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To: Members of the Joint Committee on
Finance

From: Charlotte Gibson
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Subject: Report on 2019 Activities of DOJ's drug prosecutor team pursuant to Wis.
Stat. § 165.25(11)

2017 Wisconsin Act 261, section 13 created two Assistant Attorney General project positions intended to (1) assist the Division of Criminal Investigation field offices in Wausau and Appleton and (2) assist district attorneys with the prosecution of drug-related offenses. I am reporting to describe the activities of our assistant attorneys general in those positions and assess their effectiveness for the 2019 calendar year, pursuant to Wis. Stat. § 165.25(11).

1. *Activities of these attorneys.*

The attorneys perform a variety of functions related to investigations and prosecutions of heroin, other opioids, and methamphetamine trafficking. They work on cases including conspiracies of drug trafficking organizations and first-degree reckless homicide (“Len Bias”) charges against traffickers responsible for the delivery of drugs that have resulted in fatal drug overdoses. The attorneys provide guidance and assistance to law enforcement agencies and district attorney’s offices in the regions of the state covered by the Department of Justice - Division of Criminal Investigation (DCI) field offices in Wausau and Appleton, and occasionally to areas of the state outside of those geographic regions. They assist the district attorney’s offices with criminal prosecutions in an assist capacity pursuant to Wis. Stat. § 978.05(8) and occasionally handle cases as special prosecutions pursuant to Wis. Stat. § 978.045.

The regular duties of the attorneys fall into three primary categories: (1) training and consultation, (2) investigation, and (3) prosecution.

a. Training and Consultation

One important function of the regional drug prosecutor program is serving as a resource for law enforcement officers and prosecutors across the state. The regional bases of the attorneys make them accessible to officers and prosecutors in their regions and allow them to build productive working relationships that result in efficient, thorough, and successful investigations and prosecutions.

The attorneys have developed training materials and standards for drug investigations and prosecutions. These training materials and standards for both prosecutors and law enforcement officers focus on high-level drug trafficking and Len Bias investigations and prosecutions with an emphasis on identifying and aggressively prosecuting the most culpable offenders. The attorneys regularly present these materials during formal training sessions for law enforcement officers, including to various multi-jurisdictional drug task forces, as well as to prosecutors in their regions and across the state.

In addition to formal presentations, the attorneys regularly perform case consultations for prosecutors and law enforcement officers, including DCI special agents within the regional offices, investigators with local drug units, and officers from local sheriff's offices and police departments. These consultations help assess cases that are under investigation, have been referred for criminal charges, or have already been filed. The attorneys make recommendations on case and investigation strategy and address questions on many legal topics, including search warrant forms.

b. Investigation

An important benefit of the attorneys being regionally located is their ability to collaborate with law enforcement during the early stages of criminal investigations on major cases such as drug overdose deaths and complicated drug conspiracies. That early involvement has repeatedly resulted in more thorough and comprehensive investigations, improved information sharing between agencies, better compliance with legal requirements, and ultimately, more successful prosecutions. The attorneys draft and review various types of search warrants, advise on the legality of investigations, help develop and brainstorm investigative strategies, and identify follow-up investigative tasks, all with the purpose of building legally sound and prosecutable criminal cases. The attorneys work with law enforcement to identify the most culpable

offenders by working up the drug chain of supply and distinguishing drug users from drug dealers.

c. Prosecution

The majority of the attorneys' caseloads are criminal prosecutions handled as DOJ assists pursuant to Wis. Stat. § 978.05(8). Assist cases are assigned upon the request of the applicable district attorney and approval of the Attorney General. Assist cases remain under the authority of the district attorney. The district attorney's office assigns a prosecutor from the local office to remain on the case with the Assistant Attorney General. This structure allows the DOJ attorneys to provide valuable caseload assistance to district attorney's offices and offer a level of expertise in drug conspiracy or overdose death prosecutions. The attorneys help mentor and train prosecutors, providing specific tools and strategies prosecutors can implement for future investigations and prosecutions.

The attorneys handle some cases as special prosecutions pursuant to Wis. Stat. § 978.045. Cases are assigned as special prosecutions upon the request of the applicable district attorney(s) and approval of the Attorney General. The attorneys are assigned cases as special prosecutions under limited circumstances, including when criminal conduct of a defendant spans multiple counties. In special prosecution cases, the Department of Justice is solely responsible for the prosecution, including all decisions related to settlement.

In both special prosecution and assist cases, the attorneys remain assigned through resolution by plea agreement or trial, as well as any trial-level post-conviction motions.

2. Caseload Statistics

The following is a breakdown of cases assigned to the attorneys as either assists or special prosecutions during the 2019 calendar year. Six cases involved both methamphetamine and heroin/fentanyl, so they are included in each "distribution" category:

Total: 68
First Degree Reckless Homicide (Len Bias): 21
Methamphetamine Distribution: 31

Heroin/Fentanyl Distribution: 16
Other: 6

3. Review of the program for 2019.

Both qualitatively and quantitatively, we believe that the program has been very valuable in helping investigate and prosecute serious drug-related offenses in the target counties. Because the goal of these positions is to assist district attorneys and DCI special agents in the region, we sought comments from those individuals. These comments further demonstrate the attorneys' value and effectiveness.

