

An Evaluation

# **Allocation of Prosecutor Positions**

*Department of Administration*

## **2007-2008 Joint Legislative Audit Committee Members**

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# CONTENTS

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<b>Letter of Transmittal</b>	<b>1</b>
<b>Report Highlights</b>	<b>3</b>
<b>Introduction</b>	<b>9</b>
Revenues and Expenditures	12
<b>Staffing and Caseloads</b>	<b>15</b>
Staffing Levels and Funding Sources	15
Salaries	19
Caseloads	20
<b>Weighted Caseload Formula</b>	<b>23</b>
Development of the Weighted Caseload Formula	23
Measuring Caseload	26
Options for Improving Caseload Measurement	31
Case Weights and Workload Measures	33
Differences in Time Available Among Prosecutors	33
Case Categories and Weights	34
Changes in Law Affecting Prosecutors' Workloads	36
Options for Improving Case Weights and Workload Measures	37
Improving the Weighted Caseload Formula	39
<b>Other Criminal Justice System Issues Affecting Workload</b>	<b>43</b>
Cases Involving Inmates	43
Reimbursements from the Department of Corrections	49
Court Structures and Policies	51
Law Enforcement Agencies and Practices	53
County-Funded Support Staff for District Attorneys	55
<b>Special Prosecutors</b>	<b>57</b>
Court-Appointed Special Prosecutors	57
Public Service Prosecutors	62
Assistance from Other State Prosecutors	62

<b>Issues for Legislative Consideration</b>	<b>65</b>
Options for Prosecutorial Staffing	65

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**Appendices**

Appendix 1—Full-Time Equivalent Prosecutor Positions
Appendix 2—Prosecutor Positions by Funding Source
Appendix 3—Caseload by County
Appendix 4—Weighted Caseload Formula
Appendix 5—Staffing Need under Current Weighted Caseload Formula
Appendix 6—Positions Eliminated as a Result of 2003 Wisconsin Act 33
Appendix 7—Felony Caseload by County
Appendix 8—Inmate Population by County and Facility
Appendix 9—State Funding for Special Prosecutors

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**Response**

Response from the Department of Administration
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Janice Mueller  
State Auditor

July 24, 2007

Senator Jim Sullivan and  
Representative Suzanne Jeskewitz, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, Wisconsin 53702

Dear Senator Sullivan and Representative Jeskewitz:

We have completed an evaluation of the allocation of prosecutor positions, as requested by the Joint Legislative Audit Committee. The State has funded county-level prosecutors, including district attorneys, deputy district attorneys, and assistant district attorneys, since 1990. As of July 1, 2006, there were 424.65 full-time equivalent (FTE) county-level prosecutors statewide. Fiscal year 2005-06 expenditures totaled \$44.4 million, including \$40.8 million in general purpose revenue.

Each year, the State Prosecutors Office in the Department of Administration (DOA) calculates prosecutorial staffing needs in each county using a formula that considers current staffing levels and the number and types of cases prosecuted by each county. However, the formula has never been used to reallocate positions across counties. The current weighted caseload formula estimates that statewide, district attorneys' offices are understaffed by 117.33 FTE positions.

Prosecutors have expressed a number of concerns with the formula's calculation of staffing needs. We found that while the formula's basic methodology is sound, it uses incomplete data and out-of-date measures of the time required to prosecute cases. Updating the formula will require use of a more accurate data source and a new time study to measure prosecutors' work.

We also examined the extent to which prosecutors' workloads are affected by other agencies, including prisons and the courts. We found that cases involving prison inmates are relatively rare but can be time-consuming, and that better coordination between district attorneys and prison officials could assist in mitigating the workload impact of crimes committed by inmates.

We identify several issues for the Legislature to consider in allocating prosecutor positions. For example, creating a pool of "floating" assistant district attorneys could help counties manage unexpected or short-term workload increases.

We appreciate the courtesy extended to us by DOA, district attorneys and their staffs, and other state and local officials we contacted during our evaluation. DOA's response follows the appendices.

Respectfully submitted,

Janice Mueller  
State Auditor

JM/KW/ss



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## Report Highlights ■

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***In recent years, staffing levels have declined while caseloads have increased.***

***While the weighted caseload formula's methodology is sound, the formula should be updated.***

***Coordination between prosecutors and other agencies could help manage prosecutorial workloads.***

***District attorneys have used special prosecutors to supplement staffing resources.***

Responsibility for funding county-level prosecutor positions, including 71 elected district attorneys and their subordinates, was transferred to the State by 1989 Wisconsin Act 31. As of July 1, 2006, there were 424.65 full-time equivalent (FTE) county-level prosecutors statewide. Fiscal year (FY) 2005-06 expenditures totaled \$44.4 million, including \$40.8 million in general purpose revenue (GPR) and \$3.6 million in program revenue.

Each year, the State Prosecutors Office in the Department of Administration (DOA) calculates prosecutorial staffing needs in each county using a formula that considers current staffing levels and the number and types of cases prosecuted by each county. Concerns have been raised about the accuracy with which this methodology, known as a weighted caseload formula, currently measures staffing needs. At the request of the Joint Legislative Audit Committee, we analyzed the current weighted caseload formula, including:

- variation in prosecutors' duties that can change the amount of time they have available for prosecuting cases;
- the extent to which management differences among district attorneys' offices affect the formula's results;
- whether the data and time estimates used by the formula are current and accurate;

- the effect that cases involving inmates in state correctional facilities, changes in law enforcement, and court structures and policies have on prosecutorial workload; and
- the use of State-funded special prosecutors to supplement district attorneys’ office staffing.

### **Staffing and Caseloads**

As shown in Table 1, the number of FTE prosecutor positions decreased from 444.35 FTE positions in July 2002 to 424.65 FTE positions in July 2006, or by 4.4 percent. As of July 2006, 376.40 positions were funded with GPR, while 48.25 positions were funded with program revenue. Program revenue is derived primarily from federal grants that target specific types of crimes or crime prevention activities. Federal 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. Milwaukee County relies most heavily on program revenue-funded positions, which account for 29.8 percent of its prosecutorial staff.

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Table 1

**FTE Prosecutor Positions**  
As of July 1

Year	FTE Positions
2002	444.35
2003	447.40
2004	431.50
2005	427.15
2006	424.65

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From 2001 through 2005, the number of criminal cases prosecuted by district attorneys’ offices increased by 11.5 percent statewide, and the number of felony cases increased by 16.2 percent. Prosecutors with whom we spoke reported that increasing caseloads have resulted in less-timely prosecutions, more decisions not to prosecute cases, and settling cases out of court with lighter penalties.



## Weighted Caseload Formula

The weighted caseload formula measures 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 formula has never been used to reallocate positions across counties. Using the current formula, the State Prosecutors Office calculated in August 2006 that 63 counties are understaffed by a total of 119.16 FTE positions, while 8 are slightly overstaffed by a total of 1.83 FTE positions, for a net statewide need of an additional 117.33 FTE positions.

The weighted caseload methodology is generally consistent with nationally accepted practices for measuring prosecutorial workloads, and most of the prosecutors with whom we spoke believed it was generally an appropriate method for measuring staffing needs. However, prosecutors expressed a number of concerns with how the formula measures caseload and how it weights different factors.

We found that most of these concerns arise from the fact that the formula uses incomplete data and out-of-date measures of the time required to prosecute cases. In the short term, limited changes to the formula could improve consistency and accuracy. However, effectively updating the formula would require a new time study to measure prosecutors' work, and statewide implementation of PROTECT, a data system that can provide more accurate information.

## Other Factors Affecting Workload

Some prosecutors reported that cases involving prison inmates take longer to prosecute than other cases because some inmates may intentionally try to prolong the criminal justice process. However, inmate cases are rare. Approximately 10.1 percent of assaults committed by inmates from 2002 through 2005 were referred for prosecution, and inmate crimes accounted for less than 1.0 percent of criminal caseloads in the counties we visited that house prisons. Improved coordination between district attorneys and prison officials could assist in mitigating the workload effect of crimes committed by inmates.

The number of judges in state circuit courts, as well as the courts' structures and policies, also affect prosecutors' workloads. As of winter 2006, the ratio of prosecutors to judges ranged from 2.75 in Pierce County to 0.75 in Oconto County. Prosecutors reported that when there are more judges relative to prosecutors, prosecutors must spend more time in court and may not have adequate time for research, preparation, and other activities.

In some counties, prosecutors and courts have worked together to identify structures and policies to improve efficiency, such as implementing rotation schedules or court specialization, initiating regular meetings between prosecutors and judges, and reducing the number of hearings held on each case. While the effectiveness of specific methods may vary across counties, the State Prosecutors Office could work with district attorneys and the state courts to facilitate sharing of best practices.

### Special Prosecutors

District attorneys may be aided by special prosecutors, who are not regular employees but who are temporarily given the powers and duties of the District Attorney to prosecute cases. Court-appointed special prosecutors are a type of special prosecutor paid by DOA on an hourly basis. As shown in Table 2, between 32 and 42 special prosecutors were appointed in each year from FY 2001-02 through FY 2005-06. In FY 2005-06, DOA spent \$237,000 in GPR to reimburse 42 special prosecutors in 27 counties. Statutes define the permissible uses of special prosecutors and the procedures for their appointment. We found that current practice is not always consistent with these requirements.

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Table 2

#### Special Prosecutor Appointments

Fiscal Year	Appointments
2001-02	42
2002-03	38
2003-04	32
2004-05	42
2005-06	42

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### Matters for Legislative Consideration

There are several issues for the Legislature to consider as it allocates staffing resources to district attorneys' offices. For example, the Legislature could consider whether current staffing levels justify adding new positions. Alternatively, given current limits to the

State's resources and its other funding priorities, the Legislature could consider ways to lessen prosecutors' workloads.

One method for addressing staffing needs, particularly in smaller counties, would be to create a pool of short-term, "floating" assistant district attorneys in a central or regional office who could be assigned to counties experiencing unexpected increases in workload.

## Recommendations

Our report includes recommendations for DOA to report to the Joint Legislative Audit Committee by March 14, 2008, regarding:

- ☑ its efforts to implement short-term improvements to the weighted caseload formula ([p. 40](#));
- ☑ its plans for using improved referral data in the weighted caseload formula ([p. 41](#));
- ☑ its plans for initiating a new time study to more accurately measure prosecutors' work ([p. 41](#)); and
- ☑ the feasibility of implementing floating assistant district attorney positions or expanding the use of existing alternative resources ([p. 67](#)).

We also include recommendations that district attorneys:

- ☑ work with prison officials to develop guidelines for investigating and prosecuting crimes committed by inmates ([p. 49](#)); and
- ☑ work with local law enforcement agencies to develop guidelines for referring crimes to district attorneys' offices ([p. 55](#)).

In addition, we include recommendations for:

- ☑ the State Prosecutors Office to work with district attorneys and the state courts to facilitate sharing of best practices for managing workloads through court structures and policies ([p. 53](#)); and
- ☑ the Legislature to consider statutory changes to clarify the allowable use of special prosecutor appointments ([p. 61](#)).



## Introduction ■

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Wisconsin state courts are divided into three levels:

- The circuit courts are trial courts for criminal and civil cases involving state law. As of December 2006, there were 69 circuit courts with 241 judges.
- Any final judgment or order made in the circuit courts may be appealed in the Court of Appeals, which includes four districts with 16 judges.
- The Wisconsin Supreme Court can review decisions made by any of the lower courts.

In addition, many municipalities have courts whose responsibilities may include adjudicating local ordinance and traffic violations. As of April 2006, there were 244 municipal courts in Wisconsin, as well as two United States District Courts responsible for adjudicating violations of federal law. United States Attorneys, who are part of the federal Department of Justice, prosecute cases in the federal district courts. Wisconsin's Attorney General and assistant attorneys general in the Department of Justice (DOJ) prosecute certain types of cases in the state circuit courts, represent the State in cases that are appealed to the state Court of Appeals or the Wisconsin Supreme Court, and represent the State in cases on appeal in federal court.

***District attorneys, deputy district attorneys, and assistant district attorneys prosecute cases in state circuit courts.***

District attorneys, deputy district attorneys, and assistant district attorneys—collectively referred to as prosecutors throughout this report—prosecute cases in the state circuit courts. They are responsible for all criminal cases filed in circuit court, including:

- felonies, which are criminal cases that may be punishable by imprisonment in a state prison;
- misdemeanors, which are all criminal cases that are not felonies and may be punishable by fines or imprisonment in a county jail; and
- juvenile cases, which involve criminal activities committed by persons under the age of 17.

In 44 counties, the District Attorney’s office is responsible for cases related to children who may have been abused or neglected, including petitions to temporarily remove them from their parents, terminate parental rights, or establish guardianships. Other counties employ other attorneys to handle those cases. Traffic and ordinance violations may be heard either in municipal court or in circuit court and may be prosecuted by either municipal attorneys or by prosecutors in the District Attorney’s office. District attorneys’ offices are generally not involved in most other civil cases heard in the circuit courts, such as divorce proceedings, small claims, and lawsuits.

***Prosecutors have been state employees since 1990.***

Responsibility for funding county-level prosecutors, including district attorneys, deputy district attorneys, and assistant district attorneys, was transferred to the State by 1989 Wisconsin Act 31, largely as a means of providing local property tax relief and reducing turnover in prosecutor positions. Although all county-level prosecutors are now state employees, the 71 district attorneys in Wisconsin are elected at the county level—Shawano and Menominee counties jointly elect a District Attorney—while the Legislature is responsible for authorizing deputy and assistant district attorney positions. Hiring decisions for deputy and assistant district attorneys are made by the elected District Attorney.

The State Prosecutors Office, attached to DOA, is responsible for administrative duties relating to the offices of district attorneys, including advertising vacancies, payroll and benefits, budgeting, collective bargaining, and serving as a central point of contact for all prosecutors. It is staffed by a Director, with additional support provided by other DOA divisions. However, each District Attorney operates as an autonomous elected official. There is currently no official statewide policy-making body for district attorneys, although the State Prosecutors Office periodically seeks guidance

from the Wisconsin District Attorneys Association, a voluntary membership body that included 61 prosecutors from 32 counties as of January 2007. Assistant district attorneys are represented by their union, the Association of State Prosecutors, while deputy district attorneys are not unionized.

***A weighted caseload formula is used to measure prosecutorial staffing needs.***

Each year, the State Prosecutors Office calculates prosecutorial staffing needs using a formula that considers staffing levels and the number and types of cases prosecuted by each county. This methodology, known as a weighted caseload formula, is based in part on recommendations made in our 1995 evaluation (report 95-24), along with the results of a 1994 prosecutor time study. However, use of the formula has been limited. It has occasionally been used to guide decisions regarding where to add new positions or eliminate existing ones, but never to reallocate positions across counties. Furthermore, the formula methodology has remained essentially the same since its adoption in 1996, with the exception of several minor changes based on recommendations of the Wisconsin District Attorneys Association.

Concerns have been raised about the accuracy with which the weighted caseload formula measures prosecutorial staffing needs. At the request of the Joint Legislative Audit Committee, we therefore analyzed the formula by:

- visiting and interviewing prosecutors and support staff in 16 county district attorneys' offices;
- interviewing state-level staff of the State Prosecutors Office, the Office of Justice Assistance, the Office of State Courts, and the Department of Corrections, as well as staff at 19 of 20 adult prisons;
- analyzing data on prison inmate populations and crimes committed by inmates; caseload data from the courts' Consolidated Court Automation Programs (CCAP); and case referral data from Prosecutor Technology for Case Tracking (PROTECT), the case management system used by district attorneys' offices; and
- analyzing data on statewide trends in population, crime rates, and law enforcement officers.

A Legislative Council study committee—the Special Committee on District Attorney Funding and Administration—was approved in June 2006 to explore the feasibility of other funding sources to support county-level prosecutors and determine whether any changes should be made in the administrative structure relating to those functions. In order to limit duplication of effort, we reviewed the Committee’s work and included relevant information from its deliberations in our report. In May 2007, the Committee permanently adjourned without making a recommendation.

### Revenues and Expenditures

**State expenditures for district attorneys’ offices totaled \$44.4 million in FY 2005-06.**

As shown in Table 3, the State’s expenditures for district attorneys’ offices increased from \$40.5 million in FY 2001-02 to \$44.4 million in FY 2005-06, which is 9.7 percent. GPR accounted for 91.9 percent of total funding in FY 2005-06. Program revenue, which is primarily federal grants along with revenues from certain court fees, has declined over the past two fiscal years.

Table 3

#### State Expenditures for District Attorneys’ Offices

Fiscal Year	GPR	Program Revenue	Total	Percentage Change in Total Annual Expenditures
2001-02	\$37,035,700	\$3,432,100	\$40,467,800	
2002-03	38,566,500	3,677,400	42,243,900	4.4 %
2003-04	39,734,300	3,920,200	43,654,500	3.3
2004-05	40,013,700	3,789,600	43,803,300	0.3
2005-06	40,808,700	3,603,400	44,412,100	1.4

Senate Substitute Amendment 1 to 2007 Senate Bill 40 would increase funding to \$91.8 million over the FY 2007-09 biennium, primarily for standard budget adjustments to fully fund continuing salaries and fringe benefits. In addition, both the Senate and Assembly versions of the budget bill would provide funding for a small number of full- or part-time prosecutor positions in several counties. These proposals are currently pending in the Legislature.



As shown in Table 4, of the \$44.4 million spent in FY 2005-06 for district attorneys' offices, \$43.8 million, or 98.6 percent, funded prosecutor salaries and fringe benefits.

Table 4  
State Expenditures for District Attorneys' Offices

Expenditures	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
Prosecutor Salaries	\$30,407,400	\$31,516,800	\$31,719,100	\$31,533,400	\$31,652,900
Prosecutor Fringe Benefits	9,501,100	10,226,300	11,412,200	11,575,100	12,156,600
Supplies and Services	308,600	247,800	251,200	418,400	317,900
Milwaukee County District Attorney's Office Clerks <sup>1</sup>	250,700	253,000	272,000	276,400	284,700
<b>Total</b>	<b>\$40,467,800</b>	<b>\$42,243,900</b>	<b>\$43,654,500</b>	<b>\$43,803,300</b>	<b>\$44,412,100</b>

<sup>1</sup> Includes 6.5 FTE clerks, who are Milwaukee County employees located in the District Attorney's office and who process violent crimes and firearms cases and are funded with program revenue from court fees.

