has invested a significant amount in training and becoming proficient at their job. Individuals with 3-5 years of experience were leaving for more lucrative careers in county or municipal government or the private sector and to be able to pay off student loans, buy a house, and start a family. A key factor in making the merit pay system work was providing parity in funding for both sides so that neither became a training ground for the other. The 2019 budget was the first time that parity was disrupted. While it has had a negative effect since July 2019, retention of public defenders was further exacerbated by the stress and health concerns for some while working during the pandemic. Continuing to visit clients and their families in person, going to jails, and in-person court proceedings and the added workload that has been associated with the pandemic has added significant pressure that has increased turnover. Since last March, a significant number of SPD staff have left the agency, some for significant salary increases in the private sector or other government offices. But notably, some have left for not much additional money.

We are able to self-fund this session's version of the bill due to this increased staff turnover as well as the temporary impact of the pandemic on the number of cases. While these cases are likely to come back at some point, that does not seem likely in the next few months. In using these savings now, we have the opportunity to fix this disparity without appropriating new funds.

Increased staff turnover has negative ramifications for our clients as well as local court systems, counties, and victims. When a staff position becomes vacant, all of their clients must be reassigned to other attorneys. It also takes time to hire and bring a new attorney up to speed. This impact can have significant ripple effects but in smaller more rural counties it can be that much more pronounced. In the course of the pandemic, there has also been a decrease in the number of private bar attorneys who are willing to accept conflict of interest appointments. While the pandemic is likely driving some of that, it puts additional pressure on the system. The need to retain staff at this time is even more critical to

ensuring that the rights of defendants, particularly those being held in custody during a pandemic, are protected and that the criminal justice system is not brought to a standstill by lack of counsel.

I appreciate the number of legislators who have signed on as sponsor's of this bill. It is a vital demonstration that supporting the systems that ensure constitutional rights are protected draws bipartisan support. Thank you for having this hearing today, and I'm happy to answer questions.



STATE BAR OF WISCONSIN

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To: Members, Assembly Committee on Judiciary
From: State Bar of Wisconsin
Date: February 16, 2021
Re: Support for AB 33 - Pay Progression for State Public Defender

The State Bar of Wisconsin has long supported the continued funding of pay progression for Assistant District Attorneys (ADAs), Deputy District Attorneys (DDAs), and Assistant State Public Defenders (ASPDs). With this longstanding policy position in mind, the State Bar supports AB 33, which funds pay progression for public defenders in Wisconsin, and provides funds to compensate for the lack of pay progression for ASPDs in the 2019-2020 session.

Supporting this measure would not only assist in attracting and retaining qualified ASPD attorneys but also ensure salaries for public defenders remain competitive with salaries paid to ADAs and DDAs, which received allocations for pay progression in the 2019-2020 state budget. AB 33 would ensure pay parity among these practitioners.

Pay progression helps the government retain talented and experienced employees by rewarding attorneys with increasing years of service. Retention is a major concern for all state attorneys. Ensuring the State Public Defender's Office can hold on to experienced attorneys will help ensure that the constitutional rights of our citizens are protected, and that our justice system is working efficiently.

If you have any questions or would like additional information, please contact State Bar lobbyists Cale Battles, cbattles@wisbar.org, (608) 695-5686 or Lynne Davis, ldavis@wisbar.org, (608) 852-3603.