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November 12, 2010

Chairperson David O'Leary
Subcommittee on Funding Components
Office of the District Attorney
Rock County Courthouse
51 South Main Street
Janesville, WI 53545

RE: Recommended Adjustments to Weighted Caseload Formula

Dear Chairperson O'Leary,

On behalf of the Wisconsin District Attorneys Association (WDAA), thank you for your service on the Subcommittee on Funding Components for the Special Committee on Criminal Justice Funding and Strategies. It was a pleasure presenting to the Special Committee during the opening meeting on August 30, 2010, and then presenting to the Subcommittee on October 22, 2010.


At last meeting, you requested that I provide the subcommittee with a recommendation, on behalf of the WDAA, as it pertains to short-term improvements to the weighted caseload formula. The Wisconsin Legislative Audit Bureau (LAB), in Report 07-9 on page 40, recommended such improvements to the weighted caseload formula and the WDAA recommendations attached to this letter are consistent with that directive.

The proposed changes serve as a best-practice model to reflect the amount of time required to ensure that prosecutors have sufficient opportunity to meaningfully review criminal cases, as well as adequately handle the other demands and responsibilities placed upon them. The recommendations take into account the findings of the LAB Report along with other authorities examining prosecutor case weights. Each of these sources validates previous findings that there is a severe prosecutor shortage throughout Wisconsin. Short-term improvements in the weighted caseload formula are futile without addressing more pronounced problems within the state system.

The WDAA believes the greatest crisis in prosecution remains the extremely high turn-over rate of assistant district attorneys, which results in prosecutors with limited experience handling increasingly complex caseloads. The two leading causes of this crisis remain the absence of a program of pay progression for assistant district attorneys and the continued problem of understaffing of district attorneys' offices throughout Wisconsin.

There is no need to wait for short-term improvements to the weighted caseload formula before responding to this crisis. As illustrated in the LAB Report, on page 21, failure to act in a timely manner perpetuates a threadbare staffing system that results in prosecutors "not hav[ing] time to meet with victims," "lengthy delays," and "cases not being prosecuted because of an inability to contact the involved parties or conduct necessary follow-up investigation." Likewise, continuing a system without pay progression will bankrupt the state of experience as prosecutors continue to leave an increasingly dilapidated system.

Sincerely,


Winn S. Collins,
WDAA President

cc: Sen. Lena Taylor, Chairperson for the Special Committee
Senior Staff Atty. Anne L. Sappenfield, Wisconsin Legislative Council
Staff Attorney Katie Bender-Olson, Wisconsin Legislative Council
State Auditor Janice Mueller, Wisconsin Legislative Audit Bureau
Mr. Phil Werner, State Prosecutors Office
Atty. David Feiss, President of the Association of State Prosecutors

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WISCONSIN DISTRICT ATTORNEYS ASSOCIATION

Recommended Adjustments to Weighted Caseload Formula

The weighted caseload formula determines the number of prosecutors that each District Attorney's office needs based on the number and type of court cases for which that office is responsible. The Legislative Audit Bureau (LAB) in Report 07-9, on page 24, states that the "weighted caseload methodology is generally consistent with nationally accepted best practices for measuring prosecutors' work-loads." However, the report notes on page 36 that "changes in statutes and case law have affected their workloads, both by increasing the number of cases they prosecute and by increasing the time required to prosecute individual cases." Therefore, the report acknowledged the importance of updating the case weights consistent with such changes.

As explained in Appendix 4 of the LAB Report, there are three primary steps in the process beginning with determining a standard number of hours available for each individual prosecutor to handle cases per year. The next step involves calculating the number of hours needed to prosecute all cases in each county. The final step divides the total annual hours needed to prosecute cases by the hours available per prosecutor. Modest adjustments at each of these three stages will ensure that the weighted caseload formula continues to provide an accurate equation for calculating prosecutorial need throughout Wisconsin.

