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**PREPARED REMARKS OF ATTORNEY GENERAL J.B. VAN HOLLEN TO JOINT
LEGISLATIVE COUNCIL SPECIAL COMMITTEE ON CRIMINAL JUSTICE FUNDING AND
STRATEGIES**

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Chairperson Taylor, Honorable Members of the Special Committee on Criminal Justice Funding and Strategies, thank you very much for the invitation to appear before you today.

The charge of this Committee is to study the funding of the criminal justice system and to develop strategies to adequately and sustainably fund the criminal justice system. You have already heard and you will continue to hear about various agencies, what they do, and how they are funded. Today, I will tell you about the Department of Justice, the agency that I oversee, and its role in the administration of public safety and criminal justice in the state of Wisconsin.

But before we get into the details, I think it is good to step back and talk about first principles.

Government exists to protect our life and liberty, to allow us to pursue our own happiness. I believe law enforcement and public safety is the first priority of government. Without them, not only are our liberties curtailed, but other government efforts cannot succeed.

At the state and local level, fulfilling this priority means having laws that protect citizens from those who would deprive us of our life and liberty. And it means adequate resources to enforce those laws.

I believe in limited government, but effective government. Limited government does not mean government doing a little bit less of each of the things that it has grown to do. It means doing the right things and doing them well, as I believe we do at the Department of Justice. It means prioritizing responsibilities according to government's essential functions.

This is why I believe that public safety has the first claim on the public treasury. It is government's primary responsibility. The criminal justice system and public safety is a common, public good. It benefits each and every citizen of the state of Wisconsin.

So while this Committee examines ways to make funding of the criminal justice system sustainable, it is important for policymakers to bear in mind that this very endeavor might indicate a past failure

to prioritize first principles. If the criminal justice system is not adequately funded, we should not be struggling with the questions of how to adequately fund the criminal justice system; rather, we should be struggling with the questions of how—or whether—to fund other government programs.

I do not say this to open the door to a discussion of general budget issues beyond this Committee's charge to investigate the criminal justice system's funding. Just the opposite is true. I say this to emphasize that (1) public safety is a common good and government's primary responsibility; and (2) it is perfectly appropriate to take the position that general purpose revenue is an appropriate source to fund government's primary responsibility. To that end, I encourage the Committee to resist the temptation to identify special excise taxes or unrelated segregated fees as solutions to funding the criminal justice system. Going beyond general funding strategies to discuss taxes or surcharges and fees unrelated to the criminal justice system may undermine the Committee's work by implicating the very non criminal-justice related policy issues that, properly understood, are beyond this Committee's charge. If this Committee recommends, for example, general purpose revenue to sustainably fund certain components of the criminal justice system, policymakers can determine how that recommendation, if adopted, will be adopted in concert with a budget.

Let me provide an example of the problem of relying on unrelated surcharges.

In my role as Attorney General, I have frequent contact with prosecutors and law enforcement. Almost without fail, these groups identify the shortage of prosecutors as being the number one threat to the State's ability to adequately and fairly enforce the criminal laws of the state of Wisconsin. This shortage is well-documented and not a recent phenomenon.

The effects of the prosecutor shortage can include delayed or less thorough review of complaints, increased incentives to plea and avoid trial, an inability to prosecute all meritorious cases, and an inability to devote the individualized attention to certain cases as justice ideally requires. In addition, the shortage contributes to high turnover, and as less experienced prosecutors replace those who have left, the problems intensify.

According to the Legislative Fiscal Bureau, the two-year budget passed in 2009 increased state spending by 6.2% over fiscal year 2008 levels. The District Attorneys budget was cut by 8.1%. That is not prioritizing core government functions. Moreover, a substantial portion of the District Attorneys budget that had been funded by general program revenue was eliminated, replaced by new fees assessed on utility bills.

The problems created by this budget approach are clear. First, the core issue of the prosecutor shortage remains unaddressed. Second, the use of a non-continuing fee transfer jeopardizes ongoing funding of an already underfunded program. Third, according to press reports, using this rate assessment created a conflict between ratepayers, who rightly expect their fees to pay for utilities, and prosecutors, who do not choose their funding sources and who exist to enforce criminal laws, not public utility laws. By removing funding from a general revenue source, only particular elements of society pay for a public good, pitting one group against another with no apparent policy purpose other than expediency. I encourage this Committee to avoid this approach.

This is not to say that surcharges and fees are always inappropriate for funding criminal justice programs. Many public safety efforts, including those in my agency, rely on user fees, court surcharges, or penalty assessments to fund core activity. Unlike using utility rates, these sources generally have a rational connection to the programs that are funded. But these sources are not without downside, as I am sure you will explore. Revenue streams rarely meet overly optimistic revenue expectations, thus creating deficits. Deficits lead to increasing surcharges. Increasing surcharges and assessments may have unintended consequences, such as changed enforcement activity or defunding programs paid with surcharges that are further down the chain of priority. Defendants, as we know, do not have unlimited resources. For example, funds paid by a defendant for one type of surcharge might mean there are no funds available for that defendant to pay restitution to the crime victim. I encourage the Committee to thoughtfully examine these implications as they weigh criminal justice funding strategies.

