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PREPARED REMARKS OF ATTORNEY GENERAL J.B. VAN HOLLEN TO JOINT  
COMMITTEE ON FINANCE REGARDING PUBLIC SAFETY, THE DEPARTMENT  
OF JUSTICE, AND THE 2009-2011 BUDGET

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Co-chair Miller, Co-chair Pocan, Honorable members of the Joint Committee on Finance, thank you for the invitation to appear before you today.

Before I discuss the Department of Justice's budget, I want to talk about what the Department of Justice does with the money that you appropriate. We support law enforcement; through our agents and analysts at the Division of Criminal Investigation, through the Crime Lab, through training, and through technical support. We support victims and victim services. We arrest child predators and disrupt drug trafficking organizations. We enforce the law, whether criminal or civil, whether supported by Republicans, Democrats, or both. We keep convicted felons *in* prison, by representing the state in felony appeals. In court, we defend the State and the laws you pass, including attempts to undo the budgets that you pass. We protect taxpayers and the state treasury from fraud.

By and large, we don't charge state agencies and local governments for what we do. But we do provide revenue--revenue that doesn't show up on these budget summaries that you receive from DOA and the Fiscal Bureau. Let me provide an example. The year before I took office, the Medicaid Fraud Control Unit collected just over \$437,000 in civil restitution. This is money that had been unlawfully obtained through fraud. These awards are returned to the Medicaid program. In my first year in office, this Unit collected over \$4 million in civil restitution. In 2008, this Unit collected over \$8 million dollars. This year, from January to mid-March, we have collected or are entitled to collect almost ***\$17 million*** to return. This is the same Unit that this body agreed to supplement with two additional investigators during the budget deliberations two years ago. The return on investment when we work together is pretty good, I'd say.

As you can see, the hard work of the dedicated attorneys and investigators in DOJ pays off. Literally. Not only in Medicaid Fraud, but additional funds are collected from our efforts to enforce consumer and environmental laws. These awards help Wisconsin citizens recover their losses and encourage lawful behavior. They also represent a substantial source of revenue for the state.

Enhancing the state treasury by cracking down on unlawful behavior isn't the only way we protect taxpayer money. Two years ago, I asked the Legislature for increased resources to eliminate the DNA backlog at the Crime Lab. The Legislature and the Governor responded. We didn't just add bodies and do things as usual; we dramatically enhanced the efficiency at the Lab. Last year, with double the personnel we worked nearly four times as many cases as were worked in 2006. This means more cases solved, more offenders off the streets, more suspects exonerated, more officer time on the street with less effort tracking down dead-end leads. And it means fewer crime victims.

Before talking about the Governor's budget proposal, I want to talk about what I proposed to the Governor. I made a targeted request to add six special agents and three analysts to tackle Internet Crimes Against Children, narcotics, and gangs, including those largely comprised of illegal aliens. I also asked that the state fulfill its promise to crime victims by enhancing the underfunded crime victim's compensation program and by using existing revenue streams to fund victim assistance programs. I also asked the Governor to restructure the criminal history record check fee so that we could maintain and begin critical improvements to enhance the vital law enforcement support systems the fee funds.

On behalf of those who we serve and protect, I asked for a modest increase. New agents would be covered with GPR dollars. Other programs would be funded by existing program revenue, federal dollars, or by appropriately adjusting fees to pay for services. The Governor's proposal recommends adding one special agent and one analyst and he also approved, with minor modifications, proposals to use program revenue to support crime victims and critical law enforcement support. For that, I thank him.

But this budget can do more for public safety. Budgets should reflect our priorities, and the first priority of government is public safety. Government exists to protect our life and liberty, to allow citizens to pursue their individual happiness. Not only does law enforcement and public safety protect individual liberty, but without it, other government efforts cannot succeed.