Step 1: Annual Work Hours Available per Prosecutor

In the first step of the inquiry, the original caseload formula assumed that a full-time workload for every prosecutor is 2,088 hours per year with 861 hours subtracted from annual work hours for certain categories of prosecutorial work, thus leaving a balance of 1,227 available hours per prosecutor to handle individual cases.

The LAB Report, on page 40, noted that the State Prosecutors Office (SPO) could make immediate changes to update the calculations consistent with current practice, including changing the currently-allotted 35 hours per year per prosecutor for "[r]eviewing case referrals that are not prosecuted" to a more accurate 100 hours. The current formula also assumes a total of 2,088 available hours, but the number of hours was reduced this biennium on account of furloughs or temporary layoffs. The WDAA opposes such unpaid leave and it is important for the formula to properly reflect that the imposition of such leave reduces the total number of hours available for prosecution within the State of Wisconsin.

Recommendation

The WDAA recommends the Department of Administration implement short-term improvements to the weighted caseload formula by changing the first step of the caseload formula in the following two ways: (1) Increasing "[r]eviewing case referrals that are not prosecuted" from 35 hours to 100 hours; and (2) Creating an additional designation to the time subtracted from annual work hours of prosecutorial work to reflect any reduction in hours caused by furloughs, temporary layoffs, or other unpaid leave.

The above recommendation would change the 861 hours presently subtracted from the annual work hours to better reflect the actual time prosecutors spend on reviewing case referrals that are not prosecuted, and it addresses recent activity that reduced the total number of hours available for prosecution. The first change is supported by the material from the LAB Report, whereas the second change is confirmed within the minutes of the March 16, 2010 meeting of the Joint Committee on Finance.

Step 2: Number of Hours Needed to Prosecute Cases

In the second step of the inquiry, the formula calculates the number of hours needed to prosecute all cases in each county by assigning a case weight (in hours) to each type of case. As noted on page 36 of the LAB Report, changes in statutes and case law have increased the time required to prosecute cases. Incorporating data from comparable sources into the case weights provides short-term improvements to the weighted caseload formula.

A report by the American Prosecutors Research Institute (APRI), entitled *Comprehensive Workload and Resource Allocation Assessment*, provided updated case weights under a study conducted in Lane County, Oregon. There may be differences between the practices of Oregon and Wisconsin which limits the value that may be assigned to the case weights in this study. However, the report does offer guidance in those areas where prosecutors have identified a specific change in law or practice since the 1994 time study. The LAB Report specifically noted, on page 37, that the legislature failed to provide the 15.0 additional prosecutors required as a result of changes in the law made by 2005 Wisconsin Act 60, related to mandating the audio or video recordings of interrogated juveniles. Therefore, adjusting the 3.32 hours assigned for each juvenile delinquency to the 3.44 hours recommended under the APRI study would be a modest change and consistent with changes that have occurred since the 1994 time study was completed. The APRI report is also helpful in the area of homicide case weights; many prosecutors expressed concern about assigning a figure of only 50 to 100 hours for such cases. The increasing use of digital evidence, expert testimony, and many other factors have resulted in homicides requiring significantly more time to effectively prosecute than presently allocated in the formula. The APRI report provides for 160.0 hours for all homicides. Wisconsin's case weights for Class A and B homicides may increase to 160.0 hours with all other homicides remaining at halved case weights and, thus, may increase to 80.0 hours.

A report, entitled *The State (Never) Rests: How Excessive Prosecutor Caseloads Harm Criminal Defendants* (hereinafter SNR), suggested that a prosecutor handling only misdemeanor cases should not have more than 400 such cases per year. This assumes the prosecutor handles no other type of criminal cases because adding felony and other cases to the mix would prevent the prosecutor from properly handling the 400 misdemeanor cases. It is easy to adjust the weighted caseload formula to incorporate this recommendation. First, assuming no unpaid leave, a prosecutor has 2,088 available hours with 926 hours subtracted from this total. The subtraction occurs based upon 861 hours being increased by 65 hours for the reasons presented above. Therefore, a prosecutor has a total of 1,162 hours available to handle 400 cases on an exclusively misdemeanor caseload. Dividing the number of available hours into the number of cases results in 2.905 hours per misdemeanor cases. The calculation may be rounded to 2.91 hours per misdemeanor case.

