

# LOW PAY FOR PUBLIC ATTORNEYS A GROWING CONCERN AS BACKLOGS RISE

*While recent state budgets have increased staffing levels and pay for both district attorneys and public defenders in Wisconsin, their salaries still lag those of attorneys in the private sector and turnover and workloads for the positions have increased over time. Lawmakers will consider this issue in the upcoming state budget, adding another potential investment priority to an already crowded field.*

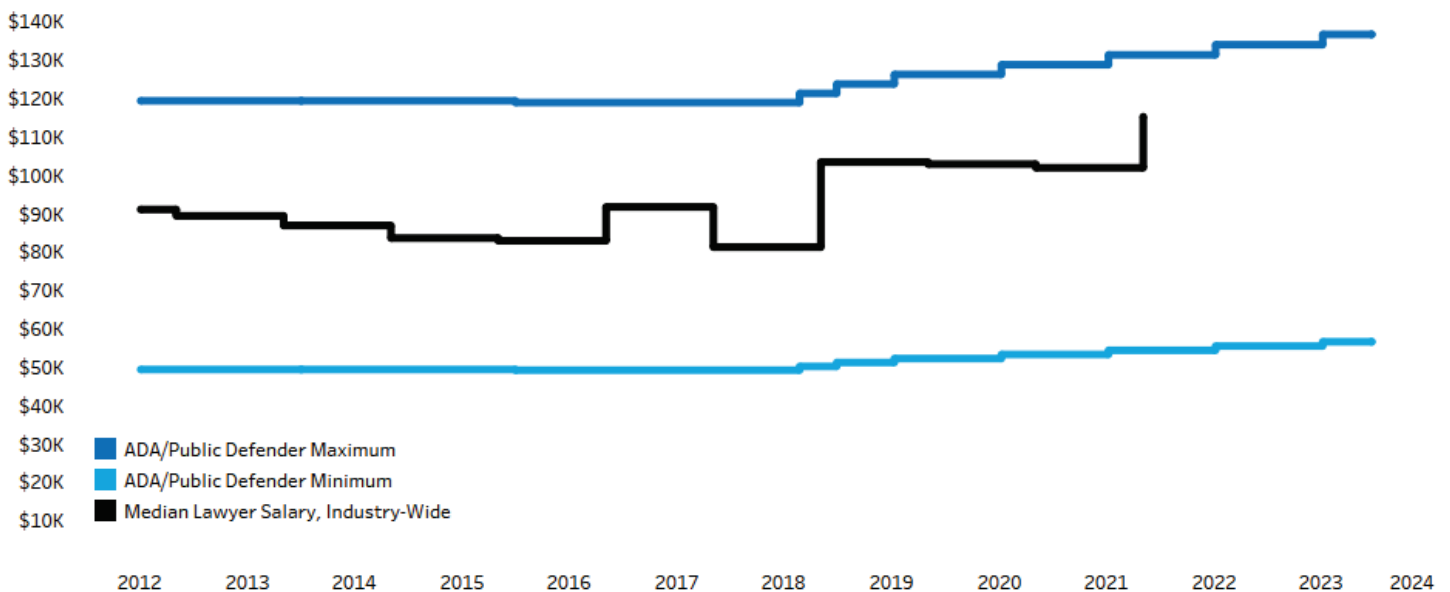
Newly hired assistant public defenders and assistant district attorneys in Wisconsin currently make a starting wage of \$56,659 per year, or \$27.24 an hour. That represents an increase of about 15% since 2012, a time period in which inflation has risen more than twice as much. It also follows a decline in take home pay for these and other public positions that occurred with the passage of 2011 Wisconsin Act 10.

