

An Evaluation:

Allocation of
Prosecutor Positions

Department of Administration

July 2007

Report Highlights ■

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

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.

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

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:

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

- 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.

District attorneys have used special prosecutors to supplement staffing resources.

Staffing and Caseloads

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.

FTE Prosecutor Positions As of July 1	
<u>Year</u>	<u>FTE Positions</u>
2002	444.35
2003	447.40
2004	431.50
2005	427.15
2006	424.65

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.

Key Facts and Findings

As of July 1, 2006, there were 424.65 FTE county-level prosecutors statewide.

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

FY 2005-06 expenditures for district attorneys' offices totaled \$44.4 million.

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.

Criminal caseloads increased 11.5 percent from 2001 through 2005.

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 current weighted caseload formula calculates a statewide need for additional prosecutors.

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

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

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. 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.

Special Prosecutor Appointments	
<u>Fiscal Year</u>	<u>Appointments</u>
2001-02	42
2002-03	38
2003-04	32
2004-05	42
2005-06	42

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.

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 shortterm 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](#)).

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