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# Information Brief

January 2002

Report No. 02-03

## The Office of Statewide Prosecution Is Effective and Economically Viable

### *at a glance*

The Office of Statewide Prosecution is effective: it achieved a 96% conviction rate and law enforcement, regulatory agencies, and victims report the office is doing a good job. The office annually collects more money for victims and government agencies than its operating budget.

Whether the state attorneys could conduct the office's work at a lower cost per case cannot be determined because the two entities define cases differently, total state attorney costs are not known, and the types of cases handled by the two differ.

Our review of cases identified by state attorneys as being of questionable jurisdiction found that the cases fell within the jurisdiction of the office. While state attorneys felt that some cases were not of sufficient magnitude to warrant the attention of the statewide prosecutor, there were legitimate reasons for the office to pursue these cases. Miscommunication and misunderstanding were factors in a number of these contentious cases.

Law enforcement agencies report that there is more than enough prosecutorial work to be done and urge the entities to mend their rift. Better communication individually and through the Florida Prosecuting Attorneys Association is essential to serving the public interest.

### Purpose

The Florida Legislature directed OPPAGA to review the Office of Statewide Prosecution. We were directed to examine cost-effectiveness and efficiency, economic viability, and jurisdictional authority of the Office of Statewide Prosecution and the state attorneys.

To conduct our investigation, we interviewed the statewide prosecutor, surveyed the 20 state attorneys, interviewed staff of state and local law enforcement and regulatory agencies that have been represented by the Office of Statewide Prosecution, and reviewed files of cases that state attorneys identified as questionable or inappropriate for the Office of Statewide Prosecution to handle. We also examined the Florida Prosecuting Attorneys Association [December 2001 report](#) on the Office of Statewide Prosecution, and the statewide prosecutor's [response](#) to that report.

This report addresses five questions.

1. Why was the Office of Statewide Prosecution created?
2. Is the office effective?
3. Is the office economically viable?
4. What is the jurisdictional authority of the office and is it overstepping these limits?
5. Can the tensions between the state attorneys and the Office of Statewide Prosecution be eliminated?

## Findings

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### 1. Why was the Office of Statewide Prosecution created?

The Legislature and the electorate created the office to enhance the operations of the statewide grand jury and increase Florida's ability to fight complex, multi-jurisdictional crime.

In 1973, the Legislature created the statewide grand jury to strengthen the grand jury system and enhance the state's ability to fight organized criminal activity. The statewide grand jury's jurisdiction was limited to specific offenses involving more than one county. While the statewide grand jury provided a good way to attack complex criminal activity, it was limited by inadequate prosecutorial powers.

A variety of prosecutorial approaches were used between 1973 and 1987. Initially, the Governor appointed a state attorney, who, with his staff, served as legal advisor to the statewide grand jury.<sup>1</sup> The state attorney acting as advisor could not prosecute indictments returned by the grand jury; they had to be referred to the local state attorney's office. Next, a council of five state attorneys was created to support the statewide grand jury, but this led to severe political infighting.<sup>2</sup> In 1981, the function was revised and the Governor appointed a separate legal advisor with a staff of three to advise the statewide grand jury. This method provided continuity from one grand jury to the next and eliminated the burden on a state attorney and his staff of performing this function in addition to their normal duties. However, the legal advisor did not have authority to subpoena witnesses, and he could not press charges; a grand jury had to be convened.

These solutions did not provide adequate prosecutorial support to the grand jury, and failed to produce an efficient system for attacking organized criminal activity. In response, the Governor created a Commission on the Statewide Prosecution Function in 1984 to develop recommendations for how to establish an independent agency to prosecute organized criminal activity.

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<sup>1</sup> The Florida Constitution provides that voters in each judicial circuit shall elect a state attorney to prosecute criminal and some civil matters on the state's behalf. Chapter 26, *Florida Statutes*, divides the state into 20 judicial circuits.

<sup>2</sup> "The Statewide Prosecutor: A New Weapon Against Organized Crime," by R. Scott Palmer and Barbara M. Linthicum, *Florida State University Law Review*, Vol. 13:653.

In 1985, at the recommendation of the Governor's Commission on the Statewide Prosecution Function, the Legislature passed HJR 386, proposing an amendment to the Florida Constitution that would create the position of statewide prosecutor in the Office of the Attorney General. The proposed amendment was placed on the ballot in November 1986 and approved by the voters.<sup>3</sup> The position of statewide prosecutor became effective January 6, 1987.