The original weighted caseload formula in Wisconsin assigned 2.17 hours for misdemeanors and 1.68 hours for criminal traffic cases. The reduced time allotted for criminal traffic was based upon a 1994 time study prior to the proliferation of audio-video recording capabilities in police vehicles. It now is generally accepted that such recordings are important and necessary, however their use also increases the amount of time required to review criminal traffic cases. Additional statutory and customary changes have decreased the number of license violation prosecutions, thereby resulting in impaired driving prosecutions accounting for a higher percentage of a prosecutor's criminal traffic caseload. Collectively, these changes diminish the need to distinguish between these two types of misdemeanor cases, particularly in light of the recommendation that a prosecutor should not handle more than 400 cases when prosecuting an exclusively misdemeanor caseload.

☑ Recommendation

The WDAA recommends the Department of Administration implement short-term improvements to the weighted caseload formula by changing the case weights (in hours) in the second step of the caseload formula in the following six ways: (1) Changing Class A Homicides from 100.00 hours to 160.00 hours; (2) Changing Class B Homicides from 100.00 hours to 160.00 hours; (3) Changing All Other Homicides from 50.00 hours to 80.00 hours; (4) Changing Misdemeanors from 2.17 hours to 2.91 hours; (5) Changing Criminal Traffic from 1.68 hours to 2.91 hours; and (6) Changing Juvenile Delinquency from 3.32 hours to 3.44 hours.

The above short-term improvements to the weighted caseload formula provide sound recommendations based upon quantifiable data and materials that improve upon the 1994 time study. Of the several categories left unchanged, the most significant in terms of total caseload involves the "all other felony" category. The case weight of 8.49 hours was cross-checked against the SNR report, which recommended that a prosecutor handling an exclusively felony caseload should handle no more than 150 cases per year. There was not a substantial difference between the case weight of 8.49 hours under the 1994 time study and the SNR report's recommendation. The consistency between these two independent data sources suggests that there has not been a substantial change in this category since the 1994 time study was conducted. However, this assumption may require subsequent examination given the proliferation of statutory and technological changes that have increased the complexity of felony prosecution.

Other categories presently unchanged include Children in Need of Protection or Services (CHIPS), CHIPS Extensions, and Termination of Parental Rights (TPR). Many district attorneys' offices handle child welfare litigation in the form of cases involving CHIPS and TPR. The law in this area has dramatically changed since the federal passage of the Adoption and Safe Families Act (ASFA). The weights presently assigned to these categories of cases likely underestimate the time required to competently handle such cases given this and other statutory changes. Although this is not the charge of this committee given its criminal justice focus, attorney positions dedicated to the prosecution of child welfare cases should be considered separately for the purpose of appropriate staffing levels.

Step 3: Determining Staffing Need in Wisconsin Counties

In the third step of the inquiry, the number of prosecutors needed in each district attorney's office is calculated by dividing the total annual hours needed to prosecute cases by the hours available per full-time prosecutor. The LAB Report explained that the estimated total staffing need can then be compared to existing staffing levels, which resulted in the computations reflected in Appendix 5. A full analysis of such a computation, however, requires a look back at Appendix 2 in the LAB Report. The earlier appendix differentiates between general purpose revenue (GPR) funded positions versus program revenue (PR) funded positions. Such positions should not be merged with GPR positions when calculating the difference between the existing staffing levels and staffing need reflected under the weighted caseload formula.

