

PREPARED TESTMONY OF ATTORNEY GENERAL J.B. VAN HOLLEN
before the
Wisconsin Legislature's Joint Committee on Finance
Regarding the 2011-2013 Executive Budget
Wednesday, April 6, 2011

Good afternoon and thank you Chairman Darling, Chairman Vos and members. I appreciate the opportunity to appear before you and offer a brief overview of the Executive Budget as it concerns the Wisconsin Department of Justice and answer your questions.

I believe that public safety is the first priority of state government. I know from my visits with many of you that public safety is a priority we share. Governor Walker understands the importance of public safety as well. I am pleased that he is supporting critical state public safety initiatives in his budget, even in difficult budget conditions. He has offered in his budget funding to strengthen the fight against internet predators, maintain effective DNA forensics, and retain experienced prosecutors in DOJ and around the state.

The Department of Justice is a public safety and law enforcement agency that enforces state law and exists to assist front line police officers and prosecutors, working together to further our priority mission. We provide assistance to local law enforcement, district attorneys, and victim/witness professionals throughout Wisconsin. We do this through the State Crime Laboratory, where state-of-the-art forensics helps identify offenders and clear innocent suspects. We do this through the Division of Criminal Investigation, which assists local law enforcement by providing elite investigative services, clearing homicides and leading our efforts to protect our kids from Internet predators. We do this by training state prosecutors and police, as well as providing advice daily to front line prosecutors whose work is essential but whose resources are strained. We do this through the Crime Information Bureau, which operates the TIME system, providing officers on the street real-time information essential for enforcing the law and tactical decision-making. We do this through our assistant attorneys general, who keep sex predators off the streets and fight to defend and enforce the laws you pass. And we do this through the Office of Crime Victim Services, recognizing that crime is not simply a statistic; crime is the ultimate breach of the social compact that causes tremendous adversity to the crime victims who are targets of crime or who are caught in its wake.

This work is not done by divisions and offices, but by experienced individuals who are dedicated to the Department's mission. I look forward to working with them and you over the next biennium to continue our good work, and to do so efficiently.

The Crime Laboratory and the DNA Section

At my request, the Governor has included the DNA resources necessary to meet the immediate and anticipated need at our State Crime Laboratories.

One of the primary reasons the DNA backlog grew out of control in the past was the inability to forecast future demand. While we eliminated the backlog I inherited, our success has increased demand. And, that is a *good* thing. DNA is a critical law enforcement tool that helps identify offenders and take them off the streets. The sooner an offender can be identified, the greater the chance justice will be served and the less opportunity criminals will have to victimize others. Put differently, without DNA forensics, countless crimes ranging from homicides to property crimes may never have been solved and prosecuted.

The need for additional resources is demonstrated by reviewing the statistics. DNA case submissions have increased from 2,877 in 2008 to 5,188 in 2010, an increase of 2,311 (80%) over the two-year period. It is projected that case submissions may increase another 30 percent over the next two years, to approximately 6,744 cases annually. This number will exceed the ability of the current DNA staffing levels to process the evidence in a timely fashion, even with our many improved efficiencies. DNA supervisors have estimated that six additional DNA analyst positions will be required to prevent a dangerous backlog from re-occurring.

As long as I am Attorney General, I am committed to a DNA section at the crime laboratory that is a national model, not the evidence-retention warehouse it once was. But I need your help. These requested and recommended resources will ensure we can deliver, and continue to deliver, what we promised the legislature, law enforcement, and citizens four years ago: Barring exceptional circumstances, DNA cases will be turned around within sixty days of receipt.

The fight to protect our children from sexual predators.

If we believe public safety is our first priority, we must also believe we must first protect those who are least able to protect themselves: our children. That is why I urge you to support the Governor's proposal to enhance our Internet Crimes Against Children program.

As Attorney General, I have led the fight to expand law enforcement's net to snare online predators, to bring them out from the shadows of cyber anonymity and hold them accountable for their crimes and the incalculable harm they cause. In the past four years, I've increased the number of local law enforcement affiliates from 27 to 164 partners, and we are still growing. Just last week Grand Rapids joined the Task Force and two more agencies will join before week's end.

