

**OFFICE OF THE STATE PUBLIC DEFENDER  
2021-2023 Biennial Budget  
Issue Paper**

**Topic:** DIN 5020 – Video Evidence Workload Staffing

**Agency Request**

The Public Defender Board requests, for the Office of the State Public Defender (SPD), \$3,527,100 GPR and 40.0 FTE in FY22 and \$3,998,900 GPR and 40.0 FTE in FY23 for the resources to receive, store, and review video evidence such as police body worn cameras.

**Problem Description**

The exponential increase in the number and length of video evidence from multiple sources such as body worn cameras and squad car cameras has had a significant impact on the SPD from both a workload and technology standpoint.

The impact on workload is not reflected in the required caseload of SPD staff attorneys. So, while the number of cases each staff attorney must take has not changed, the amount of time to provide a constitutionally required defense has gone up.

Technology needs have similarly increased, most significantly the costs to store video evidence provided in criminal cases.

**Background**

Over the last several years there has been a significant increase in the use of video evidence, such as body worn cameras by law enforcement officials, in criminal proceedings. This has increased both the workload of Public Defender staff and private bar attorneys and increased demand on technology resources such as data storage and bandwidth requirements.

**Analysis**

**Workload Impact**

Supreme Court Rules require that attorneys review the evidence in order to provide their client with an adequate defense. In a case with video or other electronic evidence, the attorney must watch all video related to the case in order to ensure that evidence that might be relevant is identified. Not only must the attorney review the evidence, but they must review it with their client as well. As the number of body worn cameras and other video sources has increased, so has the workload it requires for an attorney to review the video. Even a brief interaction with law enforcement usually requires viewing hours of video as multiple officers and squad car cameras create multiple views of the law enforcement contact, each of which could provide different information. This has increased the workload for public defender staff and private bar attorneys while caseloads have remained fixed. Significant time is also spent obtaining the videos from prosecutors and law enforcement officials, downloading the files from electronic servers, and addressing technical issues in being able to access and play the video evidence.

The impact of video evidence on a case can also be significant. In numerous instances, SPD attorneys were the first to review all available video evidence which affected the charges brought in the case. One example of that was submitted by a staff attorney:

In a Len Bias case that I had, there were approximately 40 body cam videos that were disclosed to me. My co-chair and I worked a couple hours a night after hours, taking notes on what we saw. We ended up discovering that one of the witnesses spoke to an officer the morning after the overdose and provided information that completely invalidated the state's timeline. That information also better jived with the toxicology report which put the time of death many hours after the decedent had contact with our client. The information never made its way into a police report: we only learned about it by reviewing body cam footage. Eventually, the reckless homicide charge was dismissed.

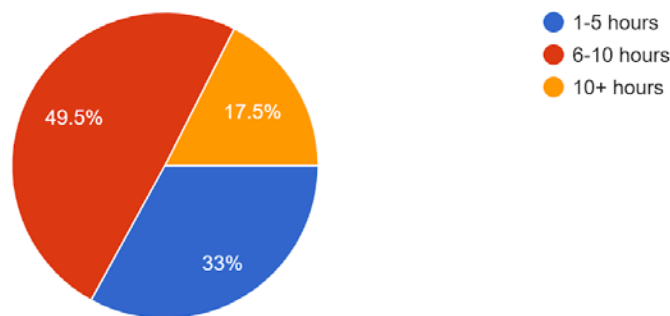
Attorneys also have to push back on the “CSI effect” by courts and juries which expect to have conclusive video evidence in every case. Like other evidence offered in court proceedings, video evidence also comes with limitations that are often not understood. Video and audio recording problems, limited and misleading perspectives, and incomplete video recordings are but a few of the limitations on video evidence.

While national data on the workload impact to defense attorneys from video evidence is in the early stages of being collected, the SPD has been tracking several data points related to video evidence and also recently conducted a survey of staff attorneys statewide to determine the impact to their workload.