I know that I'm not alone in this view. UW-Madison's new Chancellor, Biddy Martin, was asked by a reporter from the Associated Press what jobs she deemed essential given the UW-System's directive that Chancellors hire only those positions deemed "essential to the University's mission." Her response? Those jobs involving public safety, including University Police. If public safety is essential to achieve the University's mission, certainly it is essential to government as a whole.

Unfortunately, I do not believe the Governor's budget proposal adequately protects this priority. Yesterday, I sent you a letter expressing my concerns over a number of Governor Doyle's recommendations that I believe diminish public safety. It does so by releasing felons from prison, reducing supervision, cutting already overburdened district attorney's offices, pushing state costs down onto local agencies, and in other ways I indicated in my letter. The state has faced difficult economic times before, but this body has refused to balance the budget on the back of public safety. I am hopeful that you will do the same as this process goes forward.

## **Restore Base Funding and Eliminate the Department of Administration's Lapse Authority over Law Enforcement and the Department of Justice**

As it relates to the Department of Justice, the Governor's budget proposal leaves much to be desired. While government spending is to increase nearly 8 percent in the first year of the biennium, the Department of Justice's ability to perform its public safety mission is weakened. In addition to the 1 percent cut assessed to nearly all agencies, the Governor has proposed reducing the Department's GPR appropriation by an additional \$2 million over the biennium. Moreover, I am informed that the Secretary of Administration intends to assess another \$2 million lapse on the agency's budget. That's a number that won't show up in DOA's or the Fiscal Bureau's spreadsheets. Still more ominous is the language that would enable the Secretary of Administration to lapse vacant positions and additional funds associated with those positions, hampering the ability to achieve budget savings through smart vacancy management.

Perhaps most alarmingly, the Governor's budget proposal would give the Secretary of Administration the ability to unilaterally assign any DOJ employee (or other agency employee) to any other state agency while salaries and benefits continue to be paid by the agency to which the Legislature assigned the employee. At his will, and without your permission, the Secretary of Administration would be able to reconstruct state government. This not only jeopardizes every agency head's ability to manage his or her department, it deprives the Legislature of its ability to construct the government. In effect, it makes the Legislature an advisory committee to the Secretary of Administration.

The Governor's office, through the Department of Administration, should not have the ability to oversee DOJ in a manner that diminishes my ability to serve the citizens who elected me, and diminishes my ability to manage the resources the Legislature provides to the Department of Justice. Rest assured, if I can find additional savings, I will return them to the treasury as I did during the last biennium when I returned \$1.2 million to the treasury in savings – that in addition to the many millions recovered in litigation.

Another number that won't show up in the spreadsheets is the fact that while the Governor recommends using federal funds to back fill cuts for agencies like the Department of Administration, DATCP, Commerce, Corrections, DNR, Tourism, the Arts Board—even his own office—he made no similar recommendation for the Justice Department or DA's. The bottom line is that while the cuts to many other agencies are, in part, illusory, these cuts to public safety are real and greater than they first appear.

As a separately elected constitutional officer, as the state's top cop, I am asking this Committee to exempt the Department of Justice from these cuts and unilateral lapses. We should not cut back on core priorities while we fund new entitlements or continue to fund lower priority governmental functions. If we believe in priorities, if we believe that this is to be a budget that protects public safety, then public safety functions should be exempt from cuts.

### **Oppose Human Resource Consolidation**

The Governor's budget proposal would also interfere with the Department's ability to manage the agency by taking away our human resources office and putting all human resources functions under centralized control.

I cannot overstate how important it is to have human resources services employed by the agencies they serve. A responsive human resource office is an essential component of managing both an agency and a budget, employees, and vacancies.

You know this. Just as it is important to allow the Legislature to manage its human resources, it is important for agencies--particularly agencies independent of the Governor, such as Justice, DPI, and the State Public Defenders--to manage theirs.

Not only will HR consolidation interfere with my ability to manage the Department, there is no benefit. The Governor doesn't even predict that this consolidation will result in savings. And why would it? Adding another layer of bureaucracy by removing HR from the primary agency and adding red tape in the form of charge-backs isn't the kind of thing that saves money. Most alarmingly, we've been told that OSER has no preconceptions as to how human resources consolidation will occur or how it will look when completed. Translation: there is no plan.