In addition to the expenditures for district attorneys' offices, the State Prosecutors Office in DOA had FY 2005-06 expenditures of \$105,762, 95.3 percent of which was for salary and fringe benefits for its 1.0 FTE staff position. DOA was not able to readily quantify the costs of other staff who assist the State Prosecutors Office.

**State expenditures for district attorneys' information technology totaled \$3.1 million in FY 2005-06.**

The State also provides information technology equipment and services to district attorneys' offices, including computers for all offices, installation of computer office networks and case management systems, and the services of 11.0 FTE DOA employees to provide information technology support. As shown in Table 5, the State's information technology expenditures for district attorneys' offices totaled \$3.1 million in FY 2005-06. All funding is derived from federal grants, surcharge fees imposed for filing certain court papers, and surcharge fees on violations of state law and local government ordinances. Funding declines over the past five fiscal years reflect decreased federal grant revenue.

Table 5

**Information Technology Expenditures for District Attorneys' Offices**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
Salaries	\$ 873,200	\$ 811,800	\$1,043,800	\$ 909,000	\$ 825,300
Fringe Benefits	277,900	273,300	345,700	321,000	303,900
Supplies and Services <sup>1</sup>	3,255,500	3,131,400	2,012,600	1,948,400	2,008,000
<b>Total</b>	<b>\$4,406,600</b>	<b>\$4,216,500</b>	<b>\$3,402,100</b>	<b>\$3,178,400</b>	<b>\$3,137,200</b>

<sup>1</sup> Includes providing high-speed communications network capabilities for all district attorneys' offices, purchase of computers and software for each prosecutor, and contracts to install and service information technology systems.

Senate Substitute Amendment 1 to 2007 Senate Bill 40 would increase surcharge fees to provide an additional \$1.1 million in FY 2007-08 and \$1.2 million in FY 2008-09. The increased funding would be used to upgrade computer hardware and software and to implement case management systems in two of the largest counties that are not part of the current case management system: Milwaukee and Racine.

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## Staffing and Caseloads ■

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Since 2003, the number of authorized FTE prosecutor positions has declined each year, in part because declines in federal grant funding have resulted in a decrease in the number of program revenue-funded positions. Further position reductions are expected as soon as September 2007. Program revenue-funded positions are typically designated for prosecution of certain types of crimes, such as drug offenses or domestic violence, and may also have non-prosecutorial responsibilities for crime prevention activities. Although staffing levels have declined over the past five years, prosecutors' caseloads have increased.

### Staffing Levels and Funding Sources

***The number of FTE prosecutor positions decreased by 4.4 percent from July 2002 through July 2006.***

The number of authorized prosecutor positions grew substantially in the first 13 years after the State assumed funding responsibility, from 338.49 in 1990 to 444.35 in 2002, or by 31.3 percent. However, as shown in Table 6, the number of FTE positions decreased from 444.35 in July 2002 to 424.65 in July 2006, which is 4.4 percent. Appendix 1 and Appendix 2 provide further detail on prosecutor positions in each county from 2002 through 2006.

Table 6

**Number of Authorized FTE Prosecutor Positions**  
As of July 1

	2002	2003	2004	2005	2006
GPR-Funded Positions	390.40	390.40	375.40	375.40	376.40
PR-Funded Positions	53.95	57.00	56.10	51.75	48.25 <sup>1</sup>
<b>Total</b>	<b>444.35</b>	<b>447.40</b>	<b>431.50</b>	<b>427.15</b>	<b>424.65</b>

<sup>1</sup> Excludes 2.0 FTE authorized positions that are no longer funded or filled.

Over the past five years, the number of GPR-funded prosecutor positions declined from 390.40 to 376.40, or by 14. Most of the decrease occurred when 2003 Wisconsin Act 33, the 2003-05 Biennial Budget Act, eliminated 15.0 FTE assistant district attorney positions in November 2003. Subsequently, 2005 Wisconsin Act 25, the 2005-07 Biennial Budget Act, added 1.0 FTE GPR-funded position for the Chippewa County District Attorney's office.

Most prosecutors are full-time employees. However, under s. 978.01(2)(b), Wis. Stats., the district attorneys in five counties—Buffalo, Florence, Pepin, Trempealeau, and Vernon—are part-time, with appointments ranging from 0.50 to 0.90 FTE positions. As noted, two counties—Shawano and Menominee—share a District Attorney. Under s. 978.03, Wis. Stats., counties with populations of 100,000 or more may appoint one or more deputy district attorneys. As of July 2006, there were 18 deputy district attorneys in ten populous counties: Brown, Dane, Kenosha, La Crosse, Milwaukee, Racine, Rock, Sheboygan, Waukesha, and Winnebago. Sixty counties also have assistant district attorney positions. As of July 2006, there were 301 full-time and 55 part-time assistant district attorneys in these counties.

In general, GPR-funded prosecutor positions can be used to prosecute all types of criminal cases. However, two assistant district attorney positions were created by 1997 Wisconsin Act 27 solely to prosecute sexual predators. These two positions are assigned to Brown and Milwaukee counties but may provide assistance to district attorneys' offices statewide.

In order to enhance their GPR-funded staff resources, district attorneys have also sought program revenue to support assistant district attorney positions. Most of these positions are supported by federal grants to the State or individual counties, along with additional

revenue from certain court fees, penalty assessments, and private foundation funds. Available information did not allow us to fully separate the number of positions supported by each of these funding sources.

***In July 2006, 48.25 FTE prosecutor positions were funded with program revenue.***

Table 7 shows the location of the 48.25 FTE positions supported by program revenue as of July 2006. Most of these positions, 37.00 FTE, were in Milwaukee County. Milwaukee County also relies most heavily on program revenue-funded positions, which account for 29.8 percent of its total prosecutorial staff.

Table 7

**Program Revenue–Funded Prosecutor Positions  
July 2006**

County	Program Revenue–Funded Positions	Total Positions	Program Revenue–Funded Positions as a Percentage of Total Positions
Milwaukee	37.00	124.00	29.8%
St. Croix	1.00	5.70	17.5
Marathon	1.50	10.00	15.0
Outagamie	1.50	10.50	14.3
Dane	4.25	31.10	13.7
Kenosha	2.00	15.00	13.3
Waukesha	1.00	15.50	6.5

All program revenue–funded positions are authorized by the Legislature through the Joint Committee on Finance and are typically funded for specific purposes. As of July 2006, these included:

- 11.25 FTE positions funded with federal aid and state court fees, to prosecute drug crimes in multi-jurisdictional task forces operating out of Dane, Milwaukee, Outagamie, St. Croix, and Waukesha counties;
- 10.5 FTE federally funded positions in Kenosha and Milwaukee counties, to perform termination of parental rights prosecutions and other actions involving children who may have been abused or neglected;

- 10.0 FTE federally funded positions in Dane, Marathon, Milwaukee, and Outagamie counties, to support prosecution of domestic violence and other crimes against women;
- 7.0 FTE federally funded community prosecution positions in Milwaukee and Kenosha counties that place assistant district attorneys at local community centers or police stations;
- 5.0 FTE federally funded High Intensity Drug Task Force positions in Milwaukee County, to prosecute certain drug crimes in conjunction with the U.S. Attorney's Office;
- 1.5 FTE federally funded positions in Dane and Milwaukee counties, to assess the disproportionate incarceration of minority juveniles in those counties; and
- 1.0 FTE position in Milwaukee County supported by state court fees, to provide assistance in using DNA evidence to prosecute criminal cases, 1.0 federally funded position in Milwaukee County to prosecute youth firearms offenses, 0.5 position funded by a private foundation to prosecute drunk driving cases in Marathon County, and 0.5 restorative justice position in Milwaukee County supported by both federal and private foundation funds.

***Federal funds supporting program revenue-funded prosecutor positions are declining.***

Because the amount of federal funds received by Wisconsin has declined over time, the number of program revenue-funded positions has declined from 53.95 in 2002 to 48.25 in 2006, as was shown in Table 6. Further decreases are expected. For example, three Milwaukee County prosecutor positions supported with Byrne Act funds are project positions scheduled to end in September 2007. In addition, Dane County's federal Violence Against Women Act funding for domestic violence prosecutors declined from \$382,200 in FY 2001-02, when it funded 5.0 FTE prosecutors, to \$130,400 in FY 2005-06, when it funded 2.0 FTE prosecutors, and is expected to end in September 2007. The Dane County District Attorney's office reported that it is unlikely to receive future grants under this program, which was designed to foster new approaches to law enforcement and will not fund ongoing efforts of the county's domestic violence unit.

## Salaries

Although all prosecutors in district attorneys' offices are state employees and receive state employee benefits, procedures for setting their salary levels differ by type of position:

- Section 978.12(1)(a), Wis. Stats., creates eight salary levels for the 71 elected district attorneys based on county population, with specific amounts established in the State's compensation plan.
- Salaries for deputy district attorneys are established in the State's compensation plan and are identical to those of other state attorney managers, including public defender staff supervisors and chief legal counsels for state agencies. As noted, there were 18 deputy district attorneys in July 2006.
- Salaries for assistant district attorneys are negotiated through collective bargaining with their union, the Association of State Prosecutors.

As shown in Table 8, both maximum and average salaries for deputy district attorneys exceeded those for elected district attorneys, and some assistant district attorneys' salaries also exceed those of elected district attorneys. For example, through an October 2006 payroll analysis, we found that 11 assistants in Dane County, 3 assistants each in Brown and Rock counties, and 4 deputies in Milwaukee County were paid more than their respective district attorneys. This can occur because elected district attorneys' salaries vary by county and are adjusted only at the beginning of their terms of office, while deputy and assistant salaries are uniform statewide and are adjusted under the terms of the State's compensation plan or collective bargaining agreements, for which changes can occur more frequently.

Table 8

**Prosecutor Salaries**  
October 2006

Position	Minimum Salary	Maximum Salary	Average Salary <sup>1</sup>
District Attorney <sup>2</sup>	\$83,451	\$115,705	\$91,166
Deputy District Attorney	48,987	116,897	97,093
Assistant District Attorney	46,001	110,938	72,067

<sup>1</sup> Average salary for a full-time prosecutor, based on average hourly wages. Some prosecutors work part-time.

<sup>2</sup> As with other elected officials, district attorneys' salaries are adjusted at the beginning of a new term of office. Therefore, October 2006 salaries reflect pay levels established in July 2005.

Section 978.12(1)(b), Wis. Stats., specifies that maximum salaries for deputy district attorneys cannot exceed the salary levels for assistant district attorneys, except that deputies may earn an additional amount—set at \$2.75 per hour under the 2005-07 compensation plan—for supervision and management duties. We found that as of October 2006, six deputies in Dane, Milwaukee, and Waukesha counties earned wages slightly higher than allowed under statutes, averaging \$217 per person and totaling \$1,300 annually. DOA was unaware of the statutory requirement limiting deputy salaries but indicates that it has worked with the Office of State Employment Relations to draft a bill that would remove the requirement from statutes.

## Caseloads

***Prosecutors' criminal caseloads increased by 11.5 percent from 2001 through 2005.***

Wisconsin's population increased from 5.4 million in 2001 to 5.6 million in 2005, or by 3.7 percent; 14 counties had increases of 5.0 percent or more, while only Milwaukee County had a decrease, of 0.1 percent. During that period, statewide arrests declined from 449,200 to 422,900, or by 5.9 percent. However, as shown in Table 9, criminal caseloads, as measured by CCAP, increased by 11.5 percent statewide. The number of felony cases, which typically require the greatest amount of prosecutors' time, increased by 16.2 percent. Appendix 3 includes information on caseloads by county. These figures represent only prosecuted cases and do not include all referrals from law enforcement.



Table 9

**Criminal Caseloads<sup>1</sup>**

Type of Case	2001	2002	2003	2004	2005	Percentage Change
Felony	30,455	32,453	32,641	33,582	35,399	16.2%
Misdemeanor	68,223	69,527	71,157	70,039	71,518	4.8
Criminal Traffic	36,925	46,420	53,776	52,040	46,696	26.5
Juvenile Delinquency	14,204	13,949	13,950	13,265	13,365	-5.9
<b>Total</b>	<b>149,807</b>	<b>162,349</b>	<b>171,524</b>	<b>168,926</b>	<b>166,978</b>	<b>11.5</b>

<sup>1</sup> Includes only prosecuted cases recorded in CCAP. Excludes Portage County, which does not use CCAP for criminal cases.

***Anecdotal evidence suggests increasing caseloads may lead to delays in prosecuting crimes.***

Criminal caseloads are the largest component of prosecutors' workloads, and increasing caseloads can affect the timeliness with which crimes are prosecuted. Prosecutors in 9 of the 16 counties we visited reported that increasing caseloads require them to prioritize, often resulting in a backlog of cases involving less-serious crimes. For example, one office said that prosecution of felonies can be delayed three to six months, and misdemeanors can be delayed longer. Prosecutors reported that lengthy delays can result in cases not being prosecuted because of an inability to contact the involved parties or conduct necessary follow-up investigation. One domestic violence prosecutor reported he issued charges on 72.0 percent of the referrals he received from January through October 2006 but was unable to issue charges on approximately 10.0 percent more because he was not able to begin working on them in a timely manner. Another District Attorney reported that his office no longer charges violations of certain crimes, such as operating a vehicle after license revocation, retail thefts below a certain limit, and some drug possession cases, because of caseload constraints.

Caseload constraints also affect how prosecutors prosecute crimes. For example, prosecutors in seven counties reported they may settle cases out of court by offering lesser charges or lighter penalties in order to avoid the time associated with a trial. One District Attorney reported that he has told his prosecutors that every decision must be made with workload considerations in mind; if one prosecutor decides to take a case to trial and has less time to handle other cases, that decision affects all other prosecutors in the office. Prosecutors in four counties said they often do not have time to meet with victims

and witnesses before hearings, which they believe has a negative effect on both their ability to prosecute cases and their service to victims.

Prosecutors reported using a variety of caseload management methods to mitigate increasing caseloads. For example, seven offices reported working with law enforcement agencies to charge certain crimes as ordinance violations rather than submitting them to the District Attorney's office. Two offices reported contracting with debt collection agencies or private attorneys to handle certain cases, such as those involving worthless checks and termination of parental rights.

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## Weighted Caseload Formula ■

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Prosecutors' workloads are influenced by caseload levels, the amount of time required to prosecute those cases, and other prosecutorial responsibilities. A weighted caseload formula is currently used to measure prosecutors' workloads and to calculate staffing needs in each county, although the formula has not been used to reallocate authorized positions since the State assumed funding responsibility for prosecutor positions in 1990. Although the formula's basic methodology is sound, most of its specific elements are more than ten years old, and fully addressing the formula's limitations will require more accurate data.

### **Development of the Weighted Caseload Formula**

***The weighted caseload formula is used to calculate prosecutorial staffing needs.***

The weighted caseload formula is intended to measure the number of prosecutors that each District Attorney's office needs, based on the number and type of court cases for which it is responsible. This calculation involves several steps:

- First, the formula identifies the time each prosecutor has available each year to prosecute cases. This figure is currently 1,227 hours per year, which was calculated by starting with 2,088 full-time annual work hours and subtracting time required for leave usage, administrative duties, reviewing case referrals, post-conviction hearings, and other activities that are not counted as part of a specific case.

- Next, the formula is used to calculate the amount of time required to prosecute cases. Each case type is assigned a weight that represents an average time requirement for cases of that type. The weight for each case type is then multiplied by the number of cases of that type.
- Finally, the number of prosecutors needed is calculated by dividing the total time required to prosecute cases by the 1,227 work hours available per full-time prosecutor. This number is compared to the office's current staffing level to determine any additional staffing need.

Appendix 4 describes the formula in more detail, including the non-case specific activities that are counted in the calculation of time available and the case types and weights used in the calculation of total time needed to prosecute cases.

This weighted caseload methodology is generally consistent with nationally accepted best practices for measuring prosecutors' workloads and is considered more accurate than measures based, for example, on populations or unweighted caseloads. In 2002, the American Prosecutors Research Institute completed a study on national prosecutorial workload assessment standards that recommend formula methods similar to those used by Wisconsin, including the need for a time study to develop accurate components, a standard workload measure of non-case specific activity, and case weights and workload measures combined with the number of cases to calculate the number of prosecutors needed. The study noted, however, that variations in external and internal factors affecting prosecutors' workloads make direct comparisons among prosecutors' offices difficult.

***The weighted caseload formula calculated a net statewide need of 117.33 FTE positions as of August 2006.***

The State Prosecutors Office most recently used the weighted caseload formula to calculate prosecutorial staffing needs in August 2006, based on caseload data for calendar years 2003 through 2005. According to the formula, 63 counties are understaffed by a total of 119.16 FTE positions and 8 are slightly overstaffed by a total of 1.83 FTE positions, for a net statewide need of 117.33 FTE positions. The relative staffing needs of individual counties can be compared in both absolute terms and percentages. Table 10 shows the ten counties that the formula indicates have the largest number of positions needed, and Table 11 shows the ten counties with the lowest staffing levels compared to their calculated staffing needs in percentage terms. Brown County is the only county whose need places it in the ten highest-need counties under both measures. Appendix 5 includes calculated staffing needs and percentages in all counties.

Table 10

**Counties with Greatest Staffing Need under the Current Weighted Caseload Formula  
August 2006**

County	Current Staffing <sup>1</sup>	Estimated Total Staffing Need	Additional Positions Needed
Dane	31.10	39.31	8.21
Racine	18.00	25.90	7.90
Brown	12.00	19.31	7.31
Rock	13.50	20.24	6.74
Waukesha	15.50	21.21	5.71
Sheboygan	7.50	12.02	4.52
Kenosha	15.00	19.45	4.45
Eau Claire	8.00	12.14	4.14
Outagamie	10.50	14.42	3.92
Milwaukee	121.00	124.84	3.84

<sup>1</sup> Based on State Prosecutors Office records as of August 17, 2006. Includes certain adjustments made by the State Prosecutors Office to reflect positions serving multiple counties.

Table 11

**Counties with Lowest Staffing Levels under the Current Weighted Caseload Formula  
August 2006**

County	Current Staffing <sup>1</sup>	Estimated Total Staffing Need	Current Staffing Level as a Percentage of Estimated Total Staffing Need
Burnett	1.25	2.79	44.8%
Monroe	3.00	5.59	53.7
Wood	4.00	7.05	56.7
Fond du Lac	5.00	8.67	57.7
Forest	1.00	1.65	60.6
Adams	1.20	1.97	60.9
Shawano/Menominee	3.00	4.89	61.3
Marquette	1.00	1.62	61.7
Grant	2.00	3.23	61.9
Brown	12.00	19.31	62.1

<sup>1</sup> Based on State Prosecutors Office records as of August 17, 2006. Includes certain adjustments made by the State Prosecutors Office to reflect positions serving multiple counties.

