

Behind the Numbers of Prosecutor Understaffing

District Attorney Winn S. Collins,
WDAAs President

LAB Report (1995)

- Title: *An Evaluation of Allocation of District Attorney Positions*
- Number: 95-24
- Date: December 1995

LAB Report (1995)

INTRODUCTION

reducing turnover in prosecution positions

The State assumed responsibility for funding district attorneys to provide property tax relief.

On January 1, 1990, district attorney positions were transferred from county to state employment, largely as a means of providing local property tax relief and reducing turnover in prosecutor positions. In addition to permanent prosecutor positions, the State also assumed responsibility for funding compensation costs for private attorneys acting as special prosecutors on behalf of the State, and clerk positions in Milwaukee County's special drug and violent crime courts. Together with the general operating costs of the State Prosecutors Office, which was created within the Department of

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LAB Report (1995)

“As a result, district attorneys in some counties believe the current comparisons of relative workload among counties are inaccurate and that their offices are **understaffed** to handle their prosecutorial responsibilities.”

Page 3

LAB Report (1995)

“At the directive of the Joint Legislative Audit Committee . . . we reviewed options for measuring prosecutorial workload, as well as for improving the State's current system for assessing the need for prosecutorial resources.”

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LAB Report (2007)

- Title: *An Evaluation: Allocation of Prosecutor Positions*
- Number: 07-9
- Date: July 2007

LAB Report (2007)

- Felony cases prosecuted by district attorney's offices increased by **16.2 percent** from 2001 to 2005.
- Wisconsin's population increased by **3.7 percent** (from 5.4 to 5.6 million people) from 2001 to 2005.
- The number law enforcement officers statewide increased by **1.3 percent** from 2001 to 2005.

Pages 20-21, 53

LAB Report (2007)

- The number of prosecutor positions decreased by **6.0 percent** (from 447.40 to 420.65 prosecutors) from 2003 to 2006.
- The information technology expenditures for district attorneys' offices decreased to **71.2 percent** of their original expenditures when comparing 2001-02 to 2005-06.

Pages 4, 14, App. 5-2

LAB Report (2007)

- **Understaffing:**

"Using the current formula, the State Prosecutor Office calculated in August 2006 . . . a net statewide need of an additional **117.33** FTE positions."

Pages 5, 37

LAB Hearing (2007)

- Date: October 18, 2007
- Chairs:
 - Sen. Jim Sullivan
 - Rep. Suzanne Jeskewitz
- Speakers:
 - 18 Speakers in Total

LAB Hearing (2007)

- The 18 Speakers at the LAB Hearing
 - Legislative Audit Bureau (2)
 - Department of Administration (2)
 - Presidents of ASP & WDAA (2)
 - District Attorneys (5)
 - Assistant District Attorneys (4)
 - Law Enforcement (2)
 - Victim Advocacy (1)

LAB Hearing (2007)

- Attorney General (10/18/07):

"The prosecutor shortage is among the most pressing public safety issues facing Wisconsin today."
- Victim/Witness Professionals (10/18/07):

". . . even the most competent professionals cannot completely fulfill their obligations [because of] understaffing and . . . a high turnover rate."
- Coalition Against Sexual Assault (10/19/07):

"A shortage of prosecutors means fewer prosecutions of sex offenders, a decrease in community safety, and a loss of trust in the justice system by victims."

Wisconsin Lawyer (2008)

- Title: *Empty Pockets and Overfilled Dockets: Prosecutors Leaving the Profession*
- Number: Vol. 81, No. 3
- Date: March 2008

Wisconsin Lawyer (2008)

- **Turnover Rate:**
Approximately **50 percent** over **Six Years**
- **Program Revenue Positions:**
Funding cuts likely so future positions reductions very probable.

Appendix 2

Prosecutor Positions by Funding Source July 1, 2006

County	GPR-Funded FTE Positions	Program Revenue-Funded FTE Positions	Total FTE Positions
Adams	1.20		1.20
Ashland	1.75		1.75
Waukesha	14.50	1.00	15.50
Waupaca	3.50		3.50
Waushara	1.50		1.50
Winnebago	10.00		10.00
Wood	4.00		4.00
Total	376.40	48.25	424.65

Wisconsin Lawyer (2008)

- **LAB Report (2007):**
“Using the current formula, the State Prosecutor Office calculated in August 2006 . . . a net statewide need of an additional **117.33** FTE positions.”

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Appendix 5

Staffing Need under Current Weighted Caseload Formula August 2006

County	Current Staffing	Additional Positions Needed	Estimated Total Staffing	Current Staffing Level as a Percentage of Estimated Total Staffing Need
Adams	1.20	0.77	1.97	60.9%
Ashland	1.75	0.23	1.98	88.4
Barron	3.00	1.27	4.27	70.3
Bayfield	1.00	0.57	1.57	63.7
Brown	12.00	7.31	19.31	62.1
Waukesha	15.50	5.71	21.21	73.1
Waupaca	3.50	0.44	3.94	88.8
Waushara	1.50	0.43	1.93	77.7
Winnebago	10.00	3.61	13.61	73.5
Wood	4.00	3.05	7.05	56.7
Total	420.65	117.33	537.98	78.2%

Wisconsin Lawyer (2008)

The Actual Prosecutor Shortage:

- Weighted Caseload Formula: 537.98
- GPR Positions Provided: 376.40
- Shortage: 161.58

Weighted Caseload Formula

Understanding the Formula:

- Total Annual Hours per Prosecutor: 2,088
- General Duties* not Case Specific: – 861
- Available Hours for Case Specific: 1,227

Note: General duties include authorized leave time, administrative/personnel duties, serving on boards/commissions, working with law enforcement, preparing search warrants/ subpoenas, attending trainings/conferences, reviewing "no prosecution" cases, attending post-conviction hearings, prosecuting traffic/forfeiture cases, and prosecuting appeals/probation revocations.

