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PREPARED TESTIMONY OF ATTORNEY GENERAL BRAD D. SCHIMEL
Assembly Committee on Government Accountability and Oversight
Wednesday, December 20, 2017

Good morning, Chairman Hutton and members of the Assembly Committee on Government Accountability and Oversight. I appreciate the opportunity to testify on [Assembly Bill 231](#) (AB 231), which establishes a prosecutor board in the state. I would like to extend a special thank you to both Representative Tusler and Senator Wanggaard for sponsoring this important legislation, because it will have an immediate and positive impact on public safety in Wisconsin.

In 1989, as a third year law student, I began an internship in the Waukesha County District Attorney's Office, where I fell in love with public service. I would stay there for the next 25 years of my career. As legislators, you are public servants and know how public service is different from the private sector. As you would expect, a district attorney's office is very different from "one of the big firms." There aren't high rise offices, lunches with clients, year-end bonuses and the potential for paychecks with lots of zeroes at the end. But in the DA's office, there are opportunities every day to change lives. To help find justice for the community, healing for crime victims and rehabilitation for offenders. If you care about the people you serve, and are willing to work hard, criminal prosecution can be very rewarding in many ways.

Life in DA's offices has changed an awful lot since I started in 1989. My teenagers can't imagine it, but we did not have the internet yet. I remember criminal complaints being prepared on typewriters. I remember when we got our first fax machine in the 1990s. One day we got a computer, but it wasn't interconnected to anything. It was just a word processor.

But it is not the technology in the office that was significant. With the internet, we experienced many changes in the behavior of criminals. In 1990, the words "identity" and "theft" did not appear next to each other in the criminal code. Criminals stole

checks and forged them, but they had not yet invented the idea that you could more effectively steal from people if you just stole their identity.

In 1990, we almost never saw child pornography cases. To have it, one had to possess a magazine or stack of photos and the mailman delivered it in a plain brown wrapper. With the onset of the World Wide Web, child sex offenders found a way to anonymously produce and distribute images of children being sexually assaulted and exploited. And the pedophiles who are aroused by these sick images are now offered an array of child pornography that is absolutely shocking. Thank you for passing Alicia's Law last session. It is helping police and prosecutors rescue kids from sexual abuse and trafficking more quickly.

If you talked in the 1990s about "internet travelers," people would have looked at you like you were some kind of Star Trek fanatic lost in a science fiction dream world. We used to teach kids about "stranger danger" and warned them to never get in a car with a stranger. Now, child sex offenders don't go to the local park to find victims. They go to the internet, and they do it with such frequency that whenever we run an undercover online investigation, the offenders come out of the woodwork to travel to have sex with a 12 year old. Many of them have seen the TV shows like "To Catch a Predator" and know that police are online trying to catch them, but they still come.

In 1990, DNA existed only as something you learned about in science class. It was not a tool for law enforcement to solve crimes. I remember prosecuting cases in which we utilized blood type evidence, which was useful only to eliminate suspects. Over the years since 1990, DNA science has become increasingly more precise and has become accessible to state crime labs and local law enforcement. Now, we are solving crimes we never could have dreamed of solving in 1990. In fact, the science was growing at such a fast pace that in 2007, the Wisconsin legislature approved the hiring of 31 brand new DNA analysts at our Crime Lab in one fell swoop.

We have recently seen what I hope is the beginning of a revolution in American society where victims of sexual abuse and harassment will find a more supportive justice system and public when they come forward. We saw a revolution in our approach to child sexual assault right around 1990, and we began to understand the complex reasons why victims suffered in silence and did not come forward for many years. The change in our thinking was so profound that we changed our state statutes of limitations to expand the time limit for prosecuting a child sex offender from just six years from the date of the crime to decades and in some cases, we eliminated the statute of limitations altogether.

We did not have dash cameras, much less body cameras in 1990. Stores did not routinely have video surveillance, and the cameras that existed produced such grainy images that you would not have recognized your own mother in the video.

I could go on and on about how the world has changed since 1990. Why do I choose that year? That is the year that prosecutors in DA's offices became State employees. The primary goal in making this change was to create a core of career professional prosecutors who could more effectively address the challenges brought by a rapidly changing world, and as I described moments ago, in 1990 we really had no inkling of the changes that were to come.

