



**WISCONSIN DEPARTMENT OF  
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April 7, 2008

Senator Jim Sullivan, Co-chairperson  
Representative Suzanne Jeskewitz, Co-chairperson  
Joint Legislative Audit Committee  
State Capitol  
Madison, WI 53702

Dear Senator Sullivan and Representative Jeskewitz:

In July 2007, the Legislative Audit Bureau (LAB) completed a report on the allocation of prosecutor positions in Wisconsin. On October 18, 2007, the Joint Legislative Audit Committee (JLAC) conducted a public hearing on the LAB report. I participated in the public hearing and testified for the Department of Administration (DOA) and the State Prosecutors Office (SPO).

In its report, the LAB recommended that the DOA report back to the JLAC by March 14, 2008, regarding:

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

As you recall, Sheila Conroy, Administrator of the Division of Administrative Services, recently asked for an additional three weeks in which to submit DOA's report to the JLAC. This extension was due to an injury I suffered at home, and delayed the completion of the report in time for the March 14<sup>th</sup> deadline. Both of you graciously agreed to the extension, and I extend my appreciation to you for your consideration.

In the testimony I presented at the October 18<sup>th</sup> JLAC hearing, I explained that DOA and the SPO are most willing to work closely with Wisconsin prosecutors in an effort to assist the prosecution system to work as efficiently as possible. In preparation for drafting this report, the SPO reviewed information from the Wisconsin District Attorneys Association (WDAA), the Association of State Prosecutors (ASP), and others who appeared at the JLAC hearing in October, 2007. In addition, the SPO surveyed prosecutors regarding the specific LAB recommendations. I provide the following information in response to those recommendations.

***Recommendation #1: DOA report to the JLAC 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.***

With respect to establishing voluntary guidelines for charging practices throughout the State, several prosecutors have proposed that all charges against an individual be joined in one complaint whenever practicable. However, prosecutors are hesitant to limit the discretion of other prosecutors to decide whether or not to issue a charge based on specific circumstances of the crime, criminal history of the accused, etc. The current weighted caseload formula could be improved by implementing a guideline under which all charges would be joined in a single complaint whenever practicable. This would ensure greater consistency of data among the various DA offices.

Other modifications to the weighted caseload formula are also being considered. Prosecutors have identified several crimes for which they believe the time estimates to be too low, including homicides, felonies, misdemeanors, criminal traffic, juvenile delinquency, and CHIPS cases. The SPO is also considering whether DAs and Deputy DAs should be assumed to carry a full caseload due to their involvement in managerial and public issues, and whether time spent on community prosecution, diversion programs, and meeting with victims should be given weight in the formula. A second improvement to the weighted caseload formula would require gaining further consensus on these issues and integrating any appropriate adjustments into the formula.

An adjustment could also be made to the estimated number of annual hours spent on referrals. Based upon information from prosecutors, the current figure of 35 hours is likely too low. Thus, a third potential improvement to the weighted caseload formula is to establish agreement on a new annual figure to use for referrals.

***Recommendation #2: DOA report to the JLAC 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.*

PROTECT, an acronym for Prosecutor Technology for Case Tracking, is an electronic case management system utilized by DA offices. It interfaces with the Circuit Courts, the Department of Justice, and the State Patrol. PROTECT is a voluntary program, and its use in a prosecutorial unit is dependent upon the interest of the DA to implement and use it.

The WDAA's IT committee, which includes a representative from DOA, has developed best practices for entering data into PROTECT in order to accurately represent the workload in that office. Best practices recommendations include:

- Focusing on referrals rather than the number of cases;
- Identifying what information is considered a referral;

- Documenting counts or charges by class and severity;
- Reducing data entry for the referral information by implementing the electronic referral interface; and
- Establishing agreed-upon race and ethnicity designations to be used by CCAP, PROTECT, DOJ, and DOT so that evaluation of this information will be consistent and meaningful.