I urge the committee to remember DOA's track record when it comes to consolidating functions and reject HR consolidation.

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In addition to these items, I respectfully ask you to consider the following items as they relate to the Governor's proposal for the Department of Justice budget.

### **Fully Fund Internet Crimes Against Children Proposal**

I asked that the Governor propose adding six agents and three analysts in the Division of Criminal Investigation to work on the law enforcement priorities I mentioned previously. I believe that if the mayor of Madison can reprioritize his agenda to add 30 cops to the street to respond to a growing local crime problem, surely the state can find money to add six special agents in our statewide efforts to fight crime.

The one proposal that is most important to me—and it is the one request the Governor has recommended in part—expand the Internet Crimes Against Children task force by two special agents and three analysts.

The sexual assault of a child is among the most horrific crimes imaginable. The Internet is often used to lure children. Moreover, child sexual assault is recorded and electronically distributed throughout the state. Between January and October of 2008, the ICAC Task Force observed over 22,000 unique IP addresses in Wisconsin alone offering to share child pornography. Predominantly, the child pornography that we see in law enforcement involves preteens and even

toddlers being sexually abused. Research shows that those who view child pornography often abuse children in their community.

While these offenders operate in the shadows, don't believe that they always appear as shadowy characters. Our ICAC Task Force has arrested police officers, a Scout leader, university employees, and even the now former mayor of one of Wisconsin's largest cities. We cannot allow those who have earned our trust to violate our children.

At the Department of Justice, our agents identify and investigate these predators. Our computer forensic analysts search and analyze seized computers to identify these grotesque videos and images.

Two years ago, I asked the Governor and the Legislature to increase funding for our Internet Crimes Against Children program, asking for seven special agents and seven analysts. I am thankful to Governor Doyle and the Legislature for providing two new special agents and three computer forensic analysts. They are now on board and fully trained.

We have also increased the participation of local law enforcement to help in these investigations. When I took office, there were 23 local law enforcement agencies who partnered with the Internet Crimes Against Children task force. Today, there are 76. We are also cross-training other DOJ special agents in this field to assist in parts of these investigations in order to leverage internal resources.

I've come back to ask the Legislature to do what it did last year: add two special agents and three more computer forensic analysts to our fight against Internet predators. Sadly, there is no shortage of work.

Once hired and fully trained, each new agent will be expected to initiate between 30 and 40 investigations a year. In different terms, it costs the state approximately \$10,000 to investigate each case and package it for prosecution. By adopting my request, the Legislature can be responsible for helping to put 60 or more child sex predators behind bars each year. There is no better use of public safety dollars than to aggressively attack this known threat to our kids.

### **Reject Racial Profiling Study Proposal**

One of the struggles that every agency faces is that government passes new laws and mandates without supplying the resources to enforce the law or accomplish the program.

Some of these new obligations that will use existing resources are clear, such as the assignment of enforcement powers to DOJ under newly proposed policies. Others are less clear, such as the effect consolidating agency attorneys within DOA would have on our work.

One such unfunded mandate that I believe will have a substantial impact on the Department of Justice's resources is the Governor's proposal to require law enforcement in 11 counties, representing 56 percent of the state's population, to collect new demographic and other information about traffic stops and transmit that information to DOJ to perform a racial profiling

analysis.

I recognize the need for equal application of the law. It is a central tenet of our Constitution and the concept of justice. But I object to this proposal because it is unfunded and would consume substantial resources. I also question this proposal's utility. I question whether it is ever possible to determine whether motor vehicle stops are the result of racial profiling merely by looking at raw demographic data and not looking at the context and behaviors in each individual stop and at those situations where a stop was not made. Finally, I strongly disagree with the Governor's proposal to shield the traffic stop data from public scrutiny by exempting it from the public records law.