Recommendation

The WDAA recommends the Department of Administration implement short-term improvements to the weighted caseload formula by changing the third step of the caseload formula in the following way: After dividing the total annual hours needed to prosecute cases by the hours available per full-time prosecutor in each county, the Department of Administration should continue to provide both the additional positions needed and estimated total staffing in each county, but the current staffing level as a percentage of total need should be subdivided based upon GPR-funded and PR-funded positions to properly reflect the limitations to PR-funded positions.

The distinction between GPR versus PR funding is significant because the LAB Report cautioned, on page 4, that PR funding “is derived primarily from federal grants . . . [and] grant funds have declined in recent years and are expected to continue to decline, which will have the effect of reducing the number of prosecutor positions.” The LAB Report properly noted, on page 33, that counting PR positions in the same category as GPR positions “actually creates a disincentive for counties to seek federal grant funding.” Additionally, prosecutors’ assigned specific duties under a grant typically have fewer hours available to handle cases. Therefore, PR positions should properly be identified as short-term funding designed to address a specific type or category of crime.

Conclusion

The three recommendations provided in this letter are a necessary and important step toward updating the weighted caseload formula. These recommendations also provide the Department of Administration with the information required to fulfill the recommendation noted on page 40 of the LAB Report. The LAB Report included additional recommendations on page 41, but such recommendations cannot begin until after fully implementing and incorporating the first of the LAB Report recommendations on page 40. A new time study cannot reasonably occur prior to addressing the excessive turnover of assistant district attorneys caused by the absence of a program of pay progression for assistant district attorneys and the continued problem of understaffing of district attorneys’ offices throughout Wisconsin.

Appendix

	Estimated Hours per Year per Prosecutor
Authorized leave hours, including holidays, personal and vacation time, and sick leave	300
Administrative and personnel duties	50
Community service work and serving on boards and commissions	55
Investigative work with and training law enforcement	124
Preparing search warrants and subpoenas	50
Attending trainings and conferences	40
Reviewing case referrals that are not prosecuted	100
Attending post-conviction hearings	25
Prosecuting traffic and forfeiture cases	100
Prosecuting criminal case appeals	50
Prosecuting probation revocation and other cases	32
Furlough, temporary layoff, or other unpaid leave*	...
Total	926

Annual work hours (2,088) minus non-case specific hours (926)	1,162
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* When the State of Wisconsin imposes such leave upon a prosecutor for a given year, then the number of hours for that year must be incorporated into this formula and subtracted from the annual work hours available for prosecution.

Case Type	Case Weight (in hours)	Source of Case Weight	Source of Annual Caseload Numbers
Class A Homicide s. 940.01	160.00	APRI	CCAP
Class B Homicide s. 940.02	160.00	APRI	CCAP
All Other Homicides	80.00	APRI	CCAP
2nd and 3rd Strike Non-Homicides	50.00	WDAA	DA Offices
Security Fraud	30.00	WDAA	DA Offices
All Other Felonies	8.49	1994 time study	CCAP
Misdemeanors	2.91	SNR	CCAP
Criminal Traffic	2.91	SNR	CCAP
Juvenile Delinquency	3.44	APRI	CCAP
Children in Need of Protection or Services (CHIPS)	2.61	1994 time study	DA Offices
CHIPS Extensions	3.50	WDAA	DA Offices
Guardianships	3.50	WDAA	DA Offices
Termination of Parental Rights (TPR)	35.00	WDAA	DA Offices
Writs of Habeas Corpus	2.00	WDAA	CCAP
Inquests	64.00	WDAA	DA Offices
Sexual Predator	100.00	WDAA	DOJ

Total Annual Hours Needed to Prosecute Cases	÷	Annual Hours Available per Prosecutor (1,162 hours)	=	Estimated Total Staffing Need
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GPR-Funded FTE Positions	+	PR-Funded FTE Positions	=	Current Staffing Level (Total FTE Positions)
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