DCI's Special Agent in Charge Cindy Giese, who is based in the Wausau DCI Office, stated that the Wausau attorney position "has been a great benefit to our WI DOJ DCI Special Agents and an incredible asset to our local law enforcement and prosecutor partners." She reported that Assistant Attorney General Cass Cousins, the attorney located in Wausau, "provides a readily accessible resource to the agents which we have never had before. . . . Due to the level of experience AAG Cousins has, he is able to provide the legal information and legal guidance that the agents are looking for and within a short period of time. AAG Cousins makes time for the agents and spends the time needed to assist [them.]" Giese emphasized that AAG Cousins has been especially valuable in helping investigate in the area of overdose deaths, an area of enforcement and prosecution that had largely been absent in that area.

DCI Special Agent in Charge Jeffrey Wisch, who is based in the Appleton DCI Office, praised Assistant Attorney General Peter Hahn as "an invaluable member" of the field office staff: "The accessibility of AAG Hahn to discuss matters of importance has been too many to count. I have discussed narcotics, public integrity, major crimes, and human trafficking investigations with him, and his immediate guidance made those criminal investigations run incredibly smoother." Wisch remarked on the improvement AAG Hahn's presence has made in the criminal justice process in that region.

That praise was echoed by DCI Special Agent in Charge Raymond Taylor, who is the Project Coordinator for the Lake Winnebago Area Metropolitan Enforcement Group's drug unit. The enforcement group conducts drug enforcement investigations in four different counties and 15 local jurisdictions. Its drug enforcement investigations generate questions in the areas of search

and seizure, interview and interrogation, and arrest procedures. Special Agent Taylor commented that the enforcement group has come to rely on the advice and guidance from the position. One area where AAG Hahn has been valuable is in investigating drug traffickers who utilize the latest communication platforms, such as Snap Chat, Facebook, Instagram, or Text Now and who have records on electronic devices. Those technologies present challenges in obtaining records, preserving information, and creating the types of orders that will stand up to challenges in court, and AAG Hahn provides the group with up-to-date legal advice and assistance. He also trains and assists with multi-jurisdictional issues in multiple defendant cases, complicated drug conspiracies, overdose deaths/overdose survival investigations, and T-3 investigations.

Local district attorneys have also found the positions to be very valuable. Regarding AAG Hahn, Outagamie County District Attorney Melinda Tempelis stated: “The regional drug prosecutor program has been an exceptional resource for my office, working with us to combat methamphetamine, heroin, fentanyl, and other drug trafficking in the Fox Valley and surrounding areas. As my office, like many others across the state, has struggled with high caseloads and prosecutor turnover, Assistant Attorney General Peter Hahn has provided much needed assistance with the investigation and prosecution of serious drug trafficking and reckless homicide cases.” DA Tempelis echoed the value of having a regional prosecutor: “The regionalization approach has provided us with immediate access to a pool of knowledge that would otherwise be unavailable to assist both seasoned and new prosecutors. Furthermore, AAG Hahn has established strong working relationships with local partners, where officers and prosecutors are comfortable reaching out with questions and seeking advice on all different types of issues related to drug prosecution.”

Marathon County District Attorney Theresa Wetzsteon had similar praise for AAG Cousins, commenting that “The regional drug prosecutor (AAG Cousins) has been a tremendous asset to the Marathon County District Attorney’s Office. Since becoming the regional drug prosecutor, AAG Cousins has assisted on several reckless homicide cases based on drug overdose fatalities, as well as other drug trafficking cases.” She added that Cousins has also worked directly with law enforcement in Marathon County to advise and answer questions regarding ongoing investigations: “The addition of a regional drug prosecutor has been very beneficial to the residents of Marathon County.”

Brown County Deputy District Attorney Wendy Lemkuil stated: “The regional drug prosecutor program is an invaluable resource for the Brown County District Attorney’s Office. This program offers essential support to our office in prosecuting high volume and complicated cases in drug prosecutions. From a recent Len Bias case, a multi-defendant drug conspiracy off of a wiretap and numerous other drug cases, our office has benefitted from this resource of specialized expertise and assistance.” Deputy DA Lemkuil emphasized the “overwhelming spike in heroin, methamphetamine and fentanyl” have increased the criminal caseload in these areas, and said that the DOJ attorneys “have offered relief and support by being available to answer questions, research case law, draft pleadings and charge co-defendants when our office hasn’t been able to keep up with our increasing volume.” That relief has also allowed her office “the necessary support to continue both our heroin and drug treatment court programs to further diversionary efforts to combat the opioid crisis and address non-violent offenders.”

Portage County District Attorney Louis J. Molepske, Jr. agreed: “Regional drug prosecutors employed by the Wisconsin Department of Justice have been a resounding success for District Attorneys across Wisconsin and especially the Portage County District Attorney Office.” Describing AAG Cousins, DA Molepske said that he “has handled all of the cases he has assisted our office on professionally and has obtained high-profile convictions in large opiate-based cases which has helped reduce drug-related deaths and access to heroin and methamphetamine.”

4. Conclusion

The regional drug prosecutors have benefitted the safety and security of Wisconsin residents. The positions, originally created as part of the HOPE agenda, are currently slated to end in 2023. That would be a grave mistake in the face of an ever-evolving drug epidemic. Their expertise and value support both local law enforcement and DCI agents in large-scale drug trafficking and Len Bias overdose homicide investigations and result in more successful prosecutions.

Please let us know if you have questions or thoughts. We are proud of our staff’s great work in these vital areas and thankful for the opportunity to provide support in the fight against Wisconsin’s drug epidemic.