Meanwhile, data from the U.S. Bureau of Labor Statistics’ (BLS) Occupational Employment and Wage Statistics survey shows that in 2021, the median pay for Wisconsin lawyers was \$115,336 a year, the equivalent of \$55.45 an hour. That’s compared to about \$35.76 an hour, or about \$74,381 a year, across all assistant

district attorney (ADA) and public defender positions in the same year. The maximum salary for veteran ADAs and assistant public defenders in 2023 (\$136,781) is just a few thousand dollars more than that of the median salary for all lawyers in the state (see Figure 1). Prosecutors and public defenders typically do receive more generous pensions and health benefits than private workers. Yet some stakeholders have been asking for years whether the state and local district attorney offices are able to offer sufficient compensation to fill public defender and ADA vacancies and retain high-quality attorneys.

Governor Tony Evers’ 2023-25 state budget proposal would provide the State Prosecutors Office and the

**Figure 1: Public Defenders and Prosecutors Make, At Best, Little More Than Median Salary for Lawyers**  
Pay for lawyers\* over time, public defender/assistant district attorney range vs. median statewide salary (all sectors)



Sources: State of Wisconsin Division of Personnel Management and Bureau of Labor Statistics. \*Does not include benefits.



Office of the State Public Defender (OSPD) an additional \$24.4 million and \$42.6 million, respectively, over the next two years. The monies would be used in part to increase attorney pay rates in both offices. That legislation – and the exhaustion at the end of 2024 of federal pandemic aid that has supported some justice system positions – now provides an opportunity for state policymakers to consider this issue. In this report, we examine the recent history of these two offices, focusing on workforce levels and changes to salary schedules to provide context for the upcoming budget debate.

## DISTRICT ATTORNEY OFFICES

Criminal prosecution at the trial court level is a function of district attorneys (DAs) who are elected at the county level, and who are aided by ADAs and Deputy District Attorneys (DDAs) in larger counties. However, while this work is conducted at the county level, the state pays these attorneys' salaries and benefits (support staff in DA offices are county employees).

Voters elect 71 DAs in Wisconsin – one for each of the state's 72 counties except in Shawano and Menominee counties, which have a combined office. DAs in three other counties (Buffalo, Florence, and Pepin) serve only part-time roles. ADA and DDA positions were converted from county to state positions in 1990. Since then, the number of state-funded prosecutor positions has risen from 332.1 full-time equivalent employees (FTEs) to 456.4 FTEs – 70.0 elected DAs, 26.0 DDAs, and 360.4 ADAs. The 2019-21 state budget authorized 61.46 new FTEs, and an additional 7.4 FTEs were added in the current 2021-23 budget.

The Wisconsin District Attorneys Association estimates that based on the average number of cases filed in 2019 through 2021, the state would need 577.2 FTE prosecutors to handle the statewide workload while working 40-hour weeks. That's about 103 (22%) more than the authorized level as of September 2022.

In addition, data from the [Wisconsin State Court System](#) show backlogs of unresolved criminal cases have

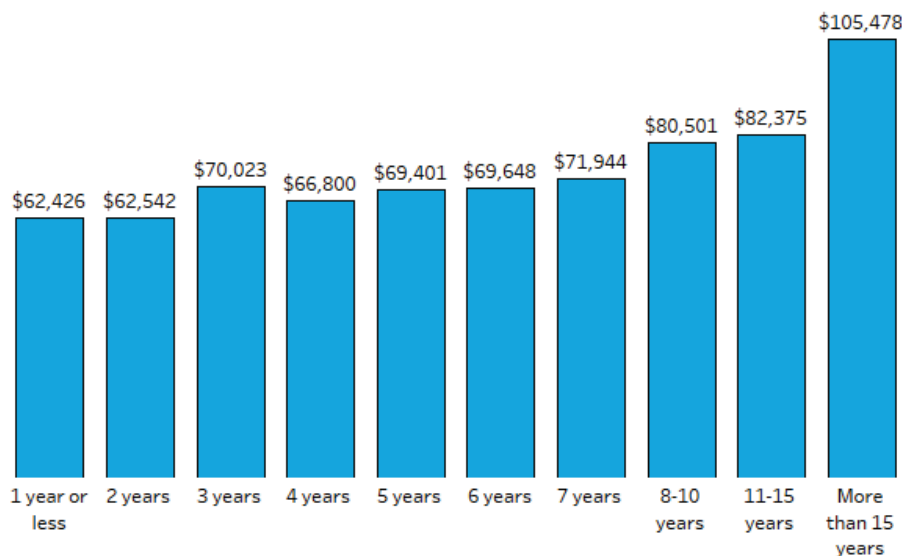
increased over the last decade. While the increase may be due to many factors, an insufficient number of experienced prosecutors might be a partial explanation.