***The weighted caseload formula has not been used to reallocate positions across counties.***

The State Prosecutors Office uses the weighted caseload formula each year to calculate prosecutorial staffing needs in all counties. However, the formula has never been used to reallocate positions across counties, and it has only occasionally been used by the Legislature to add or eliminate positions. For example, weighted caseload formula results were considered during 2001-03 biennial budget deliberations, when 7.5 FTE program revenue-funded positions were eliminated. More recently, 2003 Wisconsin Act 33, the 2003-05 Biennial Budget Act, eliminated 15.0 FTE GPR-funded positions but did not specify where the positions should be eliminated. A committee of prosecutors formed by the Wisconsin District Attorneys Association advised DOA on which positions to eliminate, based in part upon the weighted caseload formula. Appendix 6 shows the counties in which positions were eliminated.

All but one of the district attorneys' offices we visited believed the weighted caseload formula was generally an appropriate method for assessing staffing needs. Eleven of the 16 believed the current formula's estimate of their staffing needs was reasonably accurate, while 2 said the current formula understates their need and 3 said that while they are understaffed, they did not need as many staff as calculated by the formula. However, while most counties believed the formula results were relatively accurate, they expressed a number of concerns with how the formula measures caseload and how different factors are weighted in the formula.

## **Measuring Caseload**

A key component of the weighted caseload formula is data on the number of cases handled by each District Attorney's office. The State Prosecutors Office receives such data primarily from CCAP. In addition:

- DOJ provides data on the number of cases involving sexual predators committed under ch. 980, Wis. Stats., which allows the State to commit certain sexually violent persons to treatment facilities under civil proceedings after their criminal sentences end; and
- each District Attorney's office annually submits case counts for several specific case types, including certain felony repeat offenders, securities fraud, and proceedings involving child protection and guardianship.

***Only cases with an initial appearance in court are counted in prosecutors' caseloads.***

CCAP data include only those cases for which prosecutors have filed charges and made an initial appearance in court. The formula does not count cases without an initial appearance in court, case referrals that are reviewed by prosecutors and declined, and cases deferred for treatment rather than court prosecution. Most prosecutors with whom we spoke believe that as a result, the current caseload calculation underestimates their workloads, which include activities beyond those associated with cases filed in court.

A prosecutor's work typically begins with a referral from a law enforcement agency. After reviewing the referral, the prosecutor may meet with the law enforcement officer, victims, or witnesses. The prosecutor may then decide to prosecute the case by filing charges in court, may send the referral back to law enforcement for further investigation, may decline prosecution, or may defer the case pending drug abuse or domestic violence treatment.

Complete data on the number of referrals reviewed but not prosecuted were not readily available because each office has different methods for recording and tracking referrals. Based on December 2006 data from the 13 counties we visited that use the PROTECT case management system, prosecutors declined to prosecute 11.8 percent of the case referrals they received in January 2006. However, this figure is likely an understatement, because some counties do not enter all such referrals into PROTECT, and some pending referrals could result in decisions to decline prosecution. The prosecutors we interviewed estimated that anywhere from 10.0 percent to 60.0 percent of referrals are not prosecuted, depending on the county and type of case, with most estimating between 20.0 percent and 30.0 percent.

We also used CCAP data to calculate the number of cases that were not counted because no initial appearance occurred, even though charges were filed. This can occur, for example, when a victim ceases to cooperate with the prosecutor. In 2005, 3.9 percent of cases filed statewide had no initial appearance and were therefore not counted in caseload measures. In six counties, more than 10.0 percent of filed cases had no initial appearance in 2005, as shown in Table 12.

Table 12

**Filed Cases Without an Initial Appearance  
2005**

County	Filed Cases Without an Initial Appearance	All Cases <sup>1</sup>	Percentage of All Cases
Florence	34	176	19.3%
Iron	36	209	17.2
Pepin	34	286	11.9
Lafayette	34	302	11.3
Chippewa	223	1997	11.2
St. Croix	257	2468	10.4
Statewide	6,261	159,874	3.9

<sup>1</sup> Includes felony, misdemeanor, and criminal traffic cases.

In 13 of the 16 counties we visited, at least one prosecutor stated that more emphasis should be placed on referrals from law enforcement as a measure of prosecutors' workloads. Although the formula includes 35 hours per year for time spent reviewing referrals that are not prosecuted, prosecutors estimated spending more than 100 hours per year on these cases. Furthermore, the formula does not account for variations across counties in the percentage of referrals filed. Prosecutors also noted that the current method of measuring caseloads does not reward prosecutors for dealing with some cases in ways that may be more appropriate and efficient, such as by issuing an ordinance violation instead of a criminal charge, or deferring the case pending drug treatment or domestic violence counseling.



Many prosecutors were concerned that the current method of measuring caseloads can lead to inconsistent results across counties because of differences in case filing practices. For example, while most prosecutors combine multiple charges for a single criminal incident that involves one defendant into a single complaint, some split charges and file each complaint in a separate case. Similarly, while most prosecutors combine multiple counts of the same violation into a single complaint, such as passing several worthless checks over a two-week period, others separate the counts, with each complaint resulting in the filing of a separate case. Prosecutors reported that separate cases may be filed for several reasons, including:

- to more easily keep track of communication with multiple victims;
- because a defendant committed another crime before the prosecutor was able to file charges on the first offense; and
- to provide additional leverage in negotiating plea agreements with defendants.

***Variation in charging practices affects the results of the weighted caseload formula.***

The use of split charges also has the effect of increasing the number of cases recorded in the formula. Some prosecutors expressed concern that these charging practices are unfairly used to justify higher staffing levels or additional position requests. None of the prosecutors with whom we spoke reported engaging in these practices, and we were unable to independently determine whether some prosecutors are deliberately increasing their caseload counts. However, variation in charging practices across counties influences the results of the weighted caseload formula, regardless of its intent.

In order to assess variation in charging practices, we counted the number of times a single defendant was named in multiple cases, but with a single initial court date. We found that, statewide, these accounted for 5.8 percent of all criminal cases from 2001 through 2005. However, the frequency ranged from 0.6 percent in Crawford County to 19.3 percent in Pepin County. Table 13 shows the frequency for the eight counties with rates of 10.0 percent or more. We were not able to determine how often these cases could have been combined with the other cases having the same defendant and initial appearance.

Table 13

**Counties with Highest Percentage of Non-Combined Cases  
2001 through 2005**

County	Percentage of Cases <sup>1</sup>
Pepin	19.3%
Buffalo	16.3
Sawyer	14.1
Forest	13.0
Manitowoc	11.5
Price	10.3
Juneau	10.1
Green Lake	10.1
Statewide Average	5.8

<sup>1</sup> Percentage of felony, misdemeanor, and criminal traffic cases for which another case existed with the same defendant and same initial appearance date.

The effect of charging practices on caseload counts can be illustrated using an example of similar situations in two different counties. In the first situation, a prosecutor combined five worthless check offenses, committed by one defendant over a four-month span, into one case. The defendant was found guilty of one charge, and the other charges were considered in sentencing. In the second situation, a prosecutor filed 12 separate cases for worthless check offenses committed by one defendant in a three-week span. As in the first situation, the defendant was found guilty of one charge, and the other charges were considered in sentencing. Although the two situations had similar circumstances and outcomes, the first county was credited with 1 misdemeanor case, while the second was credited with 12 cases.

Prosecutors also noted that because felonies are weighted more heavily in the caseload formula, prosecutors could increase their measured staffing needs by filing felony charges on cases that could be misdemeanors. After filing, felony charges may be reduced to misdemeanors as one method of encouraging defendants to accept settlement offers. Across all counties, 28.3 percent of felony cases filed in 2005 that resulted in a guilty verdict originated as felonies but were amended to misdemeanors. However, the percentage

ranged from 6.1 percent in Outagamie County to 66.9 percent in Sawyer County, and in 20 counties more than one-third of felony cases were amended to misdemeanors. Table 14 shows the ten counties with the highest percentage of felonies amended to misdemeanors. The frequency with which this occurs may be understated because the data do not include cases in which both felony and misdemeanor charges were initially filed and the felony charges were dismissed at the prosecutor's request. We were unable to quantify how often this occurs.

Table 14

**Counties with Highest Percentages of Felony Cases Amended to Misdemeanor Cases  
2005**

County	Percentage of Cases <sup>1</sup>
Sawyer	66.9%
Rusk	54.7
Jackson	50.0
Douglas	44.4
Bayfield	41.8
Oneida	41.5
Monroe	40.5
Grant	40.1
Waupaca	39.0
Clark	38.7
Statewide Average	28.3

<sup>1</sup> Percentage of cases filed as felonies that resulted in a guilty verdict for which the most serious charge at disposition was a misdemeanor.

### **Options for Improving Caseload Measurement**

Using a more complete and consistent source for caseload data could address both the concern that prosecutors' caseloads are undercounted and the concern that caseload counts are inconsistent across counties. If the weighted caseload formula is to produce accurate and consistent results, the caseload data used in the formula should be consistent and comparable across counties to help control for variation in factors that affect prosecutors'

workloads. According to the American Prosecutors Research Institute, it is imperative that weighted caseload studies use consistent case definitions and counting methods.

***Referrals would be a more accurate measure of prosecutors' caseloads than cases filed in court.***

Counting referrals, rather than cases filed in court, would be a more complete measure of prosecutorial work and would be less subject to variation in prosecutors' case filing practices. In our 1995 report, we noted that measuring caseload based on referrals could avoid comparability problems caused by variation in charging practices, but referral data were not collected in a central location and counties did not define referrals in a uniform matter. The CCAP system, which was used to measure caseloads at that time and is still used, was designed for the court system and does not fully measure prosecutors' workloads. However, when the weighted caseload formula was developed, it contained the best data available.

More recently, however, the PROTECT case management system was implemented. PROTECT, which was first offered in 1999 and is currently used by 66 counties, is able to record, track, and report comprehensive adult criminal and juvenile case information and statistics, including referrals and prosecutor case assignments. It can exchange information with CCAP, DOJ, the State Patrol, and county law enforcement agencies. Because PROTECT is designed specifically for case management in district attorneys' offices, it is a better source than CCAP for adult criminal and juvenile case information and prosecutorial statistics, including referrals and case assignments.

***The PROTECT case management system could more consistently and accurately measure prosecutors' caseloads.***

Using PROTECT data on the number of referrals received by district attorneys' offices, rather than CCAP data on cases with initial appearances, would more accurately measure prosecutors' caseloads. However, using PROTECT referral data in the weighted caseload formula would require time and planning. PROTECT is not currently used in six counties—Milwaukee, Racine, La Crosse, Vernon, Iron, and Portage—although La Crosse is scheduled to implement it in fall 2007 and, as noted, the biennial budget bill currently under consideration in the Legislature includes funding to begin implementation in Milwaukee and Racine counties. Currently, there is considerable variation by county in how PROTECT is used. To enhance the utility of the system, these variations need to be reduced. Some improvement could be made through the collaborative development of data reporting guidelines by district attorneys, the State Prosecutors Office, and district attorney information technology staff. Prosecutors would retain their flexibility in how they file charges in the court system.

## Case Weights and Workload Measures

In addition to concerns about how caseload is measured, prosecutors also expressed a number of concerns with how cases are weighted and with the calculation of certain time estimates used to measure total workload.

### Differences in Time Available Among Prosecutors

The current formula is based on an assumption that, on average, each prosecutor spends the same amount of time on non-case specific activities and, therefore, has the same amount of time available—1,227 hours per year—to prosecute filed cases. While this figure was intended to be a statewide average, it masks differences across counties of different sizes, and some prosecutors have expressed concern that it overstates their available staffing levels. Furthermore, this number was determined by a committee of district attorneys based on their knowledge of prosecutorial workloads, rather than on a time study or other quantitative measure.

***The amount of time prosecutors have available to prosecute cases varies.***

There is no complete source of data measuring the amount of time prosecutors spend in various activities because prosecutors do not track their time, and the most recent time study—conducted in 1994—measured time spent on only a limited sample of cases. However, based on time estimates provided during our interviews, district attorneys and deputy district attorneys in offices with 3.0 or more FTE prosecutors reported spending 399 hours per year more than other prosecutors on non-case specific activities such as office administration, personnel management, and community service work, resulting in 19.1 percent less time available to prosecute cases. These data appear consistent with available workload data from PROTECT, which for selected counties showed that in December 2006, assistant district attorneys were each assigned an average of more than 200 active court cases, elected district attorneys in smaller offices (those that do not have a deputy district attorney) were each assigned more than 150 cases, and district attorneys and deputies in larger counties each averaged fewer than 100 cases.

***The weighted caseload formula may create a disincentive for counties to seek federal grant funding.***

Prosecutors also noted concerns with how program revenue-funded positions are counted. Some program revenue-funded prosecutors, such as community prosecutors in Milwaukee County, are required to spend time on crime prevention activities and, therefore, have less time available to prosecute cases. However, their positions are counted as full-time prosecutors in the formula, potentially overstating time available for prosecutorial duties. Some prosecutors noted that this effect actually creates a disincentive for counties to seek federal grant funding.

It should be noted that it would not be feasible for the formula to account for all differences among prosecutors. For example, experienced prosecutors may handle cases more efficiently. In addition, there may be differences between prosecutors in larger offices who are able to specialize in certain types of crime and those in smaller offices who handle all types of cases. In nine counties we visited, prosecutors were able to partially or totally specialize, allowing them to become familiar with handling particular types of cases and gain efficiencies in legal research and preparation.

### Case Categories and Weights

***Most elements of the weighted caseload formula have not been updated since 1994.***

Prosecutors also had concerns related to specific case types and case weights used in the current formula. The case weights are based on the results of a time study completed in 1994. The time study has not been updated since then, and no other data are currently available. However, based on interviews and available case data, several issues appear to warrant further consideration.

One category of the weighted caseload formula, the “all other felonies” category, includes nearly all felony cases except for homicides, certain repeat offender crimes, and securities fraud. In the most recent weighted caseload formula calculation, this category accounted for 18.9 percent of all cases and 43.8 percent of prosecutors’ time. Prosecutors reported that the time required for the types of cases in this category varies widely, and some argued that the category should be further subdivided. Because the case weights are intended to be averages, the use of a broad category is appropriate if the average is consistent across counties. However, we found considerable variation in the types of cases that fall within this category. For example, in 2005:

- On average, drug crimes were the largest component of the “all other felonies” category, at 19.9 percent. However, as a percentage of “all other felonies” cases in individual counties, they ranged from 3.4 percent to 37.1 percent.
- Charges of bail jumping—intentionally failing to comply with the terms of a bond issued as the result of an arrest—accounted for an average of 12.1 percent of counties’ “all other felonies” caseloads in 2005. However, it ranged from 0.0 to 27.5 percent of individual counties’ “all other felonies” caseloads. Because prosecutors identified bail jumping cases as less time-consuming to prosecute than other felonies, the caseload formula may overstate staffing requirements for counties with high percentages of bail jumping cases.

- Child abuse, which prosecutors cited as a relatively time-consuming crime to prosecute, accounted for an average of 7.1 percent of counties' "all other felonies" caseloads in 2005, but ranged from 1.1 percent to 27.6 percent in individual counties.

Appendix 7 includes more detailed information on the types of felony cases prosecuted by individual counties in 2005 that were counted in the weighted caseload formula.

Sexual assault cases, which are currently included in the "all other felonies" category, are often cited by prosecutors as time-consuming because they often require more time for contact with victims and witnesses to prepare for prosecution. According to the Office of Justice Assistance, the number of arrests for forcible rape increased by 7.6 percent from 2001 to 2005, while the number of other sex offenses decreased by 15.5 percent. Estimates given by different prosecutors for handling these cases ranged from 10 to 100 hours, which can be significantly more than the current estimate of 8.49 hours for "all other felonies" cases.

Drug crimes were also frequently cited as a growing concern. Prosecutors at eight counties said drug cases have been increasing, or they are more serious, or both. One prosecutor said his office prosecutes more cocaine and methamphetamine cases, with total time averaging 15 to 20 hours per case. According to the Office of Justice Assistance, total drug-related arrests in Wisconsin increased 2.9 percent from 2001 to 2005. CCAP caseload data show the number of drug-related cases increased from 14,088 in 2001 to 17,445 in 2005, or by 23.8 percent. During the same period, the number of methamphetamine cases nearly tripled, increasing from 231 in 2001 to 670 in 2005. Although methamphetamine accounted for only 3.8 percent of all drug crimes statewide in 2005, it accounted for more than one-quarter of all drug crimes and more than one-half of all felony drug crimes in 11 northwestern counties.

Other suggestions by prosecutors involve recategorizing activities that are currently considered only in the first step of the caseload formula, which estimates that each prosecutor has 1,227 hours per year available to prosecute specific cases. The time allocated to these activities is the same for all prosecutors, even though some are actually case-specific activities whose frequency can vary. For example, post-conviction hearings are currently counted only in the first step of the caseload formula, even though the hearings are held for specific cases. If case weights were updated to include the average amount of time spent on post-conviction hearings, the formula would more precisely measure workload. Similarly, the

current formula considers traffic and forfeiture cases only in the calculation of time available, even though the extent to which prosecutors are responsible for these cases varies considerably across counties, depending on the presence of municipal courts and attorneys. Counting them as separate cases, and assigning an appropriate weight, would allow the formula to more precisely measure differences in prosecutors' workloads.

We also found that some categories currently included in the formula are rarely used and could be eliminated or merged without significantly affecting the formula results. For example, repeat offender, securities fraud, habeus corpus, and inquest cases are rare. In 2005, there were 75 cases in these categories, which represented less than 0.1 percent of the 174,220 total cases statewide.

### **Changes in Law Affecting Prosecutors' Workloads**

***Changes in the law have affected prosecutors' workloads.***

Prosecutors reported that a number of 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. As noted, however, the current weighted caseload formula is based on a time study completed in 1994, and case weights have not been updated to reflect changes in the law since that time.