Policymakers and criminal justice professionals can make a big difference when they work together to objectively assess criminal justice funding issues. As an example, this past legislative session, a law was enacted that should increase the state public defender's ability to provide quality, constitutionally-mandated, legal service to indigent criminal defendants. And when the law becomes effective next year, the total costs to taxpayers for providing this representation are expected to go down, as cost-savings to counties should exceed additional costs to the state for expanding the state public defender program.

In another example, three and a half years ago, I introduced a detailed plan to eliminate the backlog of DNA evidence at the state crime laboratories. The plan included more scientists, but also more efficiency at the labs. And the plan had the backing of law enforcement and prosecutors, as well as many in the defense attorney community.

The legislature approved the plan with bi-partisan majorities and on a quick timeline, in a budget repair bill, funding the new scientists with general purpose revenue. The legislature recognized that delay would not only mean more unsolved crimes, but increased downstream costs to fix the problem. By implementing the plan, we've identified more offenders, solved more crimes, and I believe saved law enforcement time in the field. Today, there is no backlog.

These are examples, I believe, of recent adjustments where criminal justice funding was rationalized without budging on the state's commitment to justice. I think they show that when compelling arguments are made, the legislature will consider those arguments. I hope this Committee work will find similar solutions to enhance the quality of justice.

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Having discussed first principles and made some general observations about criminal justice funding, let me turn to the agency I oversee, the Department of Justice. The Department of Justice is, in all its operations, a public safety agency. It is easy to conceptualize the criminal justice system as simply comprising law enforcement, prosecutors, and courts. The Department certainly includes law enforcement and prosecutors. But in my opinion, crime victims, too, are part of the criminal

justice equation. As are all operations that directly support law enforcement and prosecutors. Ultimately, they all support justice.

I have asked my staff to circulate to you additional detail about the Department's operations and I understand that the Committee has been supplied with other material relating to the agency's funding as well. In brief, the Department of Justice's annual budget is approximately \$93 million minus lapses that have been or will be assessed by the Department of Administration. While the majority of these funds support Department of Justice operations, significant funds pass through the Department to other state agencies, local agencies, or grants to entities providing services to crime victims.

The Department of Justice's budget is funded by a mixture of general purpose revenue, program revenue, and federal funds. In the last budget, general purpose revenue comprised about 43% of the Department of Justice budget. Funds demarcated as "program revenue" come from a variety of sources, including the penalty assessment surcharge, the crime victim and witness surcharge, and the crime laboratories and drug enforcement surcharge. In addition, "program revenue" includes fees, such as criminal history record check fees and the handgun hotline fee. Federal money coming through the Office of Justice Assistance is also currently listed as "program revenue" in the Department's budget.

The breadth of the Department's operations within the criminal justice system is significant. The Department of Justice is comprised of the following divisions and office:

- **The Division of Criminal Investigation**

With six regional offices in addition to staff at headquarters, DCI is an elite law enforcement unit with statewide jurisdiction to investigate crimes of a statewide nature, importance, or influence. The Division has specialized expertise in a variety of criminal investigation, including: internet crimes against children investigation, homicide and cold case investigation, narcotics investigation, and arson investigation. While certain investigations can be initiated by DCI, often our involvement in a case is at the request of a local law enforcement agency. When DCI provides assistance, it does not bill the local agency for services, distinguishing it from other forms of mutual assistance.

In addition, DCI coordinates programs such as the Amber Alert Program and the Wisconsin Statewide Information Center, and serves as a primary state partner on federal programs such as the High Intensity Drug Trafficking Area program and the Joint Terrorism Task Force.

- **The Division of Law Enforcement Services**

The Division of Law Enforcement Services operates the state crime laboratories, serves as the criminal history repository for the state of Wisconsin, maintains the TIME system, operates the handgun hotline, and maintains a Training and Standards Bureau that staffs the Law Enforcement Services Board and has a significant role in developing training and standards curricula for law enforcement.

These law enforcement services are absolutely vital to a successful criminal justice system. For example, the state crime laboratory, funded through a mix of surcharges and general program revenue, analyzes evidence in felony cases submitted from law enforcement agencies and other officials throughout the state. It uses a variety of forensic sciences, including DNA, criminalistics (including, for example, fingerprint analysis), and chemistry (including, for example, toxicology), to help law enforcement identify offenders and eliminate suspects. And it does so without charge to agencies submitting the evidence. The successful use of the crime laboratory resources leads to more crimes being solved, taking more criminals off the street, exonerating the innocent and in some cases, saving significant criminal justice system resources that would otherwise be spent investigating leads.

The Crime Information Bureau, too, performs an invaluable service to law enforcement. It operates the TIME system, which provides criminal justice employees with real-time information on warrants, driver license and vehicle registration information, criminal histories, protection order and injunction files, stolen property, missing persons and more. It does so by connecting over 7,600 criminal justice computers in Wisconsin to over 250,000 criminal justice computers across the nation and Canada.