The WDAA IT committee intends to educate prosecutors about the benefits of the best practices and work to institutionalize them over time. To communicate the best practices to prosecutors, the WDAA IT committee plans to:

- Incorporate best practices discussions into existing regional prosecutor training classes, as well as Milwaukee's PROTECT implementation training classes;
- Distribute recommendations to prosecutors via e-mail;
- Develop a webcast "Implementing Best Practices" recommendations; and
- Post documentation regarding best practices on the DAIT website.

At this time, PROTECT has been implemented in 67 of the 71 DA offices. It could take until the end of fiscal year 2011 to be fully implemented in the remaining counties, including Milwaukee. Currently it is anticipated that implementation of PROTECT could occur according to the following timetable:

- Milwaukee County Adult – planned implementation in FY09 with the current budget providing funding
- Iron County – planned implementation in FY09 with costs accommodated within the current base budget
- Portage County – currently Portage has an integrated system with their courts. However, the criminal courts may move to the CCAP system. If so, the DA's office probably would be interested in moving forward with PROTECT. Likely implementation would be in FY10 and could be accommodated within the current base budget.
- Vernon County – has not expressed an interest in PROTECT, but may do so if the State begins using PROTECT data as the source of the weighted caseload statistics. Implementation could be accommodated within the current base budget.
- Shawano/Menominee Counties – PROTECT is installed, but the office has not used it. The current DA is moving forward to begin using PROTECT.
- Milwaukee Children's Court (Juvenile) – the systems and processes used at Children's Court are entirely different than those in the Adult cases. Projected timeline is the 2009-11 biennium.

The implementation timeline above anticipates continued full funding within the State's current budget, continued federal funding (or equivalent State funds), and sufficient funding in the next biennium to cover the implementation cost for Milwaukee Children's Court (approximately \$298,000). After the implementation timetable is achieved, each DA office will need to use the PROTECT system for a period of time before the data can be utilized in the weighted caseload formula. As soon as there is sufficient reliable data, the SPO will begin using PROTECT referral data in the weighted caseload formula.

***Recommendation #3:*** DOA report to the JLAC on its plans for initiating a new time study to more accurately measure prosecutors' work.

The SPO has considered the initiation of a new time study to measure prosecutors' work. However, there is no consensus among stakeholder groups on this issue. More specifically, there is no agreement as to how long the study should last, which activities should be included, how the study should consider all time worked by prosecutors, and how the data could be verified. In addition, there are concerns among prosecutors that a new time study conducted under current staffing levels will not accurately measure their workloads under optimal conditions. Based upon the status of discussions on this issue, the SPO has not developed a specific plan to initiate a new time study.

***Recommendation #4:*** DOA report to the JLAC 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.

The SPO has considered the feasibility of implementing a pool of floating ADAs to assist counties experiencing a heavy caseload and needing additional resources. However, there are potential challenges with this concept. There are questions as to who would hire, supervise, evaluate, schedule, and train this pool of floating ADAs. In addition, there could be a lack of continuity in handling cases as the ADAs move from county to county. Notwithstanding these practical issues, the feasibility of such a program would almost certainly depend upon additional funding.

An increase in the use of special prosecutors would likewise require additional funding. As for the DOJ, it generally does not have the staffing flexibility to assist DAs with heavy workloads. However, prosecutors did provide some suggestions for more effective use of DOJ's assistance. For example, DOJ's specialized prosecutors for cases such as Chapter 980 (Sexually Violent Person Commitments) have proved successful. Perhaps additional specialized prosecutors could be designated to help with homicide cases. Prosecutors also suggested that it would be helpful if DOJ could participate in criminal prosecution rather than as an advisor on appeals. SPO will contact the appropriate representative at DOJ to discuss these options.

Thank you for the opportunity to provide additional information to you. If you have any questions, I will be happy to respond to them.

Sincerely,

Philip W. Werner, Director  
State Prosecutors Office

cc: Sen. Julie Lassa

Sen. Mark Miller  
Sen. Alan Lasee  
Sen. Robert Cowles  
Rep. Samantha Kerkman  
Rep. Kitty Rhoades  
Rep. David Cullen  
Rep. Joe Parisi  
Janice Mueller, State Auditor