Since 1980, ch. 950, Wis. Stats., has provided a basic bill of rights for victims and witnesses, including the right to consult with intake workers and district attorneys, the right to have their interests considered, and the right to be notified of hearings and case dispositions. 1997 Wisconsin Act 181 added a penalty of up to \$1,000 for public officials who intentionally fail to provide a right to a victim of a crime. Some prosecutors stated that ensuring and tracking victim rights increases their workloads and that of support staff by, for example, causing sentencing hearings to be repeatedly rescheduled if victims have not yet been consulted.

Truth-in-sentencing legislation, created by 1997 Wisconsin Act 283, established a bifurcated sentencing system that includes a period of incarceration followed by a period of extended supervision outside prison. An imprisoned felon may petition the court to adjust the confinement portion of a sentence for most crimes, and prosecutors said that has resulted in more post-conviction hearings for sentencing adjustments, which prosecutors often must attend. By contrast, under the prior system of incarceration followed by parole, Department of Corrections officials were responsible for parole decisions, and district attorneys were not involved.



Some prosecutors reported that the 1997 federal Adoption and Safe Families Act increased workloads on cases related to abused and neglected children, both by increasing the number of court hearings and by increasing the amount of time needed to review, draft, file, and manage these cases. In Milwaukee County, a settlement agreement from a 1993 class-action lawsuit filed in federal court has also led to increased oversight of child welfare activities, which prosecutors there say has affected their workload.

2005 Wisconsin Act 60, which took effect in December 2005, requires law enforcement agencies to make audio or video recordings when interrogating juveniles and declared it the policy of the State, starting in January 2007, to make audio or video recordings of interrogations of all persons suspected of committing felonies. Prosecutors said reviewing recordings takes considerably more time than reading a law enforcement officer's case notes, but since recordings exist, they believe they cannot competently handle cases without reviewing them. A fiscal estimate for the bill projected a need for 15.0 FTE additional prosecutors, at a total cost of at least \$840,000, including 4.0 additional prosecutors in Milwaukee County and 1.0 each in 11 other counties. However, although Act 60 provided grants to law enforcement agencies for recording equipment, it did not include any funding for additional personnel.

Other legal changes some prosecutors cited as increasing their workloads include:

- changing certain crimes from misdemeanors to felonies, such as operating a vehicle without the owner's consent, certain types of battery cases, and identity fraud;
- changing the age of majority from 18 to 17 for prosecuting crimes; and
- extending juvenile court jurisdiction to some adjudicated individuals up to age 25, which increased the post-disposition work of juvenile prosecution.

### **Options for Improving Case Weights and Workload Measures**

Each of the concerns with case weights and workload measures that prosecutors raised relates to how much time they spend on various activities, which can change. In our 1995 report, we suggested updating case weights on a regular basis in order to take into

account changes in statutes, case law, and the technology used in prosecutors' work. However, since the workload formula was created in 1996, this has not occurred.

***A time study could provide accurate measures of how much time prosecutors' activities require.***

Although the case weights and workload measures could be updated based on the collective knowledge of district attorneys, there are currently no data available to accurately determine what the weights should be. A better option for collecting data and updating the existing weighted caseload formula would be to conduct a new time study. Such a study could collect information on how much time prosecutors spend on administrative and other non-case specific activities, how much time is available to prosecute cases, the average amount of time required to prosecute various types of cases, and the extent to which these measures vary across counties or among assistant, deputy, and elected district attorneys. The weighted caseload formula could then be updated to incorporate the new measures.

DOA could look to the courts for guidance in conducting a new time study. The January 2007 Wisconsin Judicial Needs Assessment used a time study to establish a set of case weights that provide uniform and comparable measures of the number of judicial officers needed to provide effective case resolution. The Workload Assessment Advisory Committee, composed of judges, commissioners, and representatives from the office of the Director of State Courts, contracted with the National Center for State Courts at a cost of \$150,000 to review and approve overall project design and recommendations.

In developing a new time study, district attorneys and the State Prosecutors Office could:

- consider national best practices as part of their study design;
- collect data from respondents in every county, to ensure sufficient data to assess separate standards and weights for offices of different sizes;
- evaluate an expanded set of case types, such as further distinguishing among cases currently categorized as "all other felonies"; and
- ask respondents to record all of their time spent on case specific and non-case specific activities, including post-conviction activity.

One consideration in designing a time study is how cases are defined. The preferred option is to use referrals, so that the new weights reflect average time requirements both for cases that are filed and for those that are not filed. In addition, as much case-related activity as possible should be included in case specific weights, to help address concerns about underestimation or manipulation. The American Prosecutor Research Institute strongly recommends consistent definitions and counting methods. For example, it defines cases as beginning when a criminal matter comes to the prosecutor's attention, regardless of whether charges are filed; counts cases with multiple defendants as one case per defendant; and categorizes cases with multiple charges arising from the same incident by the highest or most serious charge.

Some have expressed concern that a time study would understate staffing needs because it would measure the amount of time prosecutors currently spend on various activities, which in some cases may be less than optimal. The judicial needs assessment addressed this concern by surveying judges to evaluate the accuracy of the time study's case weights. It should also be noted that the weighted caseload formula is based upon prosecutors working a standard 40-hour week; many reported working considerable amounts of uncompensated overtime. A time study could measure all time spent, including overtime, and then use those results to calculate staffing needs based on 40-hour work weeks.

Some are also concerned about the time and cost required to complete a time study. Although this is a valid concern, it is important to realize that the weighted caseload formula cannot be accurate unless it is periodically updated with accurate workload measures and case weights. No time study results remain accurate indefinitely, as we noted in our 1995 report. The Judicial Needs Assessment report recognized this, and it recommended annually reviewing the impact of new legislation or other factors on case weights and updating the standards approximately every five years.

## **Improving the Weighted Caseload Formula**

Most concerns with the current weighted caseload formula arise from the fact that it uses incomplete data and out-of-date measures of the time required to prosecute cases. We identified three steps that could be taken to improve the weighted caseload formula.

First, the State Prosecutors Office could make immediate changes based on the experiences and knowledge of the district attorneys. These could include:

- working with the Wisconsin District Attorneys Association and individual district attorneys who are not association members to develop voluntary guidelines for charging practices, in order to improve consistency in caseload counts across counties; and
- modifying the formula's calculation of time available to more closely match prosecutors' current estimates of the time spent reviewing referrals that are not filed. The current formula allows only 35 hours per year per prosecutor, while prosecutors with whom we spoke estimated they actually spent more than 100 hours.

**Recommendation**

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*We recommend the Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on its efforts to implement short-term improvements to the weighted caseload formula, including voluntary guidelines for case charging practices and modifications to reflect time needed for review of referrals that are not filed.*

Second, DOA could develop plans for using PROTECT as the source of data for the weighted caseload formula, with caseload determined by the number of referrals rather than the number of cases filed in court. This change would provide a more complete measure of prosecutors' caseloads that is more consistent across counties and less subject to variations in charging practices. However, DOA would need to first assess the feasibility and cost of such a change and identify any obstacles to its implementation. Plans for implementation will need to include a time line for PROTECT implementation in the six counties not currently using the system, as well as an identification of data entry standards and the process for using the information in the weighted caseload formula.

**☑ Recommendation**

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*We recommend the Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on its plans for using PROTECT referral data in the weighted caseload formula, including:*

- *case entry and tracking guidelines for prosecutors, to ensure consistent caseload measurements across counties;*
- *specific changes to the weighted caseload formula methodology;*
- *the cost of any necessary expansion or modification of PROTECT; and*
- *a time line for implementation.*

Finally, in order to ensure that the weighted caseload formula includes accurate calculations of time available and the amount of time required to prosecute cases, DOA could develop plans for conducting a new time study that conforms with best practices and produces complete information on prosecutors' time requirements.

**☑ Recommendation**

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*We recommend the Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on its plans for initiating a new time study to more accurately measure prosecutors' work.*

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## Other Criminal Justice System Issues Affecting Workload ■

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Although some prosecutors have reported that factors such as crimes committed by prison inmates, the ratio of prosecutors to circuit court judges, increases in law enforcement officers, and levels of county-funded support staff can affect their workloads, these factors are not explicitly considered in the current weighted caseload formula. Increased coordination and communication between district attorneys and other criminal justice system personnel could help mitigate the effect these factors have on prosecutorial workload.

### Cases Involving Inmates

***Cases involving prison inmates may require additional time to prosecute.***

A small number of prosecutors have argued that because the weighted caseload formula does not differentiate between inmate and non-inmate cases, it does not accurately estimate the prosecutorial staffing needs of counties that house state prisons, which handle these cases. These prosecutors report that criminal cases involving inmates take longer to prosecute than cases in which the defendants are not inmates, because some inmates intentionally try to prolong the criminal justice process by, for example, repeatedly firing their attorneys, filing numerous motions and appeals, and insisting their cases be resolved at trial.

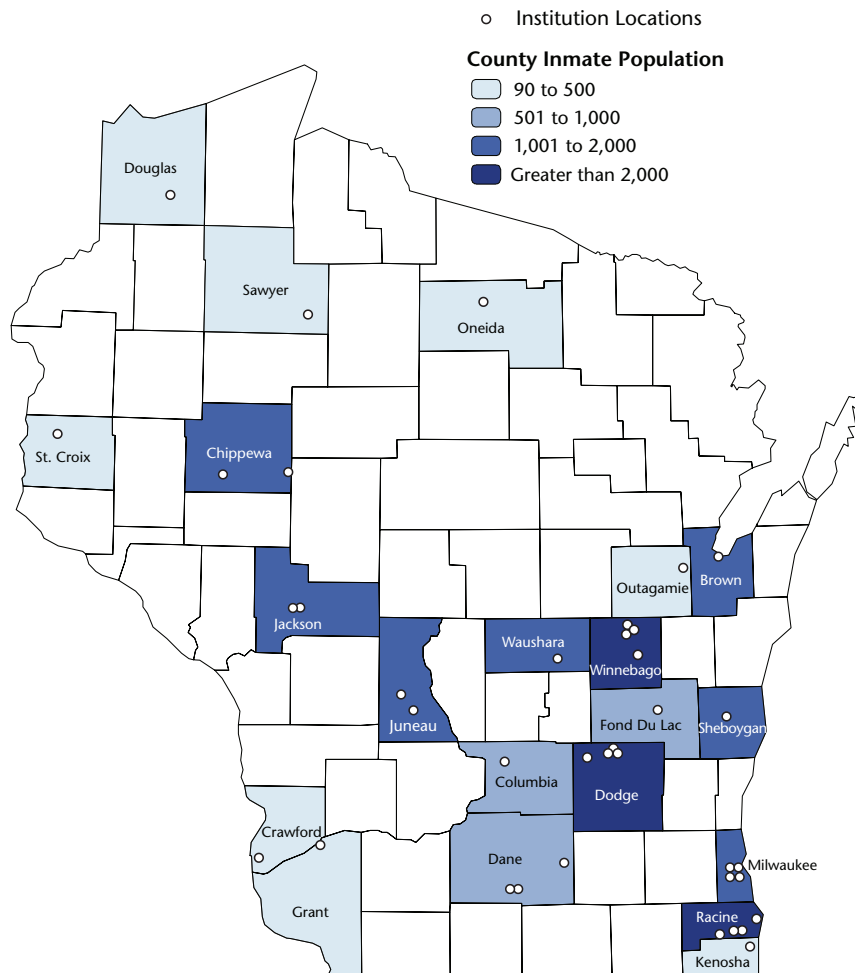
Under s. DOC 303.64, Wis. Adm. Code, prison officials may handle offenses committed by inmates internally, or they may refer them to outside law enforcement for further investigation and prosecution. When offenses committed by inmates are referred, law enforcement is responsible for deciding whether to make a referral for prosecution

to the District Attorney’s office. However, s. DOC 303.73, Wis. Adm. Code, also requires wardens to work with the local District Attorney to determine when offenses that may violate criminal statute shall be referred for prosecution.

As shown in Figure 1, Wisconsin’s 20 adult institutions, 16 correctional centers, and 2 secure treatment facilities are located in 21 counties, and both the number of these prisons and the number of inmates they house vary by county. Inmate populations range from less than 100 in Sawyer County to more than 4,000 in Dodge County, which is one of four counties with four prisons each.

Figure 1

2006 Prison Locations and Inmate Populations





Of the State’s 38 prisons, 8 have opened since 2001. As shown in Table 15, the number of in-state inmates has also increased, from 15,607 in 2001 to 22,386 in 2006. This increase, which is 43.4 percent, corresponds to a decline in the number of inmates housed in out-of-state contract facilities during the same period, from 4,359 in 2001 to 0 in 2006. Appendix 8 includes additional information on the State’s prisons, including inmate population data from 2001 through 2006.

Table 15

**Wisconsin Inmate Populations<sup>1</sup>**

Year	In-State	In Out-of-State Contract Prisons	Contract Beds at Local Jails and Federal Facilities	Total
2001	15,607	4,359	641	20,607
2002	17,572	3,443	460	21,475
2003	18,596	3,482	224	22,302
2004	20,615	1,890	240	22,745
2005	22,586	53	584	23,223
2006	22,386	0	533	22,919

<sup>1</sup> Inmate populations as of the first Friday of each year.

**Approximately 10.1 percent of assaults committed by inmates were referred for prosecution.**

To evaluate the effect that prisons have on prosecutors’ workloads, we analyzed data on crimes committed by inmates at Wisconsin prisons. Although there is no single source of such data, the Department of Corrections tracks both inmate-on-inmate assaults and inmate-on-staff assaults. Monthly assault reports, which prison security directors submit to Corrections, contain detailed information on each assault, including whether it was referred to the District Attorney’s office for prosecution. Data from the assault reports indicate that from 2002 through 2005, an average of 761 assaults were committed by inmates in Wisconsin prisons each year, approximately 10.1 percent of which were referred for prosecution.

To assess the effect of other crimes committed by inmates, we contacted prison officials, reviewed CCAP data, and requested additional information from district attorneys in 10 of the 21 counties that house prisons. As shown in Table 16, the number of inmate crimes referred for prosecution in those counties from 2002 through 2005 ranged from as many as 90 in Dodge County to as few as 3 in Chippewa, Crawford, and St. Croix counties.

Table 16

Inmate Crimes Referred for Prosecution in Selected Counties<sup>1</sup>

County	2002	2003	2004	2005	Total
Dodge	19	24	19	28	90
Milwaukee <sup>2</sup>	18	17	28	20	83
Grant	11	4	8	2	25
Juneau	0	8	10	3	21
Dane	6	1	4	8	19
Brown	3	7	4	4	18
Racine	4	2	4	4	14
Chippewa	0	0	0	3	3
Crawford	3	0	0	0	3
St. Croix	0	1	0	2	3
<b>Total</b>	<b>64</b>	<b>64</b>	<b>77</b>	<b>74</b>	<b>279</b>

<sup>1</sup> As reported by prison officials in counties that house prisons and were visited during audit fieldwork.

<sup>2</sup> Milwaukee Secure Detention Facility, the largest of that county's four prisons, provided data on crimes committed by inmates only since 2004.

Of the 279 inmate crimes referred for prosecution in the ten counties:

- 218, or 78.1 percent, were prosecuted;
- 52, or 18.6 percent, were reviewed but not prosecuted;
- 7, or 2.5 percent, had unknown dispositions; and
- 2, or 0.7 percent, were under review at the time of fieldwork.

As shown in Table 17, battery/assault cases accounted for 48.2 percent of the inmate crimes prosecuted from 2002 through 2005, while escapes accounted for 36.7 percent.

Table 17

**Prosecution of Inmate Crimes<sup>1</sup>**  
**By Type of Crime, 2002-2005<sup>2</sup>**

Type of Crime	Number of Cases	Percentage of Total
Battery/Assault	105	48.2%
Escape	80	36.7
Disorderly Conduct	7	3.2
Sexual Assault/Harassment	7	3.2
Attempted Murder	5	2.3
Drug Related	4	1.8
Unknown	4	1.8
Contraband/Delivery of Illegal Articles	3	1.4
Property Damage	3	1.4
<b>Total</b>	<b>218</b>	<b>100.0%</b>

<sup>1</sup> Includes only the ten counties we visited that house prisons: Brown, Chippewa, Crawford, Dane, Dodge, Grant, Juneau, Milwaukee, Racine, St. Croix.

<sup>2</sup> Denotes the year the crime was committed.

***Inmate crimes accounted for less than 1.0 percent of caseloads in counties that house prisons.***

As shown in Table 18, crimes committed by inmates accounted for less than 1.0 percent of adult felony and misdemeanor cases prosecuted from 2002 through 2005 in the ten counties we analyzed. Inmate crimes had the largest effect on prosecutorial caseload in Dodge County, but they still accounted for only 1.0 percent of total felony and misdemeanor cases in that county.

Table 18

**Inmate Crimes Prosecuted by the District Attorney’s Office  
2002 through 2005**

County	Inmate Crimes	Felony and Misdemeanor Cases	Inmate Crimes as a Percentage of Felonies and Misdemeanors
Dodge	57	5,590	1.0%
Grant	23	2,721	0.8
Juneau	21	2,884	0.7
Crawford	2	513	0.4
Milwaukee	75	68,614	0.1
Brown	14	14,305	0.1
Racine	13	18,800	0.1
Chippewa	3	5,520	0.1
St. Croix	3	6,320	<0.1
Dane	7	31,101	<0.1
<b>Total</b>	<b>218</b>	<b>156,368</b>	<b>0.1</b>

Although the number of inmate crimes prosecuted is small, major criminal events at prisons can have a disproportionate effect on prosecutors’ workloads, particularly in smaller counties. For example, one District Attorney reported that a prison riot involving six inmates had already consumed approximately 120 hours, with four of the six inmates’ cases yet to be resolved.

Most prosecutors, however, did not cite inmate cases as a primary concern, even in counties that house prisons. While there is no estimate available for the amount of time it takes to prosecute a typical crime committed by an inmate, the prosecutors we spoke with provided estimates ranging from 2 to 60 hours. By comparison, the workload formula weight for “all other felony” cases is 8.49 hours, which represents an average across a range of case types.

***Several prisons and district attorneys have developed policies on inmate crimes.***

The effect that inmate crimes have on prosecutors’ workloads may vary, in part, as a result of differences in prison policies and procedures. Most prisons do not have written policies regarding when crimes committed by inmates are referred to law enforcement. However, some prison officials indicated that they refer almost all inmate crimes to law enforcement, while others try to minimize the prison’s effect on law enforcement by handling minor offenses

internally and referring only the most severe offenses for investigation and prosecution. We also identified at least three prisons that have worked with local district attorneys' offices to determine when crimes committed by inmates should be referred for prosecution. However, the extent to which other prisons have done this is unclear.