- **The Division of Legal Services**

The Division of Legal Services criminal justice responsibilities include representing the state in almost all felony and habeas appeals; prosecuting 980 cases and other matters with concurrent original jurisdiction (such as Medicaid Fraud); assisting District Attorneys with training and advice, as well as acting as special prosecutors in criminal cases where District Attorneys can not act or assisting District Attorneys as co-counsel in cases needing specialized expertise.

- **The Office of Crime Victim Services**

The Office of Crime Victim Services provides funding to counties for services to victims and witnesses, compensates crime victims for medical and related expenses which they incur as the result of a crime, and administers federal funds which go to local victim service providers. Also, when the Department of Justice is prosecuting a case, staff serve as the victim/witness coordinator. Department of Justice personnel also staff the Crime Victim's Rights Board.

- **The Division of Management Services**

The Division of Management Services makes all of these criminal justice programs viable by providing administrative support, including technology support, budget and finance functions, and human resources.

The Department of Justice's interactions with law enforcement and prosecutors are regular and significant, as demonstrated by this slide that attempts to simplify how Department of Justice operations interact with other law enforcement agencies and prosecutors.

Recent Budget Observations

In the most recent budget bill, the Department of Justice's budget relying on general purpose revenue was cut by a larger percentage than GPR cuts to all state GPR appropriations. State spending increases, too, outpaced the Department of Justice budget. Overall, considering assessed and anticipated lapses, cuts to the Department of Justice's cost to continue operations will approach \$10 million over the biennium. In addition, as with all state agencies, furloughs mean that employees are spending eight days less a year on the job, effectively cutting productivity by more than \$2 million.

Cuts could have been deeper and had more significant public safety implications had the legislature not rejected approximately \$5.4 million in additional cuts that were added late in the budget making process by the Joint Finance Committee. The legislature's rejection of these additional cuts was, I believe, due to a partial recognition of the significance of public safety as a priority of government.

These cuts have required me to make significant adjustments to make budget. At the end of July, the Department of Justice had 81.4 FTE vacancies, or approximately 13.5% of authorized positions. Put differently, at the end of July, the Department of Justice had fewer full-time equivalent positions staffed than when I took office – before the necessary expansion of the DNA section at the state crime laboratories and the Internet Crimes Against Children program. While I and my staff manage vacancies and operations in a way that maximizes our ability to perform essential public safety functions, when resources are stretched thin, impacts can not be completely avoided.

Before I conclude, I want to make a couple of observations about surcharges that fund some of the Department of Justice's operations. I understand that the Committee has been provided some information on these surcharges, and I want to elaborate on these.

The Crime Laboratory and Drug Enforcement Surcharge. When the DNA program began, it was contemplated that it could be funded with a DNA surcharge created in 1993 that would be assessed in certain sexual assault cases. Early on, it became apparent that this surcharge would be inadequate to fund the program. In 1997, the legislature made the decision to fund the crime laboratory and other DOJ operations with the Crime Laboratory and Drug Enforcement Surcharge, which is assessed in all fine, forfeiture, or criminal actions. This surcharge in 1997 was \$4. In subsequent budget repair acts and budget bills, additional positions were reassigned from general purpose revenue to be paid for from this surcharge and the surcharge increased. Today, it is \$13.

The Penalty Assessment Surcharge. Increases have also been seen in the Penalty Assessment Surcharge. This surcharge is charged whenever a court imposes a fine or forfeiture for violation of state law or a municipal ordinance. Created in 1977 for the primary purpose of supporting law enforcement training, the surcharge was 10% of the fine or forfeiture imposed. In the past 30 plus years, the surcharge has risen to 26%. The need to increase the surcharge is due to two factors. One, the number of programs funded by the surcharge has increased – and some of them have only the most remote of connection (if any at all) to the criminal justice system. Two, revenue projections are always overly optimistic compared with receipts, leading to deficits.

The Penalty Assessment Surcharge significantly affects the Department of Justice budget because (1) several of its operations are partially funded by the surcharge; and (2) in 2005, the Department of Justice was designated to receive these funds and pass them through to other state and local agencies.

Taken alone, I think most people accept that those who violate the law should shoulder more of a burden for the operation of the criminal justice system. But cumulatively, surcharges can have a substantial impact on enforcement activity. A \$30 forfeiture for going 11 miles per hour over the speed limit results in a \$175 ticket due to court costs, the court support services fees, the penalty assessment surcharge, the crime lab and drug enforcement fee, the justice information fee, and the jail assessment fee. My recollection is that the same activity would have resulted in a \$57 ticket about twenty years ago. This issue isn't simply about whether the total burden to a speeder is fair while serving as an appropriate deterrent, though those are important considerations. It is also about enforcement behavior and the ability to collect surcharges. Put simply, officers with discretion to issue a ticket may be less likely to do so knowing the financial penalty for speeding is so great. In addition, defendants may not have the resources to pay. On the other hand, the programs funded with these assessments – largely the court system and law enforcement – must be adequately funded. It is my hope that the Committee will take a look at these surcharges to identify whether this is a sustainable approach to funding these fundamental aspects of the criminal justice system.

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Once again, thank you for the opportunity to appear before you today. Your work is important, and I thank you for your public service.