From 2013 to 2021, the median case age at the date of disposition, or resolution, rose for every major category. Criminal felony (+58.6%) and misdemeanor (+88.8%) cases – those generally handled by state prosecutors – have seen perhaps the starkest increase in median case age at disposition: the median felony was resolved in 152 days in 2013, compared to 241 days in 2021, while the median misdemeanor increased in time-to-resolution from 89 days in 2013 to 168 days in 2021. The bulk of both of these increases occurred from 2019 to 2021, as the pandemic slowed courts across the state.

While recent budgets have authorized more ADA positions, compensation levels may make it difficult to fill all of them. Since the beginning of 2012, minimum annual wages for ADAs have risen from \$49,240 to \$56,659, or 15.1%. According to BLS, inflation over that same time period has been 33.2%.

Additional state data gathered by the Milwaukee Journal Sentinel provide annual compensation figures for all state employees from 2019 to 2021. These data show that ADA pay tends to grow slowly: in 2021, ADAs did not earn more than \$72,000 unless they had at least eight to 10 years of experience in that role (Figure 2). It

**Figure 2: Salary for ADAs Grows Slowly With Experience**  
2021 average annualized\* salary for Wisconsin ADAs, by years of experience



Source: Milwaukee Journal Sentinel data retrieved from Wisconsin Department of Administration. \*Average of all hourly salaries in each year of experience bin multiplied by 2,080 hours to account for many part-time positions.



took at least 15 years of experience for average annual wages to rise above \$100,000.

Meanwhile, data provided by the Milwaukee County DA's Office show that since 2000, there have been four years in which at least 18 of the office's nearly 120 attorney positions (15%) have turned over, with three of those (2017, 2019, 2022) coming in the last six years. In fact, from 2000 to 2005, the Milwaukee County DA's Office averaged 8.0 separations per year; in the period from 2017 to 2022, that almost doubled to 15.8. Staff at the Milwaukee County office also note that new prosecutors generally enter their office with little background in the field, while those leaving have some time in their jobs, resulting in a significant net loss of experience.

The Milwaukee County office did receive funding in April 2022 from the federal American Rescue Plan Act (ARPA) for 15 FTE ADA positions and will have filled 13.5 FTE of those by June 19 of this year. These positions will be eliminated in 2024 when the ARPA funds are exhausted, however, which may add to the office's labor and workload challenges.

### PUBLIC DEFENDERS

State appropriations for the Public Defender's Office are larger than those for the State Prosecutors Office, as state funding supports back office and other non-

attorney positions in the Public Defender's office as well as attorneys. In 2023, \$113.2 million in general purpose revenue (GPR) was budgeted for this office and its 614.85 FTEs.