While some inmate crimes may take longer to prosecute than the workload formula would suggest, and major criminal events at prisons can be particularly burdensome, altering the workload formula would be unlikely to have much effect, particularly given the relatively small number of such cases. However, improved communication between district attorneys and prison officials could assist in mitigating the workload effect of crimes committed by inmates. Specifically, district attorneys may want to work with the prison officials in their counties to develop agreements regarding how crimes committed by inmates will be handled and when they will be referred for prosecution.

#### Recommendation

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*We recommend district attorneys in counties that house prisons work with prison officials to develop guidelines for handling crimes committed by inmates. These guidelines could consider:*

- *when criminal activity in prisons should be handled through the prison's internal disciplinary system;*
- *whether the prison should conduct an internal investigation before referring cases to the District Attorney; and*
- *how prison officials and district attorneys will cooperate in conducting investigations.*

#### **Reimbursements from the Department of Corrections**

Under s. 16.51(7), Wis. Stats., counties can be reimbursed by the Department of Corrections for certain expenses related to actions and proceedings involving adults in state prisons and juveniles in juvenile correctional facilities. Funding for these reimbursements is appropriated under s. 20.410(1)(c), Wis. Stats. For counties to be reimbursed, two criteria must be met:

- the proceedings must commence in the county where the prison or juvenile correctional facility is located; and

- the proceedings must involve the prisoner’s status as a prisoner or the juvenile’s status as a resident of a juvenile correctional facility.

To receive reimbursement for inmate-related litigation, the county must submit a bill and supporting documentation to Corrections. Because prosecutors are state employees, counties are not reimbursed for their time. However, counties can be reimbursed for the time county support staff in district attorneys’ offices spend working on inmate litigation.

As shown in Table 19, six counties received reimbursements totaling \$854,391 from FY 2001-02 through FY 2005-06 for expenses incurred by county courts, county staff in district attorneys’ offices, law enforcement agencies, court commissioners, and clerks of courts. Dodge County received 89.0 percent of all reimbursements during this period.

Table 19

**Department of Corrections Reimbursement to Counties**

County	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	Total
Dodge	\$159,419	\$193,706	\$184,892	\$139,677	\$ 82,398	\$760,092
Columbia	18,599	5,806	9,775	6,046	6,913	47,139
Racine	–	10,958	5,046	1,037	8,131	25,172
Dane	5,921	5,166	6,525	–	–	17,612
Jackson	–	–	–	–	2,582	2,582
Chippewa	–	–	–	–	1,794	1,794
<b>Total</b>	<b>\$183,939</b>	<b>\$215,636</b>	<b>\$206,238</b>	<b>\$146,760</b>	<b>\$101,818</b>	<b>\$854,391</b>

Of the five counties that were reimbursed for inmate-related litigation in FY 2005-06, only Dodge County received any significant reimbursement for work performed by support staff in the District Attorney’s office. Dodge County received \$52,816 for its combined court and prosecution costs, which could not be separated using available data.

## Court Structures and Policies

Courts are another component of the criminal justice system that can significantly affect prosecutors' workloads. The prosecutors with whom we spoke cited both the ratio of prosecutors to courts and court structures and policies as the court-related issues most likely to affect their work.

***The ratio of prosecutors to judges ranges from 2.75 to 0.75.***

Prosecutors reported that when more of their time is required in court, they may not have enough time for research, preparation, and other activities. The ratio of prosecutors to circuit court judges shows the number of prosecutors available to cover each court. As of winter 2006, it ranged from 2.64 prosecutors per judge in Milwaukee County to 0.75 prosecutors per judge in Oconto County. Of the counties with more than one judge, 17 had fewer than 1.5 prosecutors per judge, as shown in Table 20.

Table 20

### Ratio of Prosecutors to Circuit Court Judges<sup>1</sup> 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

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

It is important to note that in some counties, not all judges hear criminal cases, so the number of prosecutors available to cover each court would be greater than the ratio of prosecutors to judges would suggest. However, some counties employ court commissioners who hold preliminary hearings and other proceedings that require prosecutors' attendance; in those counties, the ratio of prosecutors to judges may overstate the number of prosecutors available to cover each court. Prosecutors in at least three counties reported that the addition of another judge would pose a significant burden without more prosecutorial staff.

The State Prosecutors Office, in consultation with the district attorneys, could develop a minimum standard for the ratio of prosecutors per judge and incorporate that standard into the weighted caseload formula as a minimum staffing level. However, since the current methodologies for measuring both prosecutorial and judicial staffing needs are based on caseloads, establishing a minimum ratio of prosecutors to judges may not have much effect on prosecutorial staffing calculations.

Because the judges in each circuit make decisions regarding court structure and policy, the circuit courts are structured in a variety of ways. In some circuits, all judges hear all types of cases. Other circuits rotate judges among types of cases—for example, felonies, misdemeanors, civil, or children's cases—for specified periods of time. Some circuits have more specialized courts, such as those handling only domestic violence, drug, or juvenile cases. Many counties also have court commissioners who preside over certain case types or components.

***Court specialization can save prosecutors' time.***

According to several prosecutors, these differences can affect workloads. For example, one District Attorney reported that his staff of 12 prosecutors specialize, but because the circuit's eight judges and two commissioners do not, prosecutors spend additional time traveling to several courts. In circuits with more specialized courts, a prosecutor may be able to handle multiple cases during one session in the same court.

We interviewed both prosecutors and circuit court staff to identify potential ways to better manage prosecutors' workloads and increase the efficiency of the criminal justice system. Of the 16 district attorneys' offices we visited, at least 5 located in multiple-judge counties have worked with the courts on these issues. Strategies they employ include:



- arranging rotation schedules or court specialization that reduces the amount of time prosecutors spend traveling between courtrooms;
- promoting cooperation and communication between district attorneys and judges through regular meetings; and
- developing practices aimed at reducing the number of hearings, such as early identification of defendants who want to plead guilty, or holding court activities such as jury selection, pre-trial conferences, or status conferences on specific days.

***The State Prosecutors Office and the courts could facilitate sharing of best practices.***

Because of the decentralized nature of the court system and differences across counties, methods used to increase efficiency in one county may not be applicable to or have the same effect in another county. As a result, it is not possible to make a generalized recommendation regarding which court policies and structures are most effective. Instead, the most useful approach may be for the State Prosecutors Office to work with district attorneys and the state courts to facilitate the sharing of best practices.

#### **Recommendation**

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*We recommend the State Prosecutors Office work with district attorneys and the state courts to facilitate sharing of best practices for managing workloads through court structures and policies.*

## **Law Enforcement Agencies and Practices**

***The number of law enforcement officers statewide increased by 1.3 percent from 2001 through 2005.***

In 2 of the 16 counties we visited, prosecutors cited an increase in law enforcement officers and a resulting increase in referrals as a factor affecting their workloads. Statewide, the number of law enforcement officers increased 1.3 percent in the most recent period for which data were available, from an estimated 11,986 in 2001 to 12,147 in 2005. However at the county level, changes ranged from an increase of 62.2 percent in St. Croix County to a decrease of 42.4 percent in Forest County. As shown in Table 21, 20 counties experienced increases of 5.0 percent or more.

Table 21

**Law Enforcement Officers per County<sup>1</sup>**  
2001 through 2005

County	2001	2002	2003	2004	2005	Percentage Change
St. Croix	74	81	80	118	120	62.2%
Douglas	87	105	105	132	133	52.9
Pepin	15	15	20	20	22	46.7
Juneau	45	54	53	57	62	37.8
Sauk	144	157	183	183	180	25.0
Burnett	19	20	20	21	23	21.1
Iron	21	25	25	26	25	19.0
Florence	11	10	10	13	13	18.2
Taylor	26	26	26	29	29	11.5
Pierce	73	78	80	79	81	11.0
Dane	1,113	1,141	1,141	1,194	1,217	9.3
Barron	79	42	79	86	86	8.9
Buffalo	13	14	14	14	14	7.7
Washington	190	198	198	200	204	7.4
Columbia	90	91	91	95	96	6.7
Door	63	63	63	65	67	6.3
Winnebago	332	341	351	357	353	6.3
Marquette	33	37	37	37	35	6.1
Brown	408	415	415	416	431	5.6
Clark	59	58	58	60	62	5.1

<sup>1</sup> For the 20 counties with the largest percentage increases in officers from 2001 through 2005.

Source: Wisconsin Office of Justice Assistance

Differences in law enforcement practices may also affect prosecutors' workloads. For example, some law enforcement agencies may issue citations or ordinance violations for offenses that others refer to the District Attorney's office for prosecution. District attorneys may be able to better manage their workloads by working with the law enforcement agencies in their counties.

**☑ Recommendation**

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*We recommend district attorneys work with local law enforcement agencies to develop guidelines addressing which crimes will be referred for prosecution and which will be handled by law enforcement.*

### **County-Funded Support Staff for District Attorneys**

***In FY 2005-06, counties were reimbursed for 54.0 percent of their victim-witness service costs.***

While prosecutors are state employees, other staff in district attorneys' offices are county employees. Section 978.13(2)(b), Wis. Stats., requires counties to provide adequate and sufficient levels of materials, supplies, equipment, services, and facilities but does not explicitly include support staff, which may include legal secretaries, administrative assistants, investigators, and paralegals. Counties also employ victim-witness staff, who serve as liaisons between crime victims and the criminal justice system and provide crime victims and witnesses with information on court schedules and case developments. Counties are eligible to receive reimbursement from the State for up to 90.0 percent of their victim-witness service costs, although the actual reimbursement rate in FY 2005-06 was 54.0 percent because requests exceeded appropriated funding. In FY 2005-06, \$5.4 million was appropriated for these services. In addition, as was noted, the State funds 6.5 FTE office clerks in the Milwaukee County District Attorney's office with revenue from a special fee collected only for Milwaukee County court case filings.

As shown in Table 22, the ratio of county-funded support staff to prosecutors varies. Among the counties we visited, Adams and Burnett had the highest ratio of support staff to prosecutors, while Racine County had the lowest. Burnett and Crawford counties had the highest ratio of victim-witness staff to prosecutors, while Brown and Milwaukee counties had the lowest. District attorneys in three counties reported that their support staffing levels were adequate and that funding from their county boards had been sufficient. However, district attorneys in the 13 other counties reported that they could use additional support staff, but their county boards had not provided funding to add new positions.

Table 22

**Support and Victim-Witness Staff in Selected Counties<sup>1</sup>**  
Fall 2006

County	Prosecutors	Victim-Witness Staff	Victim-Witness Staff per Prosecutor	Support Staff	Support Staff per Prosecutor
Adams	1.20	1.00	0.83	3.00	2.50
Burnett	1.00	1.00	1.00	2.50	2.50
Forest	1.00	0.60	0.60	1.80	1.80
St. Croix	5.70	3.00	0.53	9.00	1.58
Dodge	4.00	1.77	0.44	6.00	1.50
Grant	2.00	1.00	0.50	3.00	1.50
Dane	31.10	14.00	0.45	41.30	1.33
Rusk	1.50	0.60	0.40	2.00	1.33
Chippewa	4.75	4.00	0.84	6.00	1.26
Pierce	2.50	1.00	0.40	3.00	1.20
Brown	13.00	4.00	0.31	13.00	1.00
Crawford	1.00	1.00	1.00	1.00	1.00
Eau Claire	8.00	3.75	0.47	8.00	1.00
Milwaukee	124.00	39.00	0.31	120.10	0.97
Juneau	2.50	1.00	0.40	2.00	0.80
Racine	18.00	6.50	0.36	10.00	0.56

<sup>1</sup> Counties visited during audit fieldwork.

Prosecutors reported that without adequate county-funded support staff, they are required to perform duties normally assigned to these staff. For example, one office reported that as a result of county staffing cuts, prosecutors have had to take over duties such as filing case documents and managing court calendars. In order to compensate, they have cut back on paperwork and provide fewer victim-witness services. A 2005 consultant's report compared the Racine County District Attorney's office to those of five other counties with similar populations and referral numbers and found that lower levels of support staff can result in delayed task completion, abandonment of certain tasks, and reassignment of support tasks to more expensive professional staff members and attorneys. Counties may wish to consider the effects of funding levels for support staff in district attorneys' offices.

## Special Prosecutors ■

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District attorneys' offices may be aided by special prosecutors, who are not regular employees but have been temporarily given the powers and duties of the District Attorney to prosecute cases. Statutes allow district attorneys to assign special prosecutors to handle cases in which their offices have conflicts of interest, and to temporarily replace persons on leave. There are two primary types of special prosecutors: paid, court-appointed special prosecutors and unpaid, "public service" prosecutors. In addition, on an informal basis, prosecutors from other counties or DOJ can assist counties by acting as special prosecutors. We identified some inconsistencies between statutes and current practice.

### **Court-Appointed Special Prosecutors**

***The courts may appoint special prosecutors to perform the duties of a District Attorney on a short-term basis.***

Paid special prosecutors are appointed by the court and paid on an hourly basis by DOA using GPR. Under s. 978.045(1r), Wis. Stats., circuit court judges may appoint special prosecutors to perform the duties of a District Attorney for a specific period of time or a specific case. Section 978.045(2), Wis. Stats., allows compensation at rates that were set for court-appointed public defenders in 1992: \$50 per hour for time in court, \$40 per hour for time outside of court, and \$25 per hour for travel time. However, judges may establish higher or lower hourly pay rates.

***In FY 2005-06, DOA expended \$237,000 to reimburse 42 special prosecutors in 27 counties.***

As shown in Table 23, DOA expended \$237,000 to reimburse 42 special prosecutors in 27 counties in FY 2005-06. Appendix 9 shows state funding for special prosecutors by county for the past five years. In FY 2005-06, only three special prosecutors, who were paid a total of \$12,957, were paid more than statutory rates, and 47.3 percent of all special prosecutor expenditures, or \$112,137, was paid to special prosecutors under appointments who earned a flat rate of \$25 per hour.

Table 23

**Court-Appointed Special Prosecutors**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
Expenditures	\$228,700	\$177,300	\$165,100	\$323,600	\$237,000
Number of Special Prosecutors	42	38	32	42	42
Number of Counties Using Special Prosecutors	33	27	28	23	27

Statutes limit the use of special prosecutors to temporary situations in which existing prosecutorial staff are unable to work for reasons of absence, illness, or a conflict of interest. Specifically, under s. 978.045(1r), Wis. Stats., “[t]he judge may appoint an attorney as a special prosecutor if any of the following conditions exists:

- There is no district attorney for the county.
- The district attorney is absent from the county.
- The district attorney has acted as the attorney for a party accused in relation to the matter of which the accused stands charged and for which the accused is to be tried.
- The district attorney is near of kin to the party to be tried on a criminal charge.

- The district attorney is physically unable to attend to his or her duties or has a mental incapacity that impairs his or her ability to substantially perform his or her duties.
- The district attorney is serving in the U.S. armed forces.
- The district attorney stands charged with a crime and the governor has not acted [to appoint a replacement district attorney] under s. 17.11.
- The district attorney determines that a conflict of interest exists regarding the district attorney or the district attorney staff.”

***Special prosecutors have been used in circumstances other than those specified in statute.***

Seven of the eight statutory conditions used to justify a special prosecutor appointment refer only to the District Attorney, while the conflict of interest condition also refers to the District Attorney’s staff. However, special prosecutor appointment letters submitted to DOA appear to indicate that special prosecutors were also used when deputy or assistant district attorneys were unavailable. We were unable to quantify the extent to which that occurs because the appointment letters did not always specify which prosecutor’s absence necessitated the appointment of a special prosecutor. A strict reading of statutory language would appear to disallow this practice, although some believe that is not what the Legislature intended.

We found that many appointment letters submitted to DOA do not specify the statutory reasons for appointments. In fact, the form developed to document special prosecutor appointments contains an “other reasons” category, which allows courts to cite statutes other than s. 978.045(1r), Wis. Stats., to support appointments. As shown in Table 24, \$93,638 of special prosecutor payments in FY 2004-05, or 28.9 percent of the total for that fiscal year, was made to ten persons appointed for unspecified reasons. In FY 2005-06, \$53,380, which was 22.5 percent of total special prosecutor payments, was paid to eight persons appointed for unspecified reasons. DOA reviews the completeness and mathematical accuracy of special prosecutor reimbursement requests, but DOA officials believe the Legislature intended that circuit court judges act as the sole determiner of the necessity of appointments and the validity of reimbursement requests.

Table 24

## Statutory Reason Cited on Special Prosecutor Appointment Forms

Reason for Appointment	FY 2004-05 Expenditures	FY 2005-06 Expenditures
No District Attorney for the County	\$ 215	\$ 0
District Attorney Is Absent	60,190	51,530
District Attorney Is Physically Unable to Attend Duties or Has a Mental Incapacity	88,118	91,044
District Attorney Is in the Armed Services	32,375	16,849
District Attorney Determines There Is a Conflict of Interest	43,514	24,208
No Statutory Reason Cited	93,638	53,380
Cites s. 978.04, Wis. Stats., Creating Assistant District Attorney Positions	5,563	0
	<b>\$323,613</b>	<b>\$237,011</b>

Under s. 78.045(1g), Wis. Stats., before a court may appoint any paid special prosecutor who is expected to provide more than six hours of work, appointing courts or district attorneys must request the assistance of other district attorneys' offices or DOJ. Statutes require that if such aid cannot be obtained, DOA must be informed using a form it provides. However, DOA has not created its own form, and the appointment forms submitted to DOA by the courts do not specifically stipulate whether such aid has been requested, although the form's instructions state that DOA has indicated that the use of the form complies with the notice requirement.

***Special prosecutors have been used to compensate for staffing shortages.***

Finally, based on interviews with state and local officials, we found that special prosecutors are sometimes appointed to augment existing staff resources, rather than to prosecute a particular case or cover a short-term absence. For example:

- A Dane County special prosecutor appointed to represent the District Attorney's office at initial criminal case hearings was paid \$6,500 in FY 2004-05 and \$12,000 in FY 2005-06 in order to allow staff attorneys to concentrate on more complicated court hearings.