While we've increased our efforts with more resources and more law enforcement partners, the reality is that this criminal activity persists beyond law enforcement resources. While we are able to catch offenders like the former Racine mayor who used the Internet in an attempt to lure children for sexual purposes, countless others are not identified. Moreover, law enforcement is aware that there are tens of thousands of downloads of known images of child pornography in Wisconsin. This means child sexual abuse continues to occur, abuse recorded and disseminated online to sex predators. Studies show that those who view child pornography are not only creating a market for child exploitation, but they are destroying their own inhibitions in the process, gathering their resolve to perpetrate crimes against children in their own neighborhood.

The sexual abuse of a child is as heinous a crime as can be committed, and if we can stop these crimes from occurring, we must. So long as it persists beyond law enforcement's ability to hold offenders accountable, I will ask that we step up our fight. My request to the Governor, which he readily supported, was that we increase the number of state agents that can investigate these crimes, increase the number of criminal analysts who perform computer forensics on the cases they and our new local law enforcement affiliates generate, and increase our ability to educate parents and kids, knowing that catching the bad guys is not the only way in which we can make our children safer. I ask that you continue to support these efforts.

Good Stewardship

Funding new initiatives and preserving our ability to continue to enforce the law requires budgetary resources. Because law enforcement and public safety is the priority of state government, it must be a budget priority. But that does not mean that the Department of Justice should have a blank check. Government is not a business. But efficiency and accountability should, like in business, guide the administration of programs undertaken at taxpayer expense. I pride myself with responsible stewardship of taxpayer dollars, and with the resources they provide, we generate dollars for the state and protect the public treasury.

Memories can be short, so bear with me as I cite some examples of Justice's stewardship of the financial trust you have placed in me and every department employee.

- In my first budget as Attorney General, I returned over \$1 million to the treasury. I found savings and handed the money back to the treasury, lightening the potential burden on taxpayers.
- In that same budget, you granted my request to double the staff at Wisconsin's Crime Laboratory to eliminate the backlog of DNA work while keeping up with growing submissions. I promised then if you gave me part of what I needed, I and the State Crime Lab staff would do the rest. We did. With twice the scientists, we were able to quadruple the cases we accepted and returned to local law

enforcement. The result is a safer Wisconsin, because of a commitment of the legislature and our refusal to be satisfied with prior levels of productivity.

- The year before I took office, the Medicaid Fraud Control Unit collected a little more than \$400,000 for the Medicaid program through civil enforcement of Medicaid fraud laws. Over the last four years as Attorney General we've collected and returned to the Medicaid program approximately \$40 million, saving taxpayer money. Many millions more in contested judgments are awaiting payment.
- I requested, and the Governor has proposed in this budget, a reduction in the fee that is charged to the general public to perform criminal history record checks. Fees should not move in one direction – upwards. The general public should not have to pay more than the cost of performing record checks and maintaining those systems, and the fee is calculated to approximate those costs.
- The Department of Justice has played a key role in reducing the State's litigation and liability risks. The State is a multi-billion dollar entity. It is sued for hundreds of millions of dollars every year. Budget dollars invested in the Department of Justice legal department save the State many, many times the amount of money spent.

Continuing Operations While Managing Budget Cuts

These efforts to enhance productivity and be a good steward of taxpayer dollars continue while the DOJ budget has been cut. In the 2009-11 biennial budget, the Department of Justice budget was reduced when accounting for lapses while state spending increased. The Department met these reductions by finding efficiencies, maintaining a vacancy rate exceeding 10% of our workforce, and by using discretionary settlement funds, and grant funding when available.

According to the Legislative Fiscal Bureau, the Governor's budget bill calls for a 6% cut over the biennium to the Department of Justice, even with the proposed additional resources for DNA and ICAC. This does not include potential lapses that could be imposed by the Secretary of Administration.