In s. 16.56, *Florida Statutes*, the Legislature authorized the Office of Statewide Prosecution and specified that the attorney general will appoint the statewide prosecutor from at least three persons nominated by the Judicial Nominating Commission for the Florida Supreme Court.<sup>4</sup> Attorney General Bob Butterworth appointed the current statewide prosecutor, Melanie Ann Hines, to her third term in the position in December 1998.<sup>5</sup>

### 2. Is the Office of Statewide Prosecution effective?

The Office of Statewide Prosecution is effective. The office achieved a 96% conviction rate in the 2000-01 fiscal year. Local law enforcement, state regulatory agencies, and crime victims consider the office to be doing a good job. The office has also won six Davis Productivity Awards for effectiveness and efficiency in government.

The results of all cases disposed of by the Office of Statewide Prosecution from Fiscal Year 1998-99 to 2000-01 are shown in Exhibit 1. The office achieved a 96% conviction rate during the most recent fiscal year.<sup>6</sup>

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<sup>3</sup> The Florida Constitution, Article IV, Section 4(c) creates the position of statewide prosecutor in the Office of the Attorney General.

<sup>4</sup> The Legislature also revised the purview of the statewide grand jury so that the crimes investigated would be the same as those prosecuted by the Office of Statewide Prosecution, and changed the statewide grand jury's jurisdiction from investigating specified crimes in two or more counties to such crimes occurring in two or more judicial circuits.

<sup>5</sup> Attorney General Bob Butterworth appointed John Hogan as statewide prosecutor on February 9, 1987; Pete Antonacci as statewide prosecutor on December 31, 1987; and Melanie Ann Hines as statewide prosecutor on February 28, 1991, December 13, 1994, and December 14, 1998. The statewide prosecutor serves a four-year term that runs concurrently with the term of the appointing official. The attorney general has the authority to remove the statewide prosecutor prior to the end of his or her term.

<sup>6</sup> State attorneys do not maintain comparable data on conviction rates and sentencing results.

**Exhibit 1**  
**The Office of Statewide Prosecution Collects and Reports Case Outcomes Annually**

Data	1998-99	1999-00	2000-01
Number of cases disposed	190	213	243
Number of charges	2,209	3,210	3,006
Number of defendants	325	376	470
Number found guilty (following plea or trial)	298	352	450
Conviction rate	92%	93%	96%
<b>Sentences</b>			
Prison terms	631.9 years / 2 life	914.5 years / 1 life	1,232.8 years / 3 life
Jail time	12,202 days	15,708 days	15,776 days
Probation terms	1,594.4 years	1,537.2 years	1,846.7 years
Community control	61.83 years	49 years	57.4 years
Community service hours	15,035	8,922	8,842
Victim restitution	\$24,267,960	\$14,253,083	\$55,923,739
Number of victims	1,056	4,694 (including 44 government agencies)	1,357 (including 48 government agencies)
Fines assessed	\$ 788,246	\$ 2,435,241	\$ 6,128,513
Court costs assessed	61,803	120,363	81,466
Costs of prosecution assessed	585,130	692,114	1,171,610
Costs of investigation assessed	1,054,879	1,400,708	2,607,070
<b>Total restitution and assessments</b>	<b>\$26,758,018</b>	<b>\$18,901,509</b>	<b>\$65,912,398</b>

Source: Office of Statewide Prosecution.

According to an office survey, local law enforcement and victims are satisfied with the prosecutorial performance of the office. Since 1995, the office has surveyed all local law enforcement agencies requesting assistance. With 137 respondents (a 56% response rate), the 2000 survey rated the office above average in every category, and 95% of responding agencies indicated their intent to refer future investigations to the office, as shown in Exhibit 2.

The office also began surveying crime victims in 2000. The office reported that 93 victim survey responses have been received, and that they rated the office above average in victims' rights notification, attention to the case, professionalism, results achieved, and effectiveness.