The merit-based pay progression you built into the statutes several sessions ago and funded in the current budget will go a long way to help retain the brightest and hardest-working public servants in the 71 DA's offices. Thank you.

All of that said, though, every study of the staffing levels in the DA's offices has found that virtually every office in the state is grossly understaffed. Most of the offices are functioning at or below 1990 staffing levels. The changes in technology have helped the support staff type criminal complaints and motions more quickly, but they have not significantly aided the prosecutors. In fact, the police reports have gotten longer. There is now a large amount of audio-visual material the prosecutor must watch in order to be prepared to charge or try the case. It takes a tremendous amount of expertise now to prosecute crimes committed using the internet, or to prosecute the child sexual assault that never would have been reported a couple of decades ago, or the murder solved by DNA, or enhanced video surveillance equipment.

Any law enforcement officer will tell you that prosecutors play a critical role in promoting public safety. They will also tell you that, even though they might be a huge fan of their local DA's office, the choke point in the criminal justice system is the DA's office, because they are so dramatically understaffed that they just cannot keep up with the work. Little problems, by necessity, get ignored or delayed, and when they do, they often become much bigger problems. There is great validity to the broken windows theory of public safety. Anyone who works within the justice system will agree that the prosecutor shortage will result in dire consequences to public safety if not addressed soon.

The public defenders and criminal defense bar have traditionally supported the efforts to increase the volume of prosecutors, because an overworked prosecutor is less likely to consider options like Treatment Alternatives and Diversion programs, like drug courts and youthful offender programs. Overwhelmed prosecutors are more likely to make mistakes, and that can lead to guilty people going free, or worse, innocent people being convicted.

For several sessions, legislators from both parties have acknowledged that the prosecutor program is vastly understaffed and the problem needs to be addressed. Staffing levels have been neglected for 20 years. It is at the point that estimates are that prosecutor offices statewide are understaffed by over 120 FTEs. It is not realistic to expect that the problem will be completely solved in one budget. It is not even

possible to hire that many prosecutors at one time. Instead, the solution needs to be a gradual growing of the ranks, which means that not every office is going to get any additional prosecutor help right away, and none of the offices will get as much help as they can justify.

Herein lies the rub. Someone needs to determine how many need to be authorized immediately and where they should go. Each of the 71 elected DAs needs to take care of public safety in their county. Therefore, they will advocate for what they need. When legislators dedicated to public safety have tried to help, they have become frustrated because the prosecutors never offer a coherent plan. Rather, there are multiple plans that conflict, and those legislators who genuinely want to help have no roadmap to follow.

For these reasons, I strongly support AB 231 because it creates an independent state prosecutor office with an eleven-member board (most of which is elected by the DAs and assistant DAs), an executive director, and a small staff. The board would take over duties currently housed at the Department of Administration. The executive director would manage the office; prepare focused fiscal estimates and annual reports; and represent the prosecutor board before the legislature, bar associations, courts, and other state agencies. The state prosecutor office would be tasked with preparing a budget for all prosecutorial units and review rules that affect prosecutors. The most important thing it will do is provide legislators the roadmap they so desperately need to determine where new prosecutors are more seriously needed to preserve public safety. That roadmap will be created by a democratically elected board of peers who will speak with authority for all of the DAs offices.

Prosecutors statewide from both political parties support this measure. It will create a system with some similarities to what the State Public Defender has now. All 71 prosecutors are constitutional officers and elected officials. It is critical that these officers have an independent board that can represent them before the legislature to ensure they can continue to carry out their public safety mission.

There have been numerous legislative proposals, specifically related to criminal justice, that have come before me for my opinion. In these cases, I do my best to share these proposals with our DAs for legislative input. However, there is currently no uniform process or system through which all DAs can be heard and represented with a focused effort on legislative proposals.

There has been an increased focus on law enforcement in our state this legislative session and I applaud the work that has been done in that regard. It imperative that we ensure criminals are appropriately charged and prosecuted. This bill provides another critical component to increasing public safety: having experienced prosecutors with necessary resources. For this reason, it is vital that prosecutors are represented and organized by a capable, independent state prosecutor office that will

be able to effectively advocate and support all of the DAs offices in our great state.

Thank you again for hearing AB 231 and I look forward to your support. I am happy to take any questions.