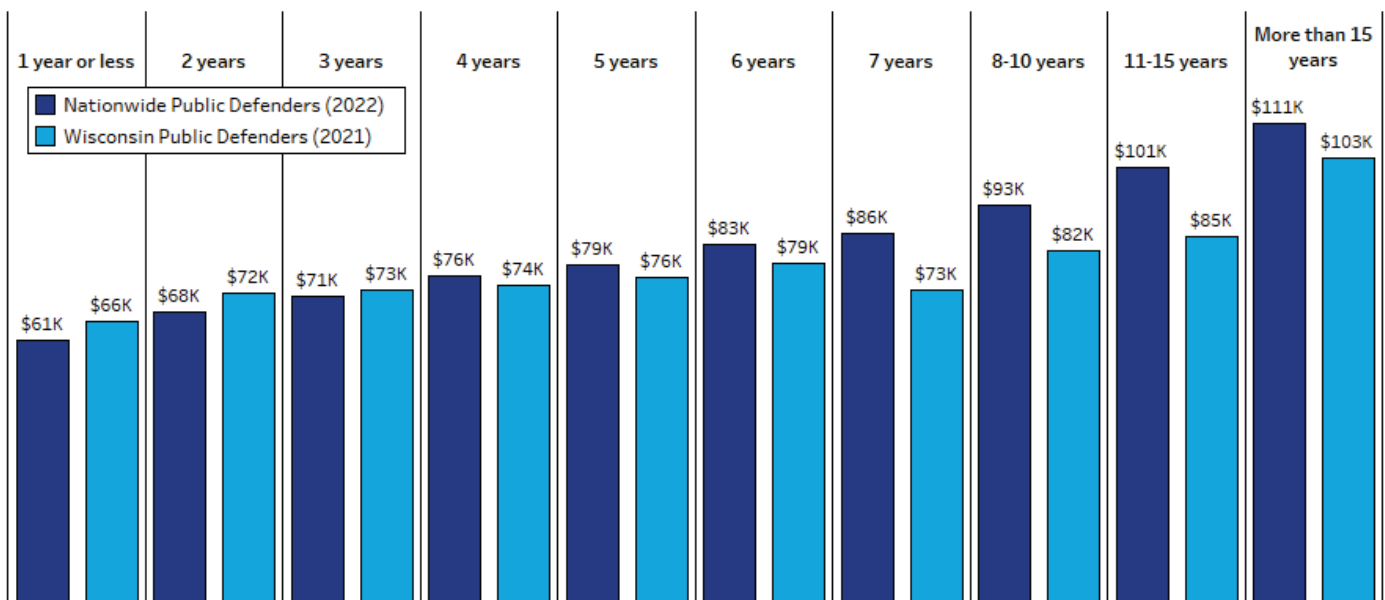
In general, public defenders represent individuals with gross incomes below 115% of the federal poverty line as it was set in 2011, or \$12,524 for an individual. It is worth noting that currently, 115% of the [federal poverty guideline](#) equates to \$16,767 for an individual, but the state standard has not been updated to account for inflation in over a decade.

In light of its large volume of cases, and when conflicts of interest arise, the OSPD supplements the work of its attorneys by hiring private attorneys to handle a portion of the statewide caseload. Since the beginning of 2020, the hourly compensation rate for private attorneys doing public defender work in Wisconsin has been \$70. Prior to that, the rate was just \$40, which at the time was the lowest of any state in the country, according to a [2013 study](#) that has not been updated.

For example, in Illinois, the rate of compensation for private attorneys doing public defense work is set locally, but cannot be lower than [\\$75 per hour](#). Further, the legal technology company Clio's 2021 Legal Trends Report noted that the nationwide average hourly pay rate for criminal defense lawyers is \$181, and average hourly billing for Wisconsin lawyers of any kind is an

**Figure 3: Earnings Lag for Wisconsin's Veteran Public Defenders**

Average annualized\* pay by years of experience, Wisconsin assistant public defenders versus public defenders nationwide



Source: Milwaukee Journal Sentinel data retrieved from Wisconsin Department of Administration, National Association for Law Placement 2022 Public Service Attorney Salary Report. \*Average of all hourly salaries in each year of experience bin multiplied by 2,080 hours to account for many part-time positions.



even higher \$248. According to the OSPD, the number of attorneys actively certified to take public defender appointments has declined by 17.9%, from 940 in January 2019 to 772 in August 2022.

Assistant state public defenders have been on the same pay schedule as ADAs since at least 2012. Data from the Journal Sentinel show that in 2021, public defenders with the same amount of experience had similar or slightly higher salaries relative to ADAs.

The National Association for Law Placement does not have recent data on prosecutors but has published extensive data on compensation for public defenders. The figures show that while Wisconsin's public defenders with up to three years of experience tend to earn slightly more than the national average, pay for defenders with four or more years of experience lags their peers. In Wisconsin, the average public defender with 11 to 15 years of experience made \$85,150 annually in 2021, compared to \$101,145 nationally in the 2022 NALP study (see Figure 3).