**Exhibit 2**  
**Law Enforcement Agencies Report Satisfaction with the Office's Prosecutorial Performance**

Survey Questions	Excellent	Good	Average	Fair	Poor	N/A
If your case was accepted for investigation or prosecution:						
How would you rate the attention your case(s) received?	70%	18%	3%	1%	1%	7%
How would you rate the professionalism of the Office of Statewide Prosecution?	79%	14%	3%	1%	0%	3%
How would you rate the efficiency in working with the Office of Statewide Prosecution?	73%	20%	1%	2%	1%	3%
How would you rate the work product of the Office of Statewide Prosecution?	72%	18%	3%	2%	0%	5%
How would you rate the results achieved in working with the Office of Statewide Prosecution?	61%	18%	3%	1%	1%	16%
				Yes	No	N/A
If your case was not accepted for investigation or prosecution, were you given a satisfactory explanation for that decision?				19%	2%	79%
In your opinion, did the Office of Statewide Prosecution effectively use its resources for the best results in this case?				81%	3%	16%
Would you call upon the Office of Statewide Prosecution in the future to work with your agency on multi-circuit organized crime cases?				95%	1%	4%
If your case was prosecuted and final disposition achieved in 2000, did you participate in a post case review discussion with the handling Assistant Statewide Prosecutor?				21%	6%	73%

Source: Office of Statewide Prosecution.

Finally, the Davis Productivity Awards also have recognized the Office of Statewide Prosecution for effectiveness and efficiency in government. The award by Florida Tax Watch recognizes individuals and groups in state government that add value to state services or identify ways to save the state money. The office and its staff have won this award on six occasions, including an award for the office in 1999 for its efforts in collecting the costs of prosecution awarded in its criminal cases.<sup>7</sup>

State law enforcement and regulatory agencies also indicated strong satisfaction with the office. We interviewed staff of the six state agencies that referred the most cases to the office: the Departments of Law Enforcement (Criminal Investigations), Insurance (Division of Insurance Fraud), Legal Affairs (Medicaid Fraud Unit), Revenue (General Tax Administration Enforcement), Banking and Finance (Division of Financial Investigations), and the Florida Highway Patrol (Bureau of Investigations). Staffs reported referring cases to the Office of Statewide Prosecution for several reasons, including the cases' multi-jurisdictional nature, their complexity, a consideration that the cases required the expertise of statewide prosecutors, and the fact that state attorneys had previously rejected similar cases or they felt the case would not get the speedy attention required for successful prosecution.

<sup>7</sup> For more on the Davis Productivity Awards, see <http://www.floridataxwatch.org/>

### 3. Is the Office of Statewide Prosecution economically viable?

The Office of Statewide Prosecution is economically viable: it collects more money for victims and government agencies than its total operating budget. Whether state attorneys could conduct the work of the Office of Statewide Prosecution at a lower unit cost cannot be determined for several reasons. It was not possible to perform a methodologically valid comparison of salaries between the office and the state attorneys offices within the time limitations of this review. We did not find a pattern of the Office of Statewide Prosecution raiding lawyers from state attorneys' offices.

The office collects more money than its total annual operating budget, as shown in Exhibit 3. The Office of Statewide Prosecution keeps detailed records of the amounts assessed and collected in its cases.<sup>8</sup> Collections vary from year to year depending on the cases. For example, a utilities fraud case might yield a substantial amount of restitution the year it is resolved, while the following year's cases may result in prison time instead of restitution payments. Collected restitution goes to individuals as well as agencies; restitution collected for state government is shown in Exhibit 4.

<sup>8</sup> While many state attorneys record assessments of fines, etc., in their case files, they do not aggregate assessment information and they do not record whether assessments have been collected.

**Exhibit 3**  
**Office of Statewide Prosecution Total Collections Exceed Costs**

	FY 1998-99	FY 1999-00	FY 2000-01	Total
Fines/Court Costs	\$ 10,328	\$ 5,341	\$ 16,386	\$ 32,055
Cost of Prosecution	34,621	52,469	124,026	211,116
Cost of Investigation	25,000	90,976	395,860	511,836
Restitution	5,305,116	3,705,393	5,019,952	14,030,461
Total of Monetary Collections	\$5,375,065	\$3,854,179	\$ 5,556,224	\$14,785,468
Seizures and Forfeitures	97,800	1,883,527	8,925,896	10,907,223
<b>Total Collections</b>	<b>\$5,472,865</b>	<b>\$5,737,706</b>	<b>\$14,482,120</b>	<b>\$25,692,691</b>
Office of Statewide Prosecution				
Legislative Appropriations	\$4,031,767	\$4,544,737	\$5,174,124	\$13,750,628

Source: Office of Statewide Prosecution data and General Appropriations Acts.