- In January 2007, two persons were provided six-month special prosecutor appointments in Dane County with the expectation that they would be hired as assistant district attorneys in June and July 2007. This was done to maintain staffing levels to compensate for the retirement of two other prosecutors who had accumulated leave balances that prevented their positions from being filled until mid-2007.
- A St. Croix County assistant district attorney employed on a 0.20 FTE basis also received ongoing special prosecutor appointments that provided \$30,296 of compensation in FY 2004-05, and \$27,845 in FY 2005-06. Another St. Croix County assistant district attorney, who held a 0.5 FTE appointment, was also appointed as a special prosecutor and provided with \$21,609 in compensation from August 2004 through February 2005 under his special prosecutor appointment.
- In February 2007, a Winnebago County judge appointed a recently retired assistant district attorney for a three-month period to review a backlog of misdemeanor cases in the Winnebago County District Attorney's office.

The current workload formula estimates that these three counties are understaffed, and the two we visited—Dane and St. Croix—expressed concerns with their current staffing levels. However, the same is true of most counties: 14 of 16 district attorneys we interviewed indicated that their current attorney staffing levels were inadequate, and the current formula estimates that 63 counties are understaffed, 34 of them by at least one full-time position. If additional district attorneys determine that special prosecutor appointments are needed to ensure timely case processing, and circuit court judges agree to sign appropriate appointment forms, state special prosecutor expenditures could substantially increase.

#### Recommendation

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*We recommend the Legislature consider statutory changes to clarify the allowable use of special prosecutor appointments.*

Changes to statute that would better align the law with current practice could include:

- expanding all special prosecutor appointment criteria to explicitly consider the availability of assistant, deputy, and elected district attorneys;
- eliminating requirements that district attorneys or courts stipulate that attempts have been made to obtain staff aid from other counties and DOJ before requesting paid special prosecutor appointments; and
- clarifying whether special prosecutor appointments may be made to augment existing staff for general caseload work if workload conditions mandate such actions.

### **Public Service Prosecutors**

Under s. 978.045(3), Wis. Stats., a District Attorney may appoint a “public service” special prosecutor to serve without state compensation. A private attorney with a part-time public service appointment may continue to practice private law and, if appointed as a full-time special prosecutor, may continue to receive private law firm compensation for up to four months. During his or her public service appointment, the attorney must not participate or consult in any cases that may pose a conflict of interest with prosecutorial duties. Records maintained by the State Prosecutors Office indicate that 58 public service special prosecutors were appointed from FY 2001-02 through FY 2005-06. However, district attorneys are not required to submit documentation of public service special prosecutors, so these records may not be complete.

### **Assistance from Other State Prosecutors**

Several district attorneys reported their offices either lend or receive assistance from prosecutors in other counties when, for example, there is a conflict of interest or a need for specialized legal knowledge, such as prosecution of financial crimes. However, some district attorneys indicated that increasing workload demands in their own and neighboring counties make such arrangements infeasible, and some also noted that travel time adds to the difficulty of taking on these extra responsibilities. District attorneys are not required to submit documentation of these arrangements, although records that were submitted to the State Prosecutors Office indicate

that from FY 2001-02 through FY 2005-06, prosecutors acted as special prosecutors for other counties 775 times, usually prosecuting a specific case due to a conflict of interest. The number of these arrangements decreased from 213 in FY 2001-02 to 128 in FY 2005-06.

***DOJ attorneys may also act as special prosecutors.***

District attorneys can also request attorneys from DOJ's State Criminal Litigation Unit to serve as special prosecutors. DOJ does not receive reimbursement from DOA for the cost of these services. Although DOJ does not maintain records on the number of special prosecutor requests it receives or the number of cases it handles, its managers estimate that they served as special prosecutors for 10 cases in 2005 and 25 cases in 2006. There are no written policies on when such requests are fulfilled, but DOJ managers indicate they usually accept more complex cases such as charges stemming from DOJ criminal investigation work, major criminal complaints against government officials, or financial crimes such as securities fraud, in which some district attorneys have limited experience. For example, in 2006, DOJ provided special prosecutor services to:

- prosecute the operators of a four-county chain of tobacco stores for failing to pay sales taxes;
- prosecute the City of Seymour deputy treasurer for embezzling public funds;
- prosecute a Manitowoc County stockbroker for securities fraud;
- prosecute a City of Minocqua police officer for possession of child pornography; and
- assist the Dane County District Attorney in the prosecution of a former legislator and a legislative staff member for misconduct in office.

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## Issues for Legislative Consideration ■

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While improvements to the weighted caseload formula would make it a more useful tool for evaluating staffing needs, the Legislature ultimately decides prosecutorial staffing levels and position allocations. Further, these decisions must be made on an ongoing basis, and our recommendations for improving the weighted caseload formula will take time to implement. We present several options for the Legislature to consider in its deliberations.

### **Options for Prosecutorial Staffing**

First, the Legislature could consider whether current staffing levels and the consequences of understaffing justify adding new prosecutor positions. As an alternative, given limited resources and other funding priorities, the Legislature could consider ways to lessen prosecutors' workloads. For example, when the Legislature considers future changes to the State's criminal, juvenile, or children's codes, it could evaluate estimates of the effects those changes would have on prosecutorial workloads and staffing needs.

Some argue that the Legislature could consider lessening prosecutors' workloads by reducing the number of offenses treated as state criminal offenses; those offenses could then be processed as civil infractions punishable by fines. For example, at least eight other states have studied or enacted laws to decriminalize or reduce penalties for certain traffic violations, such as driving without a proper license, and legislation introduced in Washington State

would decriminalize misdemeanors punishable only by fines, including some public nuisance violations. Although prosecutors currently have considerable discretion over which cases to prosecute and what charges to file, they face some pressure to be consistent with legislative intent in order to meet public expectations.

The Legislature could also consider whether positions should be reallocated across counties to increase equity in staffing levels. If the weighted caseload formula is updated to more accurately reflect current workloads and staffing needs, it could reasonably be used to guide decisions on where positions should be added or eliminated. Using the formula to reallocate resources when most counties are understaffed may be more problematic, however, because the formula cannot fully account for all variations in county workloads or management practices, and moving positions among understaffed counties could cause disruption that would outweigh the benefits of increased equity.

Finally, the Legislature could consider methods to more effectively address the staffing needs of smaller counties or counties experiencing an unexpected variation in workload. In the past, staffing levels have sometimes been adjusted in increments of less than 1.0 FTE position. Prosecutors with whom we spoke reported that part-time positions can be difficult to fill; for example, one District Attorney said that it was difficult to fill a 0.25 FTE position, which would pay an attorney for ten hours per week. Prosecutors also reported that the allocation of work is often cumbersome for prosecutors who work on a part-time basis, in part because court schedules do not take into account whether the prosecutor is available. Unless part-time positions are requested by the District Attorney's office—for example, when neighboring counties are able to share a full-time position—allocation of full-time positions whenever possible would provide more stability in staffing.

In addition, small counties are more likely to have their workloads disrupted by a small number of unusually serious or complex crimes or an unexpected spike in cases. This may be particularly problematic for crimes with which prosecutors lack experience, such as complex financial crimes. Further, a backlog of less serious cases may result if a major crime consumes most of a prosecutor's time, and it is difficult for a weighted caseload formula—which is based on prior caseloads—to accurately account for situations that do not regularly occur.

***“Floating” assistant district attorney positions could assist counties with variable workloads.***

The creation of a pool of short-term, “floating” assistant district attorney positions would be one option for addressing staffing needs in counties where state resources do not currently permit adding positions, as well as in counties where unusual or

unexpected cases create irregular increases in workload. A similar practice is currently used by DOA's Division of Hearings and Appeals, which has a pool of 30 administrative law judges who are based in Madison, Milwaukee, and Eau Claire but travel statewide to conduct hearings on proceedings involving disputed actions by state agencies. Floating assistant district attorney positions could be regional or statewide and could be assigned to counties on an as-needed basis by the State Prosecutors Office or by a designated board of prosecutors, if such an entity were created. The Legislative Council's Special Committee on District Attorney Funding and Administration discussed creating a board of prosecutors, although a formal proposal was not introduced. A similar proposal was included in the Governor's 2003-05 biennial budget proposal, which would have created 15 "assignable" prosecutor positions that would have been supervised by a designated board of prosecutors. The Governor's proposals were not approved by the Legislature.

An alternative to creating floating prosecutor positions would be to expand the use of existing alternative resources. As noted, current law permits district attorneys to use court-appointed special prosecutors or assistance from DOJ in certain situations. However, neither of these options is designed to address staffing shortages. DOJ typically assists on cases involving public officials or unusually complex crimes, and decisions on when to assist district attorneys are made at its discretion, without established guidelines. Statutes governing court-appointed special prosecutors limit their use to statutorily defined situations in which the District Attorney is unavailable or a conflict of interest exists. Although some district attorneys' offices have used them to manage staffing shortfalls, it is unclear whether this use is consistent with statutes.

The Legislature could direct DOJ to provide staff to assist district attorneys when workloads exceed staffing levels, or it could broaden the allowable uses of court-appointed special prosecutors. It should be noted that either of these options would require additional resources and may not provide as much stability or predictability as floating positions specifically dedicated to district attorneys' offices.

#### **Recommendation**

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*We recommend the Department of Administration report to the Joint Legislative Audit Committee by March 14, 2008, on the feasibility of implementing floating assistant district attorney positions or expanding the use of existing alternative resources to better assist counties facing short-term or unexpected workload increases.*





Appendix 1

**Full-Time Equivalent Prosecutor Positions**

As of July 1

County	2002	2003	2004	2005	2006
Adams	1.20	1.20	1.20	1.20	1.20
Ashland	1.75	1.75	1.75	1.75	1.75
Barron	3.00	3.00	3.00	3.00	3.00
Bayfield	1.00	1.00	1.00	1.00	1.00
Brown	14.50	14.50	14.50	14.00	13.00
Buffalo	1.00	1.00	1.00	1.00	1.00
Burnett	1.00	1.00	1.00	1.00	1.00
Calumet	2.00	2.00	2.00	2.00	2.00
Chippewa	4.75	4.75	4.75	4.75	4.75
Clark	2.00	2.00	2.00	2.00	2.00
Columbia	5.00	5.00	4.50	4.50	4.50
Crawford	1.00	1.00	1.00	1.00	1.00
Dane	33.85	34.35	31.35	31.10	31.10
Dodge	4.00	4.00	4.00	4.00	4.00
Door	2.00	2.00	2.00	2.00	2.00
Douglas	3.50	3.50	3.50	3.50	3.50
Dunn	3.50	3.50	3.00	3.00	3.00
Eau Claire	8.00	8.00	8.00	8.00	8.00
Florence	0.50	0.50	0.50	0.50	0.50
Fond du Lac	5.00	5.00	5.00	5.00	5.00
Forest	1.00	1.00	1.00	1.00	1.00
Grant	2.00	2.00	2.00	2.00	2.00
Green	2.00	2.00	2.00	2.00	2.00
Green Lake	1.50	1.50	1.50	1.50	1.50
Iowa	1.75	1.75	1.75	1.75	1.75
Iron	1.00	1.00	1.00	1.00	1.00
Jackson	2.00	2.00	2.00	2.00	2.00
Jefferson	6.00	5.30	5.30	5.30	5.30
Juneau	2.50	2.50	2.50	2.50	2.50
Kenosha	13.00	15.00	15.00	15.00	15.00
Kewaunee	1.50	1.50	1.50	1.50	1.50
La Crosse	8.00	8.00	8.00	8.00	8.00
Lafayette	1.00	1.00	1.00	1.00	1.00
Langlade	1.50	1.50	1.50	1.50	1.50

County	2002	2003	2004	2005	2006
Lincoln	2.00	2.00	2.00	2.00	2.00
Manitowoc	5.75	5.50	5.00	5.00	5.00
Marathon	10.00	10.00	10.50	10.00	10.00
Marinette	2.50	2.50	2.50	2.50	2.50
Marquette	1.20	1.20	1.00	1.00	1.00
Milwaukee	128.50	129.00	123.50	125.00	124.00
Monroe	3.00	3.00	3.00	3.00	3.00
Oconto	1.50	1.50	1.50	1.50	1.50
Oneida	2.50	2.50	2.50	2.50	2.50
Outagamie	12.50	13.50	14.10	10.00	10.50
Ozaukee	3.00	3.00	3.00	3.00	3.00
Pepin	0.80	0.80	0.80	0.80	0.80
Pierce	3.00	3.00	2.50	2.50	2.50
Polk	2.00	2.00	2.00	2.00	2.00
Portage	4.00	4.00	4.00	4.00	4.00
Price	1.00	1.00	1.00	1.00	1.00
Racine	19.00	19.00	18.00	18.00	18.00
Richland	1.80	1.80	1.80	1.80	1.80
Rock	14.50	14.50	14.50	14.50	13.50
Rusk	1.50	1.50	1.50	1.50	1.50
Sauk	5.00	5.00	4.50	4.50	4.50
Sawyer	2.00	2.00	2.00	2.00	2.00
Shawano/Menominee	3.00	3.00	3.00	3.00	3.00
Sheboygan	7.50	7.50	7.50	7.50	7.50
St. Croix	6.00	7.00	5.70	5.70	5.70
Taylor	1.00	1.00	1.00	1.00	1.00
Trempealeau	1.60	1.60	1.60	1.60	1.60
Vernon	2.40	2.40	1.90	1.90	1.90
Vilas	2.00	2.00	2.00	2.00	2.00
Walworth	5.00	5.00	5.00	5.00	5.00
Washburn	1.50	1.50	1.50	1.50	1.50
Washington	5.00	5.00	5.00	5.00	5.00
Waukesha	18.50	18.50	15.50	15.50	15.50
Waupaca	4.00	4.00	3.50	3.50	3.50
Waushara	1.50	1.50	1.50	1.50	1.50
Winnebago	11.00	10.00	10.50	10.00	10.00
Wood	4.00	4.00	4.00	4.00	4.00
<b>Total</b>	<b>444.35</b>	<b>447.40</b>	<b>431.50</b>	<b>427.15</b>	<b>424.65</b>

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
Barron	3.00		3.00
Bayfield	1.00		1.00
Brown <sup>1</sup>	13.00		13.00
Buffalo	1.00		1.00
Burnett <sup>2</sup>	1.00		1.00
Calumet	2.00		2.00
Chippewa	4.75		4.75
Clark	2.00		2.00
Columbia	4.50		4.50
Crawford	1.00		1.00
Dane	26.85	4.25	31.10
Dodge	4.00		4.00
Door	2.00		2.00
Douglas	3.50		3.50
Dunn	3.00		3.00
Eau Claire	8.00		8.00
Florence	0.50		0.50
Fond du Lac	5.00		5.00
Forest	1.00		1.00
Grant	2.00		2.00
Green	2.00		2.00
Green Lake	1.50		1.50
Iowa	1.75		1.75
Iron	1.00		1.00
Jackson	2.00		2.00
Jefferson	5.30		5.30
Juneau	2.50		2.50
Kenosha	13.00	2.00	15.00

County	GPR-Funded FTE Positions	Program Revenue- Funded FTE Positions	Total FTE Positions
Kewaunee	1.50		1.50
La Crosse	8.00		8.00
Lafayette	1.00		1.00
Langlade	1.50		1.50
Lincoln	2.00		2.00
Manitowoc	5.00		5.00
Marathon	8.50	1.50	10.00
Marinette	2.50		2.50
Marquette	1.00		1.00
Milwaukee <sup>3</sup>	87.00	37.00	124.00
Monroe	3.00		3.00
Oconto	1.50		1.50
Oneida	2.50		2.50
Outagamie	9.00	1.50	10.50
Ozaukee	3.00		3.00
Pepin	0.80		0.80
Pierce <sup>4</sup>	2.50		2.50
Polk <sup>4</sup>	2.00		2.00
Portage	4.00		4.00
Price	1.00		1.00
Racine	18.00		18.00
Richland	1.80		1.80
Rock	13.50		13.50
Rusk	1.50		1.50
Sauk	4.50		4.50
Sawyer	2.00		2.00
Shawano/Menominee	3.00		3.00
Sheboygan	7.50		7.50
St. Croix <sup>4</sup>	4.70	1.00	5.70
Taylor	1.00		1.00
Trempealeau	1.60		1.60
Vernon	1.90		1.90
Vilas	2.00		2.00
Walworth	5.00		5.00
Washburn <sup>2</sup>	1.50		1.50

County	GPR-Funded FTE Positions	Program Revenue- Funded FTE Positions	Total FTE Positions
Washington	5.00		5.00
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
<b>Total</b>	<b>376.40</b>	<b>48.25</b>	<b>424.65</b>

<sup>1</sup> 1.0 FTE program revenue-funded position was excluded because funding ended; the weighted caseload formula allocation also excludes another 1.0 program revenue-funded position because it provides statewide technical assistance in sexual predator prosecution.

<sup>2</sup> Weighted caseload formula allocation splits 0.5 GPR-funded multi-jurisdictional drug prosecution position in Washburn County into 0.25 FTE each in Burnett and Washburn counties.

<sup>3</sup> 1.0 FTE program revenue-funded position excluded because funding ended; the weighted caseload formula allocation also excludes 1.0 program revenue-funded position that provides statewide technical assistance in DNA evidence prosecution.

<sup>4</sup> Weighted caseload formula allocation splits 1.0 program revenue-funded multi-jurisdictional drug prosecution position in St. Croix County into 0.5 FTE in St. Croix County, 0.25 FTE in Pierce County, and 0.25 FTE in Polk County.