We estimate that this program will cost the Department of Justice approximately \$700,000 in startup costs and \$330,000 a year in ongoing costs. Local law enforcement will spend more time and money changing forms, filling out forms, and developing a way to transmit traffic stop information to DOJ. DOJ will have to construct databases that can receive this information and will have to hire statisticians or social scientists to analyze this information. These are not individuals that we currently have on staff, and our information technology resources have been stretched very thin, as DOA has repeatedly failed to authorize the hiring of individuals who fill our IT positions.

While issues relating to equal application of the law are matters that should always have our attention, I do not believe this proposal is a wise use of resources. For the cost of the initial startup of the racial profiling study that is unlikely to produce useable information, the Department of Justice could fund agents and analysts to initiate 60-80 more investigations of Internet sex predators. I know what I would fund.

### **Reject Governor's Proposal To Assess Additional Cuts on Law Enforcement Training, Law Enforcement Support, Law Enforcement Operations, and Victim Services Funded Through Penalty Assessment**

Governor Doyle proposes to cut by an additional 5 percent all appropriations funded with penalty assessment surcharge dollars. This makes for a 6 percent cut, when considering the percent across-the-board cut is factored in. Over the biennium, \$1 million in state support of law enforcement training will be cut, costs primarily passed onto local law enforcement agencies, increasing local burdens. Drug enforcement operations will be singled out for \$300,000 in cuts. The program that facilitates the real-time transfer of critical criminal history information to officers on the street—the TIME System—will be cut by over \$100,000 by the reduction in the penalty assessment funds and the 1percent cut. This is in addition to the \$100,000 the Governor has proposed cutting from information technology-related appropriations to work on the TIME system.

Appropriations funded by the penalty assessment surcharge have exceeded the revenue collected in recent years. This is a problem. But the solution isn't an across-the-board 5 percent cut. It is, as I advocated two years ago, to return this fund to its proper purpose: the support of law enforcement training, law enforcement operations, and crime victim services. One third of the penalty assessment surcharge money goes to operations outside of the Department of Justice.

For example, over \$4.2 million a biennium goes to DPI—some of which, I understand has been used to satisfy the Department of Administration lapse requirements in the past, despite the fact that the penalty assessment fund is in deficit. Restricting these funds to Department of Justice appropriations would eliminate this deficit.

**Reject Governor Doyle's Proposal to Raise the Handgun Hotline Fee Nearly Four Times to \$30**

Today, Wisconsin statutes require the Department of Justice to perform a background check on individuals who seek to purchase handguns from a licensed firearm dealer. In recent years, the average cost of a handgun hotline record check is \$13. By statute, that fee for performing a background check for handgun purchasers has been set at \$8 dollars. As a result, through time, the handgun hotline fund has been operating in a deficit. Interestingly, a sharp increase in the number of handgun purchases in fiscal year '09 means that the \$8 fee may come close to covering costs this year.

The Governor proposes to raise this fee from \$8 to \$30 and to merge the penalty assessment fund with a handgun hotline fund. So long as the state is operating this program, I do not object to a fee increase limited to the estimated costs of performing each handgun hotline record check (in fact, I proposed this to the Governor). But I vigorously oppose any attempt to take this fee and turn it into a tax like we might put on a pack of cigarettes or a surcharge we might assess on criminal behavior.

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When the Governor addressed the Legislature in February, he said that his was a budget that placed a priority on public safety. I disagree. Cutting public safety funding, cutting district attorney budgets, letting inmates out of prison, reducing supervision of convicted criminals, saving state money by shifting burdens to local law enforcement, recommending federal stimulus money be directed to areas other than Justice and the District Attorneys – these are not proposals that protect public safety. I hope that this body prioritizes public safety and passes a budget that matches in substance what the Governor advocated with rhetoric. You have protected public safety in the past, and I hope that you will do so in this budget.

Once again, thank you for the opportunity to appear before you today and provide these remarks.