A recent survey of staff attorneys statewide was answered by approximately 100 attorneys from all SPD offices and representing a majority of counties throughout the state. They were asked to estimate how much time they spend each week reviewing video evidence. The responses were consistent with data collected from the Milwaukee Trial office which is detailed below.

What is the average number of hours you estimate you spend each week viewing video footage in your cases?

97 responses



33% of respondents indicated 1-5 hours

49.5% of respondents indicated 6-10 hours

17.5% of respondents indicated more than 10 hours per week

Staff were also asked to indicate what aspects of reviewing video evidence have the largest impact on their workload, other than the time spent watching videos? In general, the responses indicated the following issues:

- Time to organize and take notes/transcriptions of the videos.
- Making copies of the video to review with the client.
  - One response indicated an issue that is likely to increase given the inconsistent practical impact of Marsy's Law statewide: Since Marsy's Law went into effect in May 2020, orders are being put in place which requires that my clients have to watch videos in my presence. This is doubling or tripling time it will end up taking.
- Significant issues with a wide range of software and video formats used to record and transmit video evidence.
- Difficulty obtaining all video evidence that has been provided by the prosecution or law enforcement through the discovery and open records process.
- The need to file additional discovery or open records requests to ensure that all video has been provided or to obtain another copy due to software issues.
- Additional time spent comparing the video to written police reports.
- Difficulty in finding time to watch the video. Most staff are in court or visiting clients in jail a majority of the day and must then watch video evidence at night and on the weekend.

From a workload standpoint, the data show a significant amount of time viewing video evidence. The following chart documents the amount of time spent downloading videos, the number of videos, and the length of the videos broken down by felony and misdemeanor case types. The data was collected in the Milwaukee Trial office and includes cases in which video evidence was received between December 1, 2019 and August 31, 2020.

	Misdemeanor	Felony	Total
# of Cases	448	597	1045
Total Download Time (Min.)	1678	3420	5098 (85 hours)
Average Download Time/case	3.75 minutes	5.73 minutes	4.88 minutes
# of Videos	4247	8722	12,969
Average # of Videos/case	9	15	12
Total Video Length (Min.)	83,475	156,659	240,134 (4002 hours)
Average Video Length/case	186.33 (3.11 hours)	262.41 (4.37 hours)	229.79 (3.83 hours)

The workload impact demonstrated by these data is significant. Based on the current deployment of body worn cameras to approximately 50% of law enforcement agencies (which does not include video from other sources such as private video and squad car video), an attorney with a mixed caseload may need to review more than 529 hours of video evidence per

year, more than 25% of a work year. Examined another way, the total recorded time for these 9 months to download and view the videos was 4087 hours, or 5449 hours on an annualized basis. Assuming a 2080 hour work year, this is the equivalent of needing 2.6 FTE attorney positions in just one office dedicated to nothing other than watching video evidence every day.

Extrapolating the average data across all counties statewide, the anticipated average workload impact for the SPD is significant. The following table is a conservative estimate based on the number of felony and misdemeanor cases as defined by the Wisconsin Circuit Court Automated Program in which a public defender was appointed and using the assumption that 50% of cases involve body camera videos. This is conservative as it excludes other cases in which SPD appoints and may include video evidence from others sources than body worn cameras as well as assuming that video evidence collection will not increase over the biennium:

	Misdemeanor	Felony	Total
# of appointments	46,789	49,757	96,546
Average minutes to download & view	190.08 minutes	268.14 minutes	234.67 minutes
Total minutes to download & view (50%)	4,446,827 minutes (74,114 hours)	6,670,921 minutes (111,182 hours)	11,328,225 minutes (188,804 hours)

Based on these data and a 2080 hour work year, just to download and review video would take the equivalent of 90.8 FTE positions. The impact of the video workload is significant and unsustainable.