## Appendix 3

**Caseload by County<sup>1</sup>**  
2005

County	Felonies	Misdemeanors	Criminal Traffic	Juvenile Delinquency	Child Protection <sup>2</sup>	Other <sup>3</sup>	Total
Adams	114	415	209	39	0	0	777
Ashland	157	400	101	51	16	0	725
Barron	386	630	344	46	120	1	1,527
Bayfield	95	318	98	31	9	0	551
Brown	1,256	2,488	2,416	394	0	16	6,570
Buffalo	65	176	80	20	0	0	341
Burnett	181	424	162	27	14	0	808
Calumet	106	346	250	71	56	0	829
Chippewa	427	1,021	326	142	0	0	1,916
Clark	184	501	192	60	0	0	937
Columbia	473	927	466	118	37	1	2,022
Crawford	50	79	96	9	30	0	264
Dane	2,788	4,832	2,817	1,177	512	5	12,131
Dodge	395	875	613	125	0	2	2,010
Door	161	349	209	78	16	0	813
Douglas	369	612	303	113	13	2	1,412
Dunn	322	695	279	116	108	1	1,521
Eau Claire	992	2,211	708	159	0	0	4,070
Florence	30	94	18	4	6	0	152
Fond du Lac	478	1,090	984	182	209	0	2,943
Forest	122	160	94	38	0	0	414
Grant	233	466	220	93	50	0	1,062

County	Felonies	Misdemeanors	Criminal Traffic	Juvenile Delinquency	Child Protection <sup>2</sup>	Other <sup>3</sup>	Total
Green	178	374	220	34	44	0	850
Green Lake	135	368	174	58	23	0	758
Iowa	126	413	140	31	51	0	761
Iron	63	79	31	5	8	0	186
Jackson	168	266	223	40	24	0	721
Jefferson	531	972	782	141	78	0	2,504
Juneau	286	472	200	27	36	5	1,026
Kenosha	1,348	2,712	1,169	889	205	3	6,326
Kewaunee	89	255	106	31	0	0	481
La Crosse	881	2,095	1,040	184	0	1	4,201
Lafayette	73	136	59	29	0	0	297
Langlade	192	279	112	60	53	0	696
Lincoln	296	547	230	74	38	0	1,185
Manitowoc	414	830	628	262	0	0	2,134
Marathon	1,044	2,085	758	303	0	2	4,192
Marinette	248	364	301	62	21	0	996
Marquette	140	264	111	23	0	0	538
Milwaukee	6,932	10,042	11,131	2,579	4,105	32	34,821
Monroe	530	1,101	458	107	0	0	2,196
Oconto	146	360	173	97	0	0	776
Oneida	235	604	229	67	0	0	1,135
Outagamie	840	2,281	1,491	461	205	5	5,283
Ozaukee	278	734	573	112	0	0	1,697
Pepin	37	168	47	18	0	0	270
Pierce	165	290	176	42	37	0	710
Polk	325	404	210	93	36	0	1,068
Price	76	194	127	16	0	0	413



County	Felonies	Misdemeanors	Criminal Traffic	Juvenile Delinquency	Child Protection <sup>2</sup>	Other <sup>3</sup>	Total
Racine	1,607	3,857	1,919	707	312	3	8,405
Richland	122	205	87	21	53	0	488
Rock	1,491	2,710	1,816	885	0	2	6,904
Rusk	82	199	113	42	14	0	450
Sauk	472	1,350	595	101	0	0	2,518
Sawyer	155	654	185	39	14	1	1,048
Shawano/Menominee	329	959	433	148	18	0	1,887
Sheboygan	689	1,818	1,246	392	129	0	4,274
St. Croix	570	1,249	392	178	111	0	2,500
Taylor	98	144	74	28	0	1	345
Trempealeau	141	443	202	34	35	0	855
Vernon	70	146	104	34	25	0	379
Vilas	128	358	139	74	0	2	701
Walworth	659	710	1,061	120	0	0	2,550
Washburn	119	291	123	11	29	0	573
Washington	466	1,027	892	277	88	1	2,751
Waukesha	1,396	3,238	2,657	306	0	1	7,598
Waupaca	248	558	420	130	69	0	1,425
Waushara	76	447	155	38	0	1	717
Winnebago	809	2,173	1,562	756	0	2	5,302
Wood	512	1,184	637	106	95	0	2,534
<b>Total</b>	<b>35,399</b>	<b>71,518</b>	<b>46,696</b>	<b>13,365</b>	<b>7,152</b>	<b>90</b>	<b>174,220</b>

<sup>1</sup> Includes only prosecuted cases. Excludes Portage County, which does not use CCAP for criminal cases.

<sup>2</sup> Child protection cases include Children in Need of Protection or Services (CHIPS), CHIPS extensions, guardianships, and terminations of parental rights.

<sup>3</sup> Other cases include writs of habeas corpus, inquests, and sexual predator cases.



Appendix 4

**Weighted Caseload Formula**

The weighted caseload formula is intended to determine 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. This calculation involves several steps.

1. The first step of the caseload formula is to determine a standard number of hours available for each individual prosecutor to prosecute cases.
  - A full-time workload for every prosecutor is 2,088 hours per year.
  - Time required for activities that are not counted as part of a specific case or not counted on a per case basis, such as investigative work with law enforcement or reviewing referrals, is subtracted from annual work hours.
  - This results in 1,227 hours per prosecutor to prosecute individual cases.

The following table shows the time subtracted from annual work hours for certain categories of prosecutorial work.

	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	35
Attending post-conviction hearings	25
Prosecuting traffic and forfeiture cases	100
Prosecuting criminal case appeals	50
Prosecuting probation revocation and other cases	32
<b>Total</b>	<b>861</b>
<b>Annual work hours (2,088) minus non-case specific hours (861)</b>	<b>1,227</b>

2. Next, the formula calculates the number of hours needed to prosecute all cases in each county.
  - Each type of case is assigned a weight, which represents the average hours needed to prosecute a single case of that type. The weights are based on the results of a 1994 time study and recommendations made by the Wisconsin District Attorneys Association.
  - The State Prosecutors Office obtains the total number of cases prosecuted in each District Attorney's office during the previous calendar year. Case counts are obtained from the Wisconsin Office of Court Operations' Consolidated Court Automation Programs (CCAP) database, each District Attorney's office, and the Department of Justice.
  - The case weight for each case type is multiplied by the annual average number of cases prosecuted of that type. Annual case counts from the previous three years are used to get an annual caseload average.

The following table shows the case weights and data sources for each type of case.

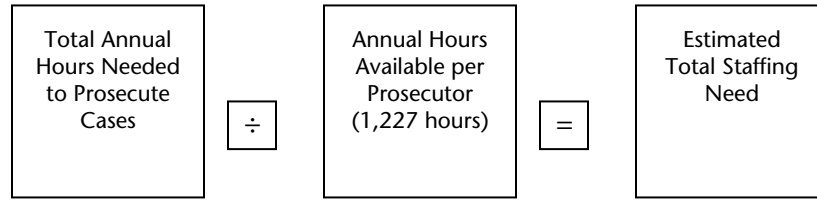
Case Type	Case Weight (in hours)	Source of Case Weight	Source of Annual Caseload Numbers
Class A Homicide s. 940.01	100.00	WDAA <sup>3</sup>	CCAP
Class B Homicide s. 940.02	100.00	WDAA	CCAP
All Other Homicides	50.00	WDAA	CCAP
2nd and 3rd Strike Non-Homicides <sup>1</sup>	50.00	WDAA	DA Offices
Security Fraud	30.00	WDAA	DA Offices
All Other Felonies	8.49	1994 time study	CCAP
Misdemeanors	2.17	1994 time study	CCAP
Criminal Traffic	1.68	1994 time study	CCAP
Juvenile Delinquency	3.32	1994 time study	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 <sup>2</sup>	100.00	WDAA	DOJ

<sup>1</sup> Cases involving a person considered a habitual offender, who may receive additional prison time. The person is considered a habitual offender under s. 939.62(2m)(b), Wis. Stats., if he or she has previously been convicted of two or more serious felonies or of at least one serious child sex offense.

<sup>2</sup> Court hearings to consider original commitments of sexually violent persons, as defined in s. 980, Wis. Stats. Hearings for periodic re-examinations and supervised release petitions are not included in case counts.

<sup>3</sup> Wisconsin District Attorneys Association

3. Finally, 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 1,227 hours available per full-time prosecutor.



The estimated total staffing need can then be compared to existing staffing levels.

- The difference between the existing staffing level and staffing need shows how many FTE attorneys should be added or subtracted from an office.
- To compare staffing need among all counties, as shown in Appendix 5, the existing staffing level can be calculated as a percentage of estimated staffing need.

*Example:*

The following example demonstrates how the weighted caseload formula estimates staffing needs for a District Attorney’s office that currently has 3.0 FTE prosecutor positions.

Case Type	Average Annual Number of Cases	Case Weight (in hours)	Annual Hours Needed to Prosecute Cases
Class A Homicide s. 940.01	0.67	100.00	67.00
Class B Homicide s. 940.02	0.00	100.00	0.00
All Other Homicides	1.33	50.00	66.50
2nd and 3rd Strike Non-Homicides	0.00	50.00	0.00
Security Fraud	0.00	30.00	0.00
All Other Felonies	293.00	8.49	2,487.57
Misdemeanors	922.67	2.17	2,002.19
Criminal Traffic	429.00	1.68	720.72
Juvenile Delinquency	175.33	3.32	582.10
CHIPS	19.00	2.61	49.59
CHIPS Extensions	2.67	3.50	9.35
Guardianships	0.00	3.50	0.00
TPR	0.33	35.00	11.55
Writs of Habeas Corpus	0.33	2.00	0.66
Inquests	0.00	64.00	0.00
Sexual Predator	0.00	100.00	0.00
<b>Total</b>			<b>5,997.23</b>
Total Annual Hours Needed to Prosecute Cases			5,997.23
Annual Hours Available Per Prosecutor			1,227.00
<b>Estimated Total Staffing Need</b>			<b>4.89</b>
Estimated Total Staffing Need			4.89
Current Staffing Level			3.00
<b>Additional Positions Needed</b>			<b>1.89</b>
<b>Existing Staffing Level as a Percentage of Estimated Total Staffing Need</b>			<b>61.35%</b>





Appendix 5

**Staffing Need under Current  
Weighted Caseload Formula**

August 2006

County	Current Staffing <sup>1</sup>	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
Buffalo	1.00	0.02	1.02	98.0
Burnett	1.25	1.54	2.79	44.8
Calumet	2.00	0.21	2.21	90.5
Chippewa	4.75	0.77	5.52	86.1
Clark	2.00	0.56	2.56	78.1
Columbia	4.50	1.91	6.41	70.2
Crawford	1.00	-0.25	0.75	133.3
Dane	31.10	8.21	39.31	79.1
Dodge	4.00	2.03	6.03	66.3
Door	2.00	0.35	2.35	85.1
Douglas	3.50	0.97	4.47	78.3
Dunn	3.00	1.46	4.46	67.3
Eau Claire	8.00	4.14	12.14	65.9
Florence	0.50	0.05	0.55	90.9
Fond du Lac	5.00	3.67	8.67	57.7
Forest	1.00	0.65	1.65	60.6
Grant	2.00	1.23	3.23	61.9
Green	2.00	0.77	2.77	72.2
Green Lake	1.50	0.67	2.17	69.1
Iowa	1.75	0.45	2.20	79.5
Iron	1.00	-0.28	0.72	138.9
Jackson	2.00	0.16	2.16	92.6
Jefferson	5.30	1.77	7.07	75.0
Juneau	2.50	0.71	3.21	77.9
Kenosha	15.00	4.45	19.45	77.1
Kewaunee	1.50	-0.31	1.19	126.1
La Crosse	8.00	3.39	11.39	70.2
Lafayette	1.00	-0.11	0.89	112.4
Langlade	1.50	0.64	2.14	70.1
Lincoln	2.00	1.09	3.09	64.7

County	Current Staffing <sup>1</sup>	Additional Positions Needed	Estimated Total Staffing	Current Staffing Level as a Percentage of Estimated Total Staffing Need
Manitowoc	5.00	1.32	6.32	79.1%
Marathon	10.00	3.05	13.05	76.6
Marinette	2.50	0.46	2.96	84.5
Marquette	1.00	0.62	1.62	61.7
Milwaukee	121.00	3.84	124.84	96.9
Monroe	3.00	2.59	5.59	53.7
Oconto	1.50	0.87	2.37	63.3
Oneida	2.50	1.02	3.52	71.0
Outagamie	10.50	3.92	14.42	72.8
Ozaukee	3.00	1.34	4.34	69.1
Pepin	0.80	-0.25	0.55	145.5
Pierce	2.75	-0.51	2.24	122.8
Polk	2.25	1.22	3.47	64.8
Portage	4.00	0.72	4.72	84.7
Price	1.00	0.17	1.17	85.5
Racine	18.00	7.90	25.90	69.5
Richland	1.80	0.12	1.92	93.8
Rock	13.50	6.74	20.24	66.7
Rusk	1.50	-0.08	1.42	105.6
Sauk	4.50	2.21	6.71	67.1
Sawyer	2.00	1.10	3.10	64.5
Shawano/Menominee	3.00	1.89	4.89	61.3
Sheboygan	7.50	4.52	12.02	62.4
St. Croix	5.20	2.07	7.27	71.5
Taylor	1.00	0.27	1.27	78.7
Trempealeau	1.60	0.60	2.20	72.7
Vernon	1.90	-0.04	1.86	102.2
Vilas	2.00	0.10	2.10	95.2
Walworth	5.00	2.38	7.38	67.8
Washburn	1.25	0.65	1.90	65.8
Washington	5.00	2.21	7.21	69.3
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
<b>Total</b>	<b>420.65</b>	<b>117.33</b>	<b>537.98</b>	<b>78.2%</b>

<sup>1</sup> Based on State Prosecutors Office records as of August 17, 2006; includes certain adjustments made by the State Prosecutors Office to reflect positions serving multiple counties.

Appendix 6

**Positions Eliminated as a Result of 2003 Wisconsin Act 33**

County	Positions Recommended for Vacancy by the Wisconsin District Attorneys Association <sup>1</sup>	Positions Eliminated by DOA Action in November 2003
Dunn	0.50	0.50
Manitowoc	0.50	0.50
Marquette	0.20	0.20
Milwaukee	5.50	5.50
Pierce	0.50	0.50
Racine	1.00	1.00
Rock	1.00	1.00
Sauk	–	0.50
St. Croix	1.00	1.30
Vernon	0.50	0.50
Waukesha	3.00	3.00
Waupaca	0.50	0.50
<b>Total<sup>2</sup></b>	<b>14.20</b>	<b>15.00</b>

<sup>1</sup> The WDAA committee recommended that the positions be kept vacant, rather than eliminated. DOA eliminated the positions.

<sup>2</sup> The WDAA committee was unable to reach consensus on the full 15.0 FTE position eliminations required by 2003 Wisconsin Act 33. DOA accepted its recommendations for 14.2 FTE positions and eliminated an additional 0.8 FTE positions in St. Croix and Sauk counties.



## Appendix 7

## Felony Caseload by County<sup>1</sup>

2005

County	Homicide <sup>2</sup>	Battery <sup>3</sup>	Sexual Assault <sup>4</sup>	Child Abuse <sup>5</sup>	Stealing <sup>6</sup>	Drug Crimes <sup>7</sup>	Fraud <sup>8</sup>	Bail Jumping <sup>9</sup>	Felony Traffic <sup>10</sup>	Other <sup>11</sup>	Total
Adams	1	3	4	3	29	15	8	14	18	19	114
Ashland	1	14	13	14	25	28	4	26	6	26	157
Barron	4	18	12	23	71	108	25	60	20	45	386
Bayfield	1	12	5	1	17	25	7	7	6	14	95
Brown	11	87	74	52	206	318	86	137	95	190	1,256
Buffalo	0	5	4	5	18	19	5	0	5	4	65
Burnett	2	8	2	5	20	50	7	34	26	27	181
Calumet	0	6	9	2	26	21	6	12	8	16	106
Chippewa	2	20	24	16	45	100	35	77	34	74	427
Clark	0	11	13	10	30	21	9	24	25	41	184
Columbia	2	38	26	27	90	118	23	59	37	53	473
Crawford	0	4	6	3	6	16	3	3	3	6	50
Dane	36	172	90	143	443	550	202	381	191	580	2,788
Dodge	1	26	31	15	97	78	18	40	36	53	395
Door	2	15	10	19	25	21	3	22	18	26	161
Douglas	4	27	18	34	56	119	30	12	27	42	369
Dunn	5	22	14	7	45	105	21	47	18	38	322
Eau Claire	12	59	49	36	191	213	65	155	50	162	992
Florence	1	2	0	8	1	1	1	4	7	5	30
Fond du Lac	3	40	49	35	87	84	34	40	46	60	478
Forest	0	13	3	8	11	33	0	22	18	14	122
Grant	4	20	17	15	25	43	15	25	16	53	233
Green	1	7	9	9	21	39	5	34	23	30	178
Green Lake	0	9	11	11	18	35	6	14	13	18	135
Iowa	0	9	5	23	18	24	4	16	7	20	126
Iron	2	12	0	2	11	5	3	6	3	19	63

County	Homicide <sup>2</sup>	Battery <sup>3</sup>	Sexual Assault <sup>4</sup>	Child Abuse <sup>5</sup>	Stealing <sup>6</sup>	Drug Crimes <sup>7</sup>	Fraud <sup>8</sup>	Bail Jumping <sup>9</sup>	Felony Traffic <sup>10</sup>	Other <sup>11</sup>	Total
Jackson	0	9	5	7	33	6	9	44	24	31	168
Jefferson	1	34	32	54	117	100	34	43	27	89	531
Juneau	2	29	18	11	78	27	10	36	19	56	286
Kenosha	7	123	61	176	205	232	57	157	54	276	1,348
Kewaunee	0	13	17	6	14	10	3	5	7	14	89
La Crosse	5	68	44	28	143	197	83	103	43	167	881
Lafayette	2	3	6	9	21	11	1	7	5	8	73
Langlade	1	20	11	16	34	45	17	16	10	22	192
Lincoln	1	23	18	13	45	40	18	81	20	37	296
Manitowoc	4	40	36	30	84	89	34	24	33	40	414
Marathon	5	64	82	80	204	164	82	149	60	154	1,044
Marinette	3	13	12	24	68	47	9	3	24	45	248
Marquette	2	7	13	11	27	26	12	20	13	9	140
Milwaukee	106	454	282	201	1,230	2,535	219	282	262	1,361	6,932
Monroe	3	23	20	22	90	81	47	111	26	107	530
Oconto	4	7	10	7	36	13	6	26	18	19	146
Oneida	2	12	14	18	33	63	9	20	26	38	235
Outagamie	3	68	66	117	136	113	70	111	56	100	840
Ozaukee	2	17	11	20	44	53	17	50	28	36	278
Pepin	0	5	4	1	5	5	3	3	8	3	37
Pierce	2	13	4	3	44	28	15	6	28	22	165
Polk	0	12	13	24	64	79	19	49	36	29	325
Price	0	4	10	6	13	16	4	9	11	3	76
Racine	19	102	61	62	291	462	102	170	53	285	1,607
Richland	2	9	11	8	20	15	5	21	5	26	122
Rock	9	102	36	66	271	268	111	240	82	306	1,491
Rusk	3	2	5	5	20	18	6	11	4	8	82
Sauk	6	32	35	29	96	80	32	47	48	67	472
Sawyer	3	22	8	32	29	10	6	22	14	9	155
Shawano/Menominee	3	17	17	6	48	93	11	30	36	68	329

County	Homicide <sup>2</sup>	Battery <sup>3</sup>	Sexual Assault <sup>4</sup>	Child Abuse <sup>5</sup>	Stealing <sup>6</sup>	Drug Crimes <sup>7</sup>	Fraud <sup>8</sup>	Bail Jumping <sup>9</sup>	Felony Traffic <sup>10</sup>	Other <sup>11</sup>	Total
Sheboygan	1	54	44	40	102	170	52	53	49	124	689
St. Croix	8	47	32	22	82	125	45	108	31	70	570
Taylor	0	8	5	8	19	17	8	11	8	14	98
Trempealeau	1	9	12	5	20	34	8	22	10	20	141
Vernon	0	3	5	5	10	17	10	8	4	8	70
Vilas	0	13	13	11	39	22	4	9	6	11	128
Walworth	4	30	34	22	178	164	10	77	64	76	659
Washburn	0	5	6	12	22	23	3	15	12	21	119
Washington	4	32	34	28	84	78	53	40	41	72	466
Waukesha	10	77	62	86	321	308	112	166	114	140	1,396
Waupaca	3	12	33	17	40	16	21	35	33	38	248
Waushara	1	1	4	15	10	17	1	5	10	12	76
Winnebago	7	58	62	83	130	198	41	67	70	93	809
Wood	1	29	46	41	128	99	39	42	52	35	512
<b>Total</b>	<b>335</b>	<b>2,384</b>	<b>1,852</b>	<b>2,013</b>	<b>6,360</b>	<b>8,403</b>	<b>2,083</b>	<b>3,825</b>	<b>2,340</b>	<b>5,804</b>	<b>35,399</b>

<sup>1</sup> Excludes Portage County, which does not use CCAP for criminal cases.