Weighted Caseload Formula

Hours per Type of Case:

• Serious Felony:	30.00 - 100.00
• Other Felony:	8.49
• Misdemeanor:	2.17
• Criminal Traffic:	1.68
• Juvenile Delinquency:	3.32
• Other Serious:	35.00 - 100.00
• Other Non-Serious:	2.00 - 3.15

Weighted Caseload Formula

Calculating Caseload:

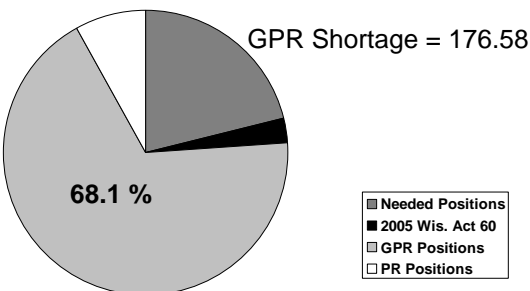
- Total Hours: 1,227
- Hours per Case: $\div 2.17$ (Misdemeanor)
- Total per Year: 565.4 Cases
- Hours per Case: $\div 8.49$ (Felony)
- Total per Year: 144.5 Cases

Weighted Caseload Formula

Legal and Law Enforcement Changes:

- Time Study in 1994 with Formula in 1996
- Increase in Video Recordings by Officers (e.g. Squad Video during OWI/PAC)
- 2005 Wisconsin Act 60 (December 2005) (Fiscal Estimate = 15.0 FTE Positions)

Weighted Caseload Formula



Weighted Caseload Formula

Alternatives to Weighted Formula:

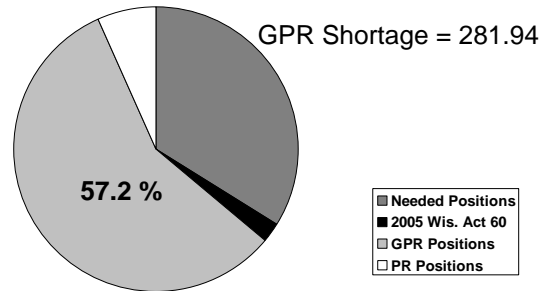
- Public Law & Legal Theory Series 2010-A-11: 150 Felonies or 400 Misdemeanors Per Year
- American Prosecutors Research Institute:
 - Hours to Prosecute Homicide: 160 Hours
 - Other Felonies: Range of 3.87 - 30.83 Hours
 - Misdemeanors: Range of 1.31 - 5.88 Hours
 - Juvenile: 3.44 Hours

Weighted Caseload Formula

Public Law & Legal Theory Series:

- Weighted Caseload Formula:
 - 565.4 Misdemeanor Cases per Year, or
 - 730.4 Criminal Traffic Cases per Year
- Public Law & Legal Theory Series:
 - 400 Misdemeanor Cases per Year
- Changing the Weighted Caseload Formula:
 - 3.07 Hours per Misdemeanor

Weighted Caseload Formula



Update on State of Prosecution

- **2007 Wisconsin Act 28**
 - Wisconsin Statutes Chapter 753
 - Create Additional Circuit Court Branches
 - Enacted: November 12, 2007
- **2009 Wisconsin Act 100**
 - Comprehensive OWI/PAC Legislation
 - Created Increased Criminal Penalties
 - Enacted: December 22, 2009

Table 20
Ratio of Prosecutors to Circuit Court Judges¹
As of Winter 2006

County	Prosecutors	Circuit Court Judges	Prosecutors per Judge
Oconto	1.5	2	0.75
Door	2	2	1.00
Fond du Lac	5	5	1.00
Grant	2	2	1.00
Lincoln	2	2	1.00
Ozaukee	3	3	1.00
Polk	2	2	1.00
Waupaca	3.5	3	1.17
Marinette	2.5	2	1.25
Oneida	2.5	2	1.25
Walworth	5	4	1.25
Washington	5	4	1.25
Waukesha	15.5	12	1.29
Dodge	4	3	1.33
Jefferson	5.3	4	1.33
Portage	4	3	1.33
Wood	4	3	1.33

¹ In counties with fewer than 1.5 prosecutors per judge, not including counties with only one judge.

Update on State of Prosecution

2009 Wisconsin Act 100:

- Fiscal Projections: 11.85 - 27.00 Positions
- Joint Committee on Finance (March 2010):
 - No Position Increase
 - Approve Reducing Prosecutor Hours
 - Equivalent of Eliminating 10-15 Positions

Update on State of Prosecution

Workload per Prosecutor:

- ADAs Needed under Formula: **119.51**
- PR Positions Increased by **24.7 Percent**
- Continued Lack of Pay Progression

Turnover in Prosecution:

- **240 ADAs** Left since 2003 (Non-Promotional)
- 356 ADAs (301 Full-Time / 55 Part-Time)
- Turnover Rate = **67.4 Percent**