#### Exhibit 4 Collections for State Government Are Increasing

Fiscal Year	Amount Collected
1998-99	\$ 70,480
1999-00	138,034
2000-01	2,640,284
<b>Total</b>	<b>\$2,848,798</b>

Source: Office of Statewide Prosecution.

Whether state attorneys could conduct the work of the Office of Statewide Prosecution at a lower unit cost cannot be determined for several reasons. One of the allegations regarding the Office of Statewide Prosecution is that it has high costs of prosecution compared to state attorneys. However, this allegation cannot be substantiated. Neither the Office of Statewide Prosecution nor the state attorneys record the time they spend working on individual cases. Therefore, it is not possible to determine actual attorney costs per case for either entity.

It has been suggested that a proxy measure of case costs could be derived by dividing the total costs of each office by the total number of cases. However, this technique cannot be used to accurately compare costs because of differences in the ways state attorneys and the Office of Statewide Prosecution define cases, the difficulty in determining total state attorney costs, and differences in the types of cases each entity handles.

The Office of Statewide Prosecution and the state attorneys define a case very differently. The office generally defines a case as a group of related transactions of criminal activity, which often involves multiple defendants charged with multiple counts for harming multiple victims. The state attorneys define each individual or complaint as a separate case. If a perpetrator has multiple criminal episodes, each episode is counted as a separate case. In those instances where there are multiple perpetrators in a single criminal episode, each perpetrator counts as a separate case. If a case is reopened, it is counted again as another case. The difference in defining cases is illustrated by a series of crimes that the Office of Statewide Prosecution referred to as one case called "Crack Attack," which

the state attorney classified as 23 cases.<sup>9</sup> If each entity's total number of cases were divided by its total costs, the differences in case definition would make the case costs appear less for state attorneys, even if the costs were exactly the same.

A further impediment to comparing costs is that the total costs to support state attorneys' offices have not been clearly identified. In addition to the state funding provided by the Legislature, county governments also make significant financial contributions to state attorneys. For example, county governments pay for the cost of state attorneys' office space and utilities; communications services such as telephones and computers; library services, including online legal research subscriptions; travel and transportation; and expert witnesses. These local costs have not been accurately itemized, thereby leaving a gap that would need to be addressed to calculate state attorneys' total costs.<sup>10</sup> In Fiscal Year 1999-00, counties reported providing \$19.4 million to support state attorneys, while a survey done by state attorney staff placed the figure at \$28.3 million.<sup>11,12</sup>

Finally, the cases handled by the two entities differ. State attorneys handle both misdemeanor and felony criminal offenses and some civil actions; 67% of the state attorneys' workload in the 2000-01 fiscal year involved misdemeanors. In contrast, the Office of Statewide Prosecution was created to address complex, multi-circuit felonies that would be time-consuming to prosecute.<sup>13</sup>

<sup>9</sup> For Fiscal Years 1998-99 through 2000-01, the average Office of Statewide Prosecution case involved three circuits and three defendants, each with eight charges.

<sup>10</sup> See OPPAGA report, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, [Report No. 01-54](#), December 2001.

<sup>11</sup> See OPPAGA report, *Justification Review of Justice Administrative Commission, State Attorneys, and Public Defenders*, [Report No. 01-64](#), December 2001.

<sup>12</sup> Executive director, Office of the State Attorney for the 6<sup>th</sup> Circuit.

<sup>13</sup> The problem with classifying or weighting all cases equally was understood by the Legislature when it required the state court system to develop a weighted caseload system to better assess the need for additional judges. Weighted approaches acknowledge that different types of cases require different resources to process and dispose. See OPPAGA report, *Information Brief on the State Courts System's Development of a Delphi-Based Weighted Caseload System*, [Report No. 98-46](#), January 1999.

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Even if it were possible to calculate the cost per case worked by the state attorneys and the Office of Statewide Prosecution, we question how useful this information would be, given the differences in the types of cases each entity handles. We would legitimately expect to see higher costs for Office of Statewide Prosecution cases if valid cost comparisons were possible.