The OSPD's recruitment and retention challenges also have grown. In fiscal years 2018 to 2020, the turnover rate among its trial attorneys ranged from 9.8% to 11.4%. In 2021, however, the rate rose to 17.9% (67 FTEs), and in 2022 it rose again to 20.4% (77 FTEs), or more than one out of every five trial attorneys. Total applications for attorney positions also dropped in each of the previous four fiscal years, from 355 in 2018 to just 168 in 2022, while the number of statewide licensed attorneys has risen slightly in each of those years.

### STATE BUDGET COULD TACKLE THESE CHALLENGES

As noted above, the governor's budget bill would increase spending on both DAs and the OSPD. State DA funding from all sources would rise from \$61.3 million in fiscal year 2023 to \$72.6 million in 2024 and \$74.4 million in 2025. The OSPD's budget would rise from \$114.7 million in 2023 to \$134.9 million in 2024 and \$137.0 million in 2025. Both offices would add authorized positions from 2023 to 2024, but lose positions in 2025 when federally-funded jobs go away; DAs would end with slightly more FTEs in 2025 compared to 2023, while the OSPD would end with slightly fewer.

The governor proposes increasing minimum hourly pay rates for ADAs and public defenders to \$35, a 28.5% increase over current levels. Along with changes to the pay progression system for both offices and 50 new FTEs in the OSPD (all of which would be non-attorney staff), these proposals would cost the state about \$39 million in the two-year budget. Similarly, separate from pay increases for existing staff, the governor is seeking 44.9 new ADA FTEs, with a price tag of just under \$8 million over both years.

The governor's proposal also would raise the compensation rate for private attorneys performing public defender work to \$100 per hour for casework and \$50 per hour for travel. This would represent a \$30 increase from current levels, and would be more than double what these private attorneys made hourly prior to 2020. The estimated cost of this proposal would be about \$10.8 million in each year of the budget.

### FUTURE CONSIDERATIONS

As the pandemic has receded, rapid inflation has pushed up wages in the private sector and potentially exacerbated pay disparities with the public sector. As we [noted last year](#), there are already signs of rising turnover among public sector employees, and one reason could be that private sector employers have had greater flexibility to respond to inflationary pressures by increasing wages than state and local governments in Wisconsin.

In this environment, the state runs the risk not only of being unable to fill vacant attorney positions, but also failing to retain veteran prosecutors and public defenders. In 2021, for example, there were more ADAs with five or fewer years of experience statewide than ADAs with six or more years; Milwaukee County officials explicitly noted the lack of prior experience held by new prosecutors joining their office as a concern.

This threat also comes at a time when the state justice system is facing growing challenges. While case backlogs caused by the pandemic may be starting to subside, individuals with a case in the state system are still having to wait longer for disposition than at nearly any other time in recent memory. A loss in experienced prosecutors and public defenders could make it more difficult to reduce that backlog of cases.

Beyond the stubborn backlog and growing numbers of cases, the OSPD notes that other factors are



contributing to an increase in the time it takes to work on individual cases. Those include complying with constitutional changes related to victim's rights, keeping up with changing science, and, notably, the explosion in evidence from video cameras, cell phones, and computers.

For example, the Milwaukee trial office alone had to review more than 4,000 hours of video evidence between December 2019 and September 2020. Statewide, officials with the OSPD note that about 70% of discovery is happening electronically and that their offices are now downloading roughly 5,000 hours of video per month. An OSPD memo notes that in a recent survey of nearly 100 public defense attorneys who represented a majority of Wisconsin's counties, a majority said they spent an average of at least six hours per week viewing video footage, adding to their workloads.

With turnover rates and case backlogs growing, job applications falling, and salaries lagging those of other attorneys, the staffing and compensation challenges for ADAs and public defenders seem likely to remain a concern with respect to both public safety and the constitutional rights of the accused. State legislators may wish to consider these trends in the coming weeks as they set their budget priorities and lay out their plans for using the state's sizable surplus.