<sup>2</sup> Includes first degree intentional homicide, first degree reckless homicide, and other homicide.

<sup>3</sup> Includes substantial/aggravated battery, battery, and other bodily security.

<sup>4</sup> Includes sexual assault, first degree sexual assault of child, and second degree sexual assault of child.

<sup>5</sup> Includes child abuse and other crimes against children.

<sup>6</sup> Includes armed robbery, unarmed robbery, burglary, theft, receiving stolen property, and operating a vehicle without consent.

<sup>7</sup> Includes drug manufacture/deliver, drug possession, and other drug offenses.

<sup>8</sup> Includes forgery, worthless checks, public assistance fraud, and other fraud.

<sup>9</sup> Includes bail jumping.

<sup>10</sup> Includes unidentified felony traffic, hit and run, other vehicular felony, and operating while intoxicated.

<sup>11</sup> Includes unidentified felony, gambling, perjury, escape, extradition, other felony, kidnapping/hostage/false imprisonment, stalking, intimidating a witness/victim, criminal damage, arson, weapons/explosives, and other public safety crimes.





Appendix 8

**Inmate Population by County and Facility**  
2001-2006<sup>1</sup>

County/Institution <sup>2</sup>	Year Opened	Prison Type <sup>3</sup>	Security Level	Inmate Population						Percentage Change
				2001	2002	2003	2004	2005	2006	
<b>Brown County</b>										
Green Bay Correctional Institution	1898	Adult Institution	Maximum	1,035	1,044	1,034	1,087	1,065	1,083	4.6%
<b>Brown County Total</b>				<b>1,035</b>	<b>1,044</b>	<b>1,034</b>	<b>1,087</b>	<b>1,065</b>	<b>1,083</b>	4.6
<b>Chippewa County</b>										
Chippewa Valley Correctional Treatment Facility	2004	Adult Institution	Minimum	-	-	-	-	446	455	
Stanley Correctional Institution	2003	Adult Institution	Medium	-	-	353	1,508	1,509	1,513	
<b>Chippewa County Total</b>				<b>-</b>	<b>-</b>	<b>353</b>	<b>1,508</b>	<b>1,955</b>	<b>1,968</b>	
<b>Columbia County</b>										
Columbia Correctional Institution	1986	Adult Institution	Maximum	828	817	817	819	829	825	(0.4)
<b>Columbia County Total</b>				<b>828</b>	<b>817</b>	<b>817</b>	<b>819</b>	<b>829</b>	<b>825</b>	(0.4)
<b>Crawford County</b>										
Prairie du Chien Correctional Institution	1997	Adult Institution	Medium	302	319	315	420	410	408	35.1
<b>Crawford County Total</b>				<b>302</b>	<b>319</b>	<b>315</b>	<b>420</b>	<b>410</b>	<b>408</b>	35.1
<b>Dane County</b>										
Oakhill Correctional Institution	1977	Adult Institution	Minimum	563	595	591	592	611	605	7.5
Oregon Correctional Center	1928	Correctional Center	Minimum	96	110	114	116	118	111	15.6
Thompson Correctional Center	1942	Correctional Center	Minimum	105	122	117	122	127	129	22.9
<b>Dane County Total</b>				<b>764</b>	<b>827</b>	<b>822</b>	<b>830</b>	<b>856</b>	<b>845</b>	10.6

County/Institution <sup>2</sup>	Year Opened	Prison Type <sup>3</sup>	Security Level	Inmate Population						Percentage Change
				2001	2002	2003	2004	2005	2006	
<b>Dodge County</b>										
Dodge Correctional Institution <sup>4</sup>	1978	Adult Institution	Maximum	1,382	1,504	1,564	1,538	1,543	1,589	15.0
Fox Lake Correctional Institution	1962	Adult Institution	Medium/Minimum	1,388	1,270	1,284	1,296	1,335	1,320	(4.9)
John C. Burke Correctional Center	1990	Correctional Center (women)	Minimum	140	235	226	254	249	235	67.9
Waupun Correctional Institution	1852	Adult Institution	Maximum	1,226	1,221	1,228	1,243	1,237	1,237	0.9
<b>Dodge County Total</b>				<b>4,136</b>	<b>4,230</b>	<b>4,302</b>	<b>4,331</b>	<b>4,364</b>	<b>4,381</b>	<b>5.9</b>
<b>Douglas County</b>										
Gordon Correctional Center	1950	Correctional Center	Minimum	70	80	80	90	100	92	31.4
<b>Douglas County Total</b>				<b>70</b>	<b>80</b>	<b>80</b>	<b>90</b>	<b>100</b>	<b>92</b>	<b>31.4</b>
<b>Fond du Lac County</b>										
Taycheedah Correctional Institution	1921	Adult Institution (women)	Maximum/Medium	645	590	631	683	714	707	9.6
<b>Fond du Lac County Total</b>				<b>645</b>	<b>590</b>	<b>631</b>	<b>683</b>	<b>714</b>	<b>707</b>	<b>9.6</b>
<b>Grant County</b>										
Wisconsin Secure Program Facility	1999	Adult Institution	Maximum	320	279	384	445	475	335	4.7
<b>Grant County Total</b>				<b>320</b>	<b>279</b>	<b>384</b>	<b>445</b>	<b>475</b>	<b>335</b>	<b>4.7</b>
<b>Jackson County</b>										
Black River Correctional Center	1962	Correctional Center	Minimum	91	93	95	30	107	87	(4.4)
Jackson Correctional Institution	1996	Adult Institution	Medium	992	985	993	990	989	995	0.3
<b>Jackson County Total</b>				<b>1,083</b>	<b>1,078</b>	<b>1,088</b>	<b>1,020</b>	<b>1,096</b>	<b>1,082</b>	<b>(0.1)</b>

County/Institution <sup>2</sup>	Year Opened	Prison Type <sup>3</sup>	Security Level	Inmate Population						Percentage Change
				2001	2002	2003	2004	2005	2006	
<b>Juneau County</b>										
New Lisbon Correctional Institution	2004	Adult Institution	Medium	-	-	-	-	1,047	993	
Sand Ridge Secure Treatment Facility	2001	Secure Treatment Facility	Maximum	71	189	197	222	245	279	293.0
<b>Juneau County Total</b>				<b>71</b>	<b>189</b>	<b>197</b>	<b>222</b>	<b>1,292</b>	<b>1,272</b>	
<b>Kenosha County</b>										
Kenosha Correctional Center	1990	Correctional Center	Minimum	96	108	114	116	112	117	21.9
<b>Kenosha County Total</b>				<b>96</b>	<b>108</b>	<b>114</b>	<b>116</b>	<b>112</b>	<b>117</b>	<b>21.9</b>
<b>Milwaukee County</b>										
Felmers O. Chaney Correctional Center	2000	Correctional Center	Minimum	96	95	103	115	108	105	9.4
Marshall E. Sherrer Correctional Center	1981	Correctional Center	Minimum	40	41	47	61	60	60	50.0
Milwaukee Secure Detention Facility <sup>5</sup>	2001	Adult Institution	Medium	-	588	855	1,012	1,003	981	
Milwaukee Women's Center <sup>6</sup>	2003	Correctional Center (women)	Minimum	43	43	44	10	85	88	104.7
<b>Milwaukee County Total</b>				<b>179</b>	<b>767</b>	<b>1,049</b>	<b>1,198</b>	<b>1,256</b>	<b>1,234</b>	
<b>Oneida County</b>										
McNaughton Correctional Center	1931	Correctional Center	Minimum	80	80	81	93	99	102	27.5
<b>Oneida County Total</b>				<b>80</b>	<b>80</b>	<b>81</b>	<b>93</b>	<b>99</b>	<b>102</b>	<b>27.5</b>
<b>Outagamie County</b>										
Sanger B. Powers Correctional Center	1982	Correctional Center	Minimum	95	107	113	125	116	118	24.2
<b>Outagamie County Total</b>				<b>95</b>	<b>107</b>	<b>113</b>	<b>125</b>	<b>116</b>	<b>118</b>	<b>24.2</b>

County/Institution <sup>2</sup>	Year Opened	Prison Type <sup>3</sup>	Security Level	Inmate Population						Percentage Change
				2001	2002	2003	2004	2005	2006	
<b>Racine County</b>										
Racine Correctional Institution	1991	Adult Institution	Medium	1,437	1,395	1,473	1,524	1,546	1,565	8.9
Racine Youthful Offender Correctional Institution	1998	Adult Institution	Medium	396	400	400	449	450	449	13.4
Robert E. Ellsworth Correctional Center	1989	Correctional Center (women)	Minimum	290	329	370	327	269	254	(12.4)
Sturtevant Transitional Facility <sup>5</sup>	2003	Adult Institution	Minimum	-	-	-	66	258	269	
<b>Racine County Total</b>				<b>2,123</b>	<b>2,124</b>	<b>2,243</b>	<b>2,366</b>	<b>2,523</b>	<b>2,537</b>	
<b>Sawyer County</b>										
Flambeau Correctional Center	1954	Correctional Center	Minimum	69	79	80	87	99	90	30.4
<b>Sawyer County Total</b>				<b>69</b>	<b>79</b>	<b>80</b>	<b>87</b>	<b>99</b>	<b>90</b>	<b>30.4</b>
<b>Sheboygan County</b>										
Kettle Moraine Correctional Institution	1962	Adult Institution	Medium	1,201	1,181	1,193	1,184	1,200	1,182	(1.6)
<b>Sheboygan County Total</b>				<b>1,201</b>	<b>1,181</b>	<b>1,193</b>	<b>1,184</b>	<b>1,200</b>	<b>1,182</b>	<b>(1.6)</b>
<b>St. Croix County</b>										
St. Croix Correctional Center <sup>7</sup>	1991	Correctional Center	Minimum	115	110	98	115	121	125	8.7
<b>St. Croix County Total</b>				<b>115</b>	<b>110</b>	<b>98</b>	<b>115</b>	<b>121</b>	<b>125</b>	<b>8.7</b>
<b>Waushara County</b>										
Red Granite Correctional Institution	2001	Adult Institution	Medium	-	964	981	991	1,010	1,009	
<b>Waushara County Total</b>				<b>-</b>	<b>964</b>	<b>981</b>	<b>991</b>	<b>1,010</b>	<b>1,009</b>	

County/Institution <sup>2</sup>	Year Opened	Prison Type <sup>3</sup>	Security Level	Inmate Population						Percentage Change
				2001	2002	2003	2004	2005	2006	
<b>Winnebago County</b>										
Drug Abuse Correctional Center	1977	Correctional Center	Minimum	196	271	280	278	265	241	23.0
Oshkosh Correctional Institution	1986	Adult Institution	Medium	1,903	1,891	1,909	2,054	2,033	2,030	6.7
Winnebago Correctional Center	1974	Correctional Center	Minimum	103	115	123	228	258	267	159.2
Wisconsin Resource Center	1982	Secure Treatment Facility	Medium	193	322	309	325	338	336	74.1
<b>Winnebago County Total</b>				<b>2,395</b>	<b>2,599</b>	<b>2,621</b>	<b>2,885</b>	<b>2,894</b>	<b>2,874</b>	<b>20.0</b>

<sup>1</sup> Based on inmate populations for the first Friday of each year, with the exception of Sand Ridge.

<sup>2</sup> Includes counties with an adult institution, correctional center, or secure treatment facility.

<sup>3</sup> Adult institutions and correctional centers are prisons administered by the Department of Correction's Division of Adult Institutions. Correctional centers are smaller, unfenced, minimum security prisons designed to prepare inmates for release and help them transition back into the community. Secure treatment facilities include Sand Ridge and Wisconsin Resource Center (WRC). Sand Ridge houses individuals committed under the State's sexually violent person's law, ch. 980, Wis. Stats. WRC is a mental health facility that operates as a prison. It houses inmates in need of mental health services transferred from other prisons, as well as individuals committed under ch. 980, Wis. Stats. Sand Ridge is administered by the Department of Health and Family Services, while WRC is administered by the Department of Health and Family Services in conjunction with the Department of Corrections.

<sup>4</sup> Includes female inmates at the Dodge Correctional Institution's reception center and infirmary.

<sup>5</sup> Includes offenders under community corrections supervision who are in custody for possible probation or parole violations.

<sup>6</sup> The Milwaukee Women's Center existed prior to 2003 at a different location with a smaller capacity. The current facility opened in 2003.

<sup>7</sup> Includes both male and female inmates in 2004, 2005, and 2006.



## Appendix 9

**State Funding for Special Prosecutors<sup>1</sup>**

County	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	Total
Adams	\$ 1,762	\$ 2,467	\$ 967	\$ 4,288	\$ 2,118	\$11,602
Ashland	50,460	1,760			493	52,713
Barron	1,280	6,442	5,735		910	14,366
Brown	36,930	10,887	4,815		21,270	73,902
Buffalo	3,028					3,028
Burnett		3,780	1,389	1,501		6,670
Chippewa	2,091	5,591		1,244		8,926
Clark	1,999					1,999
Columbia	2,478	6,703				9,181
Crawford	1,920	9,426	21,995	1,691	246	35,277
Dane	8,251	5,699	14,213	77,796	16,954	122,913
Dodge		2,796				2,796
Door			11,862	12,785	5,988	30,635
Eau Claire					6,488	6,488
Florence	5,119	673	97	497		6,386
Fond du Lac					18,000	18,000
Forest	3,681	602	3,250		602	8,135
Green Lake	475	3,002	247	3,291	3,556	10,570
Iron			596			596
Jackson	3,990	5,080	2,521			11,591
Jefferson	30,629	7,295		39,693		77,617
Juneau			2,262	3,220		5,482
Kenosha		28,482		5,000	13,000	46,482
La Crosse					30,350	30,350
Lafayette	70		154	65	209	498
Langlade					9,864	9,864
Lincoln		7,752				7,752
Manitowoc		17,828	1,300		896	20,024
Marathon	622				893	1,515
Marinette	179	425	2,921	1,208	4,631	9,364
Marquette	1,511					1,511
Monroe	2,800			9,800	5,425	18,025
Oconto		5,000	4,030	12,709	3,335	25,074
Outagamie	13,052	10,137				23,189
Ozaukee	190	140				330

County	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	Total
Pepin		\$ 1,331	\$ 190			\$ 1,521
Pierce	\$ 1,440					1,440
Polk	5,853	14,409	19,421	\$ 16,564	\$ 15,305	71,551
Portage			11,760			11,760
Racine	18,600		3,000	14,700	6,885	43,185
Rusk	2,762		3,225			5,987
Sauk			4,750	14,149	7,174	26,072
Sheboygan	2,451					2,451
St. Croix			10,368	51,905	27,845	90,118
Taylor	833					833
Trempealeau	600					600
Vernon	1,113					1,113
Vilas			4,190	135	12,333	16,658
Washburn	4,010	6,988	815			11,813
Waukesha	15,840	8,640	26,000	8,133	2,320	60,933
Washington				725		725
Winnebago	2,725	3,925	3,046	42,517	19,923	72,135
<b>Total<sup>2</sup></b>	<b>\$228,742</b>	<b>\$177,257</b>	<b>\$165,117</b>	<b>\$323,613</b>	<b>\$237,011</b>	<b>\$1,131,739</b>

<sup>1</sup> There were no state-funded special prosecutor expenditures for 20 counties: Bayfield, Calumet, Douglas, Dunn, Grant, Green, Iowa, Kewaunee, Milwaukee, Oneida, Price, Richland, Rock, Sawyer, Shawano/Menominee, Walworth, Waupaca, Waushara, and Wood.

<sup>2</sup> Totals may not sum because of rounding.





**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

**JIM DOYLE**  
GOVERNOR

**MICHAEL L. MORGAN**  
SECRETARY

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July 17, 2007

Janice Mueller  
State Auditor  
Legislative Audit Bureau  
22 E. Mifflin Street, Suite 500  
Madison, WI 53703

Dear Ms. Mueller:

Thank you for providing an opportunity for the Department of Administration (DOA) to comment on the recently completed evaluation of the allocation of prosecutor positions. Your staff members were very professional and thorough in their approach to this audit.

The audit takes on important issues relating to Wisconsin's District Attorneys including compensation, caseload, workforce and consistency of data throughout the State of Wisconsin.

As recommended by the Audit Bureau, the Department of Administration will work closely with prosecutors, the District Attorney Information Technology team within DOA, staff of the State Courts, law enforcement and others to determine the best approach to proceed with needed improvements in the hope that the Legislature will use the resulting data when developing future budgets.

Thank you for the opportunity to comment on this audit and be assured that the Department of Administration stands ready to work closely with LAB and the legislature on these important issues.

Sincerely,

Michael Morgan  
Secretary