State attorney and statewide prosecutor salaries cannot be readily compared. However, the Office of Statewide Prosecution does not appear to be raiding staff from state attorneys. Another allegation regarding the Office of Statewide Prosecutor is that it pays higher salaries than do state attorneys and is “raiding” state attorney offices for staff. Attorney salaries are generally based on years of experience. However, the state attorneys do not maintain automated data on the years of experience of their staff. To compile this information would require a review of assistant state attorney resumes, which we were not able to conduct during the limited time designated for this review.

The Justice Administrative Commission does track the date each assistant state attorney was hired; however, this data does not reflect the actual experience of staff so it cannot be used for comparisons. For example, one state attorney reported that he has at least four very senior staff that left the office and then came back, so their experience would not be reflected in their hire date.

Assistant state attorney salaries range from \$35,931 (no experience required) to \$131,000. Assistant statewide prosecutor salaries range from \$47,645 (one year experience required for entry level) to \$103,711.

We found no evidence that the Office of Statewide Prosecution is raiding staff from state attorney offices. Presently, the office is authorized 43 attorney positions while the state attorneys are authorized 1,856 attorney positions. Since the office’s inception in 1987, it has hired 73 attorneys, 41 of whom previously worked for a state attorney. Thus, during this 15-year period (1987-2001), the office has hired an average of 3 attorneys per year from the pool of assistant state attorneys in Florida’s 20 judicial circuits.

Given the high turnover rate for the state attorneys, the number of lawyers that have moved to the office does not appear unreasonable. For example, in the

2000-01 fiscal year, the state attorneys had a 22% turnover rate (over 400 attorneys left), and 4 were hired by the Office of Statewide Prosecution. Justice Administrative Commission data shows that only 54% of assistant state attorneys are retained for three or more years from date of hire.

Presently, 25 of the 43 attorneys employed by the office were previously employed in a state attorney’s office. A review of correspondence from these attorneys indicated they sought employment with the Office of Statewide Prosecution to handle more complex cases, to be able to prosecute specific crimes (such as white collar, economic, and computer crimes), to advance their careers, to participate in proactive investigations, to pursue innovative prosecutions, and for personal reasons (such as to move closer to family or to move to a larger city).

In short, over time, the low number of former assistant state attorneys working in the office coupled with their professional and personal reasons for seeking a change in employment does not support the concern cited by state attorneys that the office raids their staff.

### ***4. What is the jurisdictional authority of the Office of Statewide Prosecution and is it overstepping these limits?***

The Office of Statewide Prosecution, by law, has concurrent jurisdiction with state attorneys to prosecute violations of specific criminal laws occurring in two or more judicial circuits. Our review of cases identified by the state attorneys as having been of questionable jurisdiction found that the cases were within the jurisdiction of the office. While state attorneys felt that some cases were not of sufficient magnitude or complexity to warrant the attention of the statewide prosecutor, there appeared to be legitimate reasons for the office pursuing these cases. The office rejects cases it considers inappropriate.

Jurisdiction is separate but overlapping. The Florida Constitution specifies that the statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of specific criminal laws occurring or having occurred in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.

The Legislature in Ch. 16, *Florida Statutes*, established a second jurisdictional test to distinguish and limit activities that should be addressed by the Office of Statewide Prosecution. The offenses prosecuted must be one of the following: bribery, burglary, usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, home-invasion robbery, narcotics, violations of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, Anti-Fencing Act, or Antitrust Act, fraud, computer pornography and child exploitation.<sup>14</sup>

The 1985 Governor's Commission on the Statewide Prosecution Function had proposed these constraints, believing that by limiting the jurisdiction of the Office of Statewide Prosecution in two ways, it had developed a workable solution to address what they recognized as an inevitable potential for conflicts with state attorneys. The state attorneys, who participated in the commission, also suggested that Office of Statewide Prosecution be required to give written notice to the state attorney before initiating investigations in a circuit and that the state attorneys be given the ability to file written objections with the Attorney General, who would rule on conflicts. The Legislature did not adopt these recommendations.

Since the creation of the office, the Legislature has clarified and modified its mission and jurisdiction several times, as shown in Exhibit 5, and authorized additional staff and resources to support these duties.

Questioned cases did not appear to be inappropriate. To investigate allegations that the

<sup>14</sup> Also, violations of probation/community control for offenders that were prosecuted by the office and violated their probation or community control terms of supervision.