The majority of these cuts are to local assistance programs and the Department's supplies and services budget, cuts that appear across state agencies. As a result, the Department will go from a supplies and services budget of \$21 million at the end of FY09 to a supplies and services budget of \$16.8 million at the end of FY13 – a 20% reduction and exacerbating the structural underfunding of these budget lines.¹ When you consider that

¹ As an example of this structural underfunding, when the last budget bill created a Division of Legal Services in DOA, \$10,000 in operational costs funding was allocated per FTE. The equivalent funding per FTE in the Department of Justice's Division of Legal Services for FY 11 was \$2,926, which will decrease another 10% as proposed in this budget bill.

approximately 50% of the proposed supplies and services budget is paid to the Department of Administration in fixed costs billed by that agency, the challenge to the Department of Justice is made even greater to meet these reductions while still meeting the service needs of our public safety partners. Supplies and services funds not paid to DOA include money to purchase forensic kits, crime laboratory equipment, maintain the TIME system, purchase safety equipment and ammunition for special agents, pay for travel for special agents who cover the entire state, and many other essential public safety functions. These costs – and the public safety needs these costs serve – are not likely to decline to accommodate budget reductions. Cuts to local aids include cuts to victim services programs, such as the reimbursements to county victim/witness programs. I am concerned that this cut, which we project would bring the state's reimbursement of these programs from 60% to approximately 48%, may result in counties no longer providing this mandatory obligation that is essential to a well functioning justice system.

Ideally, critical criminal justice, law enforcement, and public safety budgets could be partly exempted from these cuts. And should you identify government programs that are not as essential as the core priority of law enforcement and public safety, I hope that you will consider restoring some public safety funding, whether to my Department or with local aids.

But I recognize and appreciate the aims of this budget – particularly the Governor's recognition that Wisconsin citizens should not have their taxes increased. This is why what I ask of this body is to provide me the tools to flexibly manage the Department's budget to minimize what could otherwise be the impacts of this budget. This can be done by:

- Rejecting all transfers from the Department of Justice discretionary account so that I may cover cuts with settlement dollars to the extent permitted by court order;
- Exempting the Department of Justice from vacancy and funding lapses that may be imposed by the Secretary of Administration to provide budget certainty;
- Fixing Penalty Assessment Fund appropriations, which are subject to deeper cuts;
- Restoring funding for positions that I and this administration have identified as essential

Discretionary Settlement Funds

The Governor's budget calls for \$297,600 to be diverted from the Department's court-ordered discretionary settlement account to DOA and the Courts. This proposal is misguided for two reasons. First, it is not legal. Second, unencumbered access to this fund is essential for the Department of Justice to provide essential services while absorbing proposed cuts.

Funds in the discretionary settlement account arise from defendant payments made pursuant to a *court order*. Pursuant to those orders, these funds may be spent at the *sole discretion* of each signatory Attorney General as permitted by state law. By mandating use of these funds for a specific purpose, no matter how noble that purpose – and I would submit that the proposed transfers are not as essential as the core functions the Department provides – the state would jeopardize losing the funds in their entirety.

Unlike my predecessors, I have used these funds primarily for law enforcement purposes in my tenure, including Department of Justice functions. For example, I have used legal settlement funds to bridge funding to temporarily maintain drug enforcement services and avoid layoffs when federal funding was unexpectedly cut, purchase SWAT team equipment, fund the Jay Balchunas Officer Safety Fund, pay for IT improvements, pay start up funds for Internet Crimes Against Children (ICAC) affiliate agencies, fund law enforcement training, support crime lab field response, and numerous other essential programs.

And, I have chosen to use a significant portion of legal settlement revenue to lapse to the general fund to comply with required budgetary reductions, demonstrating how little excess there is in the Department's budget.

Exempt DOJ from Lapse and Position Elimination

Wisconsin voters elected me Attorney General to run the Department of Justice, recognizing that I must do so within the budget provided by the legislature. My ability to run the Department of Justice, and your ability to set my budget, is compromised by the Department of Administration's power to lapse and the newly proposed power of the Department of Administration to eliminate positions that you have approved and I believe are essential to fulfilling the Department of Justice's priority public safety mission.

Since I have been Attorney General, I have fought against the lapse as applied to the Department of Justice because it is a public safety agency headed by a separately elected constitutional officer. I am committed to operating the Department within the budget authorized by the legislature, but this becomes increasingly difficult to do when the lapse is such a significant percentage of the Department's overall budget and the amount of the lapse is uncertain. To that end, I respectfully request that you exempt the Department of Justice from the funding and position lapses contained in the bill.

I pledge to you what I have told the Governor – if there are savings that can be achieved, I will return money to the treasury, as I did two budget cycles ago when no lapse was imposed on this agency. With this budget certainty and the other minor adjustments I propose here, I believe that we will be able to meet the efficiency cuts proposed by the Governor with respect to supplies and services appropriations.

