

Memorandum

**To: Joint Legislative Council – Special Committee on  
Criminal Justice Funding**

**From:** David Feiss  
President Association of State Prosecutors

**Date:** 09/07/2010

**Re:** Crisis in the State Prosecution Program

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Senator Taylor, Representative Turner, Committee Members, thank you for the opportunity to address the Committee and thank you for your efforts to find solutions to what can only be described as a growing crisis in the criminal justice system.

For a number of years myself and other career prosecutors feared that the prosecution program in Wisconsin will become a “donut”, large numbers at the top and bottom of the experience range, but no one in the middle. The lack of a sustainable salary structure will cause a mass migration of younger attorneys who will leave because they realize that although they love the work, they realize there is no economic future in the District Attorney’s Office. Eventually the pressing demands of raising families and paying off educational debts become too great and they are forced to seek other jobs. This leaves offices staffed by large numbers of new hires as well as older attorneys, but no one in the middle range.

Sadly, this fear has now become a reality. Even in the midst of the worst economic conditions in our lifetimes, the turnover rate in the State Prosecution program continues at an alarming rate. In the last 12 months nearly ten percent of the approximately 360 Assistant District Attorneys have left. An examination of those who remain shows that this alarming experience drain has already taken place. There are approximately 138 Assistants District Attorneys who were hired in the years 2005 through 2010. In contrast there are only 54 attorneys with 6-10 years of experience and only 37 with 11-15 years. There are 129 ADAs with more than 15 years experience.

The reason for this exodus can be easily seen by examining the salary compression which has impacted the prosecution program over the last several years. Prior to

2003 a wage structure existed that allowed young attorneys to consider prosecution as a career. The average ADA who started in 1997 makes \$7.91 an hour more than those who started in 2002, a difference of 30.6%. Inflation during this time period was 13.7%

The average attorney who was hired as an ADA in 2003 now earns \$2.18 cents more than attorneys who started in 2010. This represents an increase over 7 years of 10.85% or 1.55% per year. In contrast the inflation rate over that time span was 19.96% or 2.85% per year. More and more younger attorneys have left rather than fall further and further behind economically each year. It is vital to note that these attorneys are not leaving for the riches of silk stocking law firm practice. Every one who becomes a prosecutor understands that our top salary is at or below the starting salaries that large law firms pay to first year associates and we have no problem with that. What causes me great concern is that increasingly our attorneys are leaving to make more money working for other units of local and county government as Assistant City Attorneys or Assistant Corporation Counsels. The current salary structure allows people to make more money prosecuting ordinance violations than prosecuting homicides. I began in the Milwaukee County DA's Office in 1986 doing Child Support Enforcement work. If I had chosen to stay in Child Support enforcement I would now be making significantly more money to calculate child support orders.

In 1989 the leaders of State government in Wisconsin realized that the interests of public safety and the interests of justice were served by developing an experienced core of prosecutors who could represent the State in criminal cases in counties large and small throughout the State of Wisconsin. They realized that having a system where some counties encouraged the development of career prosecutors and some did not damaged the quality of justice throughout the State. Having an experienced core of prosecutors protects both the victims of crime and those who stand accused of committing criminal offenses. Experienced prosecutors are able to handle cases both more efficiently and more effectively. They understand what is needed to prove offenses beyond a reasonable doubt and when the evidence is insufficient and the accused must be set free. Experienced prosecutors have the ability to guide law enforcement in their communities in order to make sure that every citizen's constitutional rights are respected. Experienced prosecutors are able to judge which offenders are appropriate for diversion and other non criminal resolutions.

The lack of experience in the prosecution program leads to multiple miscarriages of justice. Inexperienced prosecutors lack the ability to both train law enforcement and to reject cases where law enforcement has overstepped constitutional limits. In experienced prosecutors are unfamiliar with the many nuances of the rules of evidence and make charging decisions based on erroneous assumptions about what evidence is and is not admissible. This leads to guilty perpetrators being let go and the charging of individuals where the evidence will not support a conviction.

The prosecution program that was set up in 1989 to protect justice in the State of Wisconsin is broken and only the State government can fix it. Unlike virtually any other area of legal services that is provided to State government, the market cannot solve the crisis in the prosecution program. There is no private market for prosecution. Most other legal services can be bought in the private market. If the Department of Administration has a complicated bonding issue, there are private firms that can provide advice if in house counsel is unfamiliar with the legal issues. An individual accused of a crime, can, if dissatisfied with their assigned defense counsel look to the private bar for representation. However, the family of the homicide victim, the sexual assault victim or robbery victim cannot hire private counsel to prosecute their cases. If their cases are mishandled by an inexperienced or overwhelmed prosecutor, they have no recourse except to live with the injustice. Similarly if a police department is involved in a complex investigation and they need advice on evidentiary issues or constitutional issues they have no ability to hire a law firm to advise them. They must rely on the knowledge and experience of their local District Attorney's Office.

I thank you once again for allowing me to come and testify today and I thank you for your efforts to find a long term solution that will restore the prosecution program and improve the quality of justice in our State.