Office of Statewide Prosecution is exceeding its statutory jurisdiction, we surveyed the state attorneys and asked them to identify cases that occurred during the past five years that they believed may have been inappropriate for the office to handle. We also reviewed a December 2001 report by the Florida Prosecuting Attorneys Association on the Office of Statewide Prosecution.

In response to our survey, state attorneys in three circuits identified 76 questionable cases. In addition, the association report described 28 more cases from four circuits considered to be of questionable jurisdiction. Due to differences in how the two entities define cases (as discussed earlier), the 104 cases cited by state attorneys corresponded to 55 cases filed by the office. Thus, the state attorneys cited concerns about less than 7% of all cases filed by the office in the last five years.<sup>15</sup>

We reviewed information for these cases from both the state attorneys and the Office of Statewide Prosecution to determine whether they met the jurisdictional criteria established in law by the Legislature.<sup>16,17</sup> Our examination of these cases produced no evidence of the office overstepping its authority. All of these cases met the office's jurisdictional criteria, with one exception.

<sup>15</sup> For Fiscal Years 1996-97 to 2000-01, the office filed 822 cases. The state attorneys cited concerns about 55 (less than 7%) of the cases.

<sup>16</sup> The types of information we reviewed included investigative reports from law enforcement agencies, requests for assistance, case tracking system notes, affidavits, case filings and pleadings, plea agreements, and other case materials as sufficient to make an objective assessment as to the appropriate jurisdiction of the cases. When there was any question relating to a case, we requested additional information from the state attorney and the office.

<sup>17</sup> We also reviewed information provided to us by Commissioner James T. Moore of the Florida Department of Law Enforcement. This information provides a different perspective than the association report on three cases it cites, and attests to how different parties can view data on cases and come to different conclusions.

## Exhibit 5

### The Legislature Has Expanded the Office of Statewide Prosecution's Mission

#### Effect of Change by Law

- Ch. 90-12** Added authority to investigate and prosecute "any offense comprising part of a pattern of racketeering activity in any RICO offense as charged"
- Ch. 93-212** Included authority to investigate and prosecute car-jackings and home invasion robberies
- Ch. 96-252** Amended RICO statute to include telemarketing as a predicate offense
- Ch. 96-388** Authorized investigation and prosecution of specified computer pornography and child exploitation offenses
- Ch. 97-78** Amended RICO statute to include elder abuse and exploitation as predicate offenses
- Ch. 99-335** Authorized identity theft prosecutions by any state attorney or the statewide prosecutor
- Ch. 01-54** Added authority to investigate and prosecute any violation of Ch. 815, related to computer crimes

Source: *Laws of Florida*.

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The exception was a group of eight narcotics cases identified by the 11<sup>th</sup> circuit in which the state attorney and the statewide prosecutor had agreed that assistant statewide prosecutors would be cross-designated as assistant state attorneys to help the state attorney with a backlog of single-circuit drug cases. This effort resulted from the Legislature's appropriation of additional positions to the 11<sup>th</sup> Circuit state attorney and the Office of Statewide Prosecution to fight drug crime in Miami, as recommended by James McDonough, director of the Florida Office of Drug Control. While these cases were not multi-circuit, cross-designation is a common and legitimate prosecutorial function, and the office was clearly working the cases to assist the state attorney, with her permission, as part of the statewide drug initiative.

In follow-up interviews with state attorneys, they told us that they could have easily handled the cases they cited, even though they were within the office's jurisdiction, because the criminal activity was not of sufficient magnitude or complexity to warrant the attention of the statewide prosecutor. However, we found that there appeared to be legitimate reasons why the office pursued even the "smaller" cases.

In some cases, law enforcement was working "up the chain," trying to use one offender to catch a more serious one. For example, several cases involved narcotics trafficking in two circuits. The case files documented that the office was working with the investigative agency to pursue organized criminal activity. Law enforcement hoped to use lower level drug dealers to inform on the main targets, the drug suppliers. Sometimes this strategy produced results, and sometimes it did not. When law enforcement brings a potential case in its investigative stage to a prosecutor, it is sometimes difficult to predict how the case will unfold. Considering the data in Exhibit 1, such as the fact that the average victim restitution was \$230,000 per case in Fiscal Year 2000-01, we conclude that the majority of the office's cases have not concerned minor offenses.<sup>18</sup>

Many of the controversial cases involved white-collar crimes. According to law enforcement and regulators, they sometimes take white-collar crime cases to the Office of Statewide Prosecution instead

of the state attorney because the state attorney may not have the resources to prosecute or choose to prosecute this type of case. For example, one case that the state attorney did not file on concerning defrauding the elderly for home repairs was continued by the Office of Statewide Prosecution. After further investigation, the case expanded and the defendant was ordered to pay restitution of \$180,000, which would not have been ordered if the case had been dropped.

Miscommunication and misunderstanding were also factors in a number of the contentious cases. For example, the recollection of one state attorney about being excluded from a murder-for-hire case differed from what we saw documented in the case files, which was that the office and law enforcement did work cooperatively with the assistant state attorney. In a fraud case, the documents provided by the state attorney, the statewide prosecutor, and law enforcement reflect differing understandings of how a case progressed. In a third case, also pertaining to fraud, the state attorney and the statewide prosecutor had a miscommunication that resulted from inaccurate information passed on by an investigator. Better communication between the state attorneys and the Office of Statewide Prosecution could reduce concerns of this type.

Finally, the association brought to our attention a recent court opinion that found the Office of Statewide Prosecution had exceeded its jurisdiction in one case. In *Winter v. State*, the District Court of Appeal found the Office of Statewide Prosecution's evidence of multi-circuit activity insufficient.<sup>19</sup> This case involved three employees of Unisys, the former administrator of the Florida State Employees' Health Self Insurance Fund. The perpetrators planned to use the professional license number of a psychologist in Boca Raton to process health claims through a false provider, receive and cash the benefits checks themselves, and split the money. State employees who are located throughout Florida supported the fund through payroll deduction. The Office of Statewide Prosecution's assertion of jurisdiction, supported by the Attorney General on appeal, does not appear unreasonable, and in fact was accepted by the trial court.<sup>20</sup> A different recent case, *State v. King*, questions the correctness of the

<sup>18</sup> In Fiscal Year 2000-01, victim restitution of \$55,923,739 was assessed in 243 cases, for an average of \$230,139 per case.

<sup>19</sup> *Winter v. State*, 781 So.2d 1111 (Fla. 1<sup>st</sup> DCA, 2001).

<sup>20</sup> The state attorney subsequently refiled the case, which is still being litigated.



Winter ruling.<sup>21</sup> Review of *King* is pending in the Florida Supreme Court.

The office rejects requests that it considers inappropriate. The office reviews each referral to decide whether or not to accept it as a case. In addition to verifying that the referral is multi-circuit and involves the crimes that are within the office’s jurisdiction, the office also weighs the referral against the following factors:

- the seriousness of the violation;
- whether the violation or the offender appears to be connected to organized crime or is indicative of a statewide problem;
- prior attempts to dismantle the organization or deter the offender;
- the age of the violations;
- the potential cost to the state for prosecution; and
- the potential for civil Racketeer Influenced and Corrupt Organization (RICO) action or other parallel proceeding.

As shown in Exhibit 6, the office rejected 29% of requests for assistance in the 2000-01 fiscal year for not meeting its prosecutorial criteria.

**Exhibit 6**  
**The Office Rejects Over 25% of Requests for Assistance Each Fiscal Year**

Rejections	FY 98-99		FY 99-00		FY 00-01	
Number of requests for assistance	344		439		529	
Number of cases rejected	88	26%	120	27%	154	29%
<b>Reasons</b>						
Not multi-circuit	30	34%	32	27%	44	29%
Not an enumerated offense	9	10%	10	8%	15	10%
Insufficient investigative resources	4	5%	10	8%	10	6%
Insufficient internal resources	9	10%	8	7%	14	9%
Insufficient factual basis	16	18%	31	26%	35	23%
Assistance no longer required	5	6%	8	7%	9	6%
Statute of limitations has expired	2	2%	4	3%	2	1%
Target investigated and prosecuted elsewhere	11	13%	10	8%	19	12%
Administratively closed	2	2%	6	5%	6	4%
Final disposition achieved	0		1	1%	0	

Source: Office of Statewide Prosecution.

<sup>21</sup> *State v. King*, 790 So.2d 477 (Fla. 5<sup>th</sup> DCA, 2001).

We conclude that the Office of Statewide Prosecution prosecutes cases within its statutory authority. There are valid reasons why the office does work some “smaller” cases. The office does not prosecute cases it determines are inappropriate.

***5. Can the tensions between the state attorneys and the Office of Statewide Prosecution be eliminated?***

Law enforcement and regulatory agencies may take a case to either the state attorney or the Office of Statewide Prosecution, as they consider appropriate. This choice enhances Florida’s ability to aggressively fight crime, but it creates the potential for tension between the two prosecutorial entities. Both the state attorneys and the statewide prosecutor need to make an effort to communicate better.

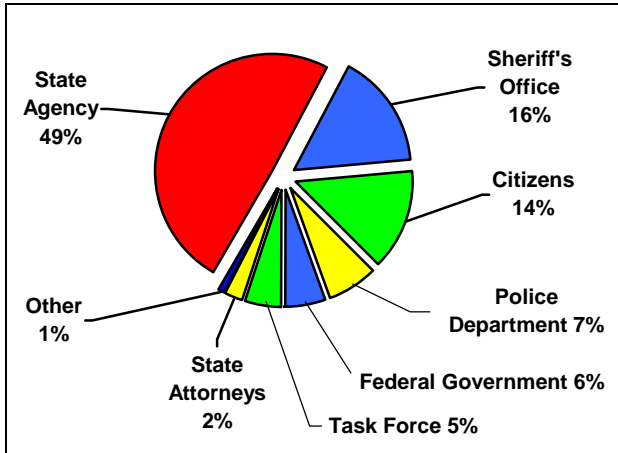
Concurrent jurisdiction creates the potential for feelings of competition. Because of concurrent jurisdiction, law enforcement and regulatory agencies may take cases that meet the jurisdictional criteria of the statewide prosecutor to either the office or the state attorney, as they consider appropriate. This choice enhances Florida’s ability to aggressively fight crime, but it creates the potential for a feeling of competition between the two prosecutorial entities.

Unlike state attorney offices, the Office of Statewide Prosecution does not employ investigators and does not initiate its own investigations. As shown in Exhibit 7, a variety of local, state, and federal agencies, as well as Florida citizens, refer cases to the office.<sup>22</sup>

In the Florida Prosecuting Attorneys Association report, the state attorneys complain that the existence of the Office of Statewide Prosecution allows law enforcement and regulatory agencies to “shop” for a prosecutor. For example, if an officer takes a case to a state attorney and the attorney declines to take the case, the officer may take the case to the statewide prosecutor instead of dropping the case. According to state attorneys, “shopping” a case shows a lack of respect for the professional judgment of the attorney that turned down the case and undermines the integrity of the state attorney’s office.

<sup>22</sup> Of state agency referrals, 52% came from the Department of Law Enforcement, 16% from the Department of Insurance, 14% from the Attorney General, 5% from the Department of Revenue, 4% from the Comptroller, and 9% from other agencies.

**Exhibit 7**  
**State Agencies Refer the Most Cases to the Office**



Source: Office of Statewide Prosecution referrals for calendar years 1998-2001.

Another allegation is that the statewide prosecutor “solicits” work, the underlying complaint being that by assisting agencies and task forces with their investigations, the office takes work from the state attorneys that is rightfully theirs and should not be prosecuted or evaluated by another entity.

The association report recommended that the law enforcement and regulatory agencies should no longer have access to the Office of Statewide Prosecution, and that the office receive all future cases through the state attorneys, the Governor, or the statewide grand jury.

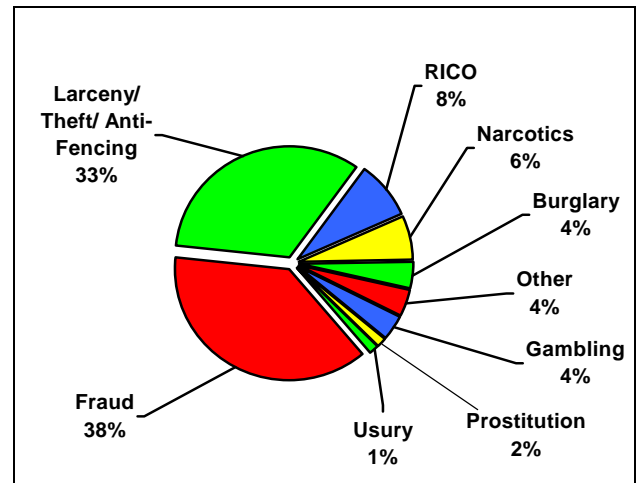
From the perspective of law enforcement and regulatory agencies