Penalty Assessment Fund

The proposed budget would cut by 10% all appropriations funded by the penalty assessment surcharge, a surcharge imposed whenever a court imposes a fine or forfeiture for a violation of state law, including moving violations. This cut is separate from the 10% efficiency cut to supplies services and local aids appropriations, and unlike those cuts, directly affects personnel.

For years, surcharge revenues have lagged behind expenditure authority, creating a deficit. As compared with other budget cuts, deeper cuts are proposed to these funds to make up this deficit. In my view, there are better ways of addressing this deficit and maintaining essential criminal justice funding than this across-the-board cut.

The penalty assessment surcharge funds a diverse range of state programs. DOJ appropriations include state and local law enforcement training, crime laboratory equipment and supplies, TIME system costs, multijurisdictional anti-drug units, drug enforcement intelligence operations, and reimbursements to counties for victim/witness programs. These items are nuts and bolts law enforcement and criminal justice system appropriations. DOJ also is required to pass through funds to other state agencies; to DPI for AODA programs, to DOC for correctional officer training and victim services, to OJA for youth diversion and OJA administration, and to SPD for public defender conferences and training.

I have long argued that this fund is in deficit because it funds appropriations that have only a tangential relationship to law enforcement and criminal justice programs. DPI's AODA programs, however important, do not have as direct a relationship to law enforcement and the criminal justice system as the DOJ appropriations identified above. Moreover, penalty assessment funds pay for programs at the Office of Justice Assistance. OJA should be a pass through for federal programs with administrative costs paid for by those grants, not a charge on state tax, fee, or surcharge revenue. I urge the legislature to reevaluate what is funded through this account, and restore funding to those appropriations with a critical law enforcement and criminal justice nexus. Should it do so, the Legislature should also consider equitable funding of prosecutor training through this account, as it funds SPD training.

Even if the legislature does not wish to eliminate or more significantly cut certain appropriations to restore funding to all law enforcement and criminal justice programs, I believe that certain DOJ appropriations should be fully restored – and doing so would not materially affect the fiscal health of the fund. Today's deficit would be nearly a million dollars greater if the Department of Justice had not declined to spend up to its expenditure authority in FY 10. For this fiscal year, I can manage these appropriations in a manner that will leave the fund approximately \$600,000 better off than DOA's projections, by once again not spending the amounts authorized by the legislature. Significantly, only DOJ has declined to expend legislatively authorized appropriations from this deficit account. At a minimum, some of the over \$1.5 million the Department of Justice will have saved the fund over the past biennium should be reflected by

restoring full funding to the following penalty assessment appropriations: TIME system costs, drug enforcement intelligence operations, and reimbursement to counties for victim/witness programs. This would cost approximately \$700,000 over the biennium, less than half of what we have saved.

Long-term Vacancies

The Governor's budget calls for the elimination of 19 positions at DOJ. The intent of this proposal was to eliminate long term vacancies. However, of the 19 FTE positions identified for elimination by the Governor, six of these positions have been authorized to be filled by the Department of Administration and the Office of State Employment Relations through the Centralized Position Review process under this administration. I am not against eliminating unnecessary positions. I have done so in each budget I have proposed. I also do not object to the elimination of 13 of the 19 positions, and I volunteered eliminating another position, which is treated separately in the budget. I propose restoring these six FTE positions and a restoration of \$279,400 in salary and fringe benefit spending authority annually.

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Governor Walker's proposed budget for the Department of Justice is a good one that I believe you can improve. He has shown a commitment to public safety by addressing emerging criminal activity, such as Internet Crimes Against Children, being ahead of the curve with DNA resources, and recognizing the importance of retaining experienced prosecutors. I ask you to support these initiatives, as I do.

To best manage the proposed cuts, I ask for flexibility. I ask that you:

- Reject transfers from DOJ's court-ordered discretionary fund;
- Exempt DOJ from DOA's position and lapse authority;
- Fix Penalty Assessment; and
- Restore position authority and funding for approved positions.

I have demonstrated a willingness and ability to not only administer the Department of Justice within the means you set, I have returned funds and maximized the investments you have made. I pledge to you my continued efforts to do just that. In the end, that is a part of what I, like you, was elected to do.

Now I'll be happy to take your questions.