Given the current staffing patterns of the SPD and the previously undocumented impact of video evidence, in the 2021-2023 biennium, the SPD would like to prioritize the addition of non-attorney staff to coordinate obtaining, downloading, organizing, and conducting a preliminary review of video evidence. Keeping in mind that attorneys retain the primary ethical obligation to review video. In addition, the workload impact to attorneys remains significant and increasing the number of attorneys and support staff would mitigate the workload impact of reviewing video evidence.

The SPD requests the addition of the following positions:

7 attorneys (2 Appellate, 5 Trial) for 21 months salary, fringe, and supplies = \$1,153,400 (Please see partial cost offset below)

10 Legal Secretaries (Trial) for 21 months salary, fringe, and supplies = \$1,084,200 (some of these positions will be utilized to increase existing part time positions to full time)

9 Paralegal (1 Appellate, 8 Trial) for 21 months salary, fringe, and supplies = \$1,004,600

5 Public Defender Investigators (Trial) for 21 months salary, fringe, and supplies = \$583,400

9 Client Service Specialists (1 appellate, 8 trial) for 21 months salary, fringe, and supplies = \$966,400

Partial cost offset on attorney positions - In the 2015-17 biennial budget, the SPD received additional attorney positions that were funded by an offset reduction in the appropriation for assigned counsel. SPD suggests adding the attorney positions as noted above but offsetting a portion of the cost related to attorney positions within the trial division through a similar reduction to assigned counsel. The net result is the addition of staff attorneys in the trial division is partially revenue neutral.

Also, while the position authority and funding is needed to add Legal Secretary positions, some of the position authority increase would be used to increase the FTE status of existing staff. This would result in fewer than 10 new legal secretaries being hired.

### Technology Impact

Aside from the impact on workload, technology costs related to data storage and bandwidth have had a significant impact on the current SPD budget. While the bandwidth issue is being addressed using existing resources, the exponential growth of storage costs will eclipse existing agency resources.

In addition to the number of videos and time to download and view them, Milwaukee Trial staff also tracked the size of the files that were being stored on servers. The average file size in a misdemeanor case was 7.3 gigabytes (GB) and for a felony was 12.8 GB. Given the way these files must be stored while the case is pending and the costs of storage being calculated on a gigabyte per month system, the video will likely need to be retained on a server for at least 6 months for a misdemeanor, and a year or more for a felony.

In July 2019, the SPD spent \$1026 per month for server storage just for the Milwaukee Trial office. In September 2019, November 2019, April 2020, and June 2020 SPD requested additional storage space (a total increase of 6,000 gigabytes) due to the exponential growth of video evidence being provided electronically. By July 2020, the server storage cost for just Milwaukee Trial had increased more than 540% to \$6,567 per month.

While there are options for different data storage systems, based on the above trends, SPD estimates annual storage costs just for Milwaukee Trial of anywhere between \$370,400 and \$913,600 depending on which type of storage system is utilized.

Using some of the case numbers listed in the workload section above and extrapolating the Milwaukee Trial storage costs data to statewide (and continuing to assume 50% body worn camera utilization, a conservative estimate), SPD estimates statewide data storage costs on an annualized basis of anywhere between \$1,366,900 and \$3,371,600.

These unbudgeted costs are taken from the same appropriation used for, among other reasons, expert witness costs in criminal cases. For every dollar that SPD must use from base resources for storage cost, there is one less dollar available for direct client representation.

Assuming that lower-cost data storage alternatives would be approved by the Division of Enterprise Technology, the SPD requests \$1,366,900 in FY 22 and \$1,366,900 in FY 23 to account for the increased data storage costs of video evidence.

**Summary**

	FY 22		FY 23	
	Funding	FTE	Funding	FTE
GPR	\$3,527,100	40.00	\$3,998,900	40.00
PR	\$0	0.00	\$0	0.00
TOTAL	\$3,527,100	40.00	\$3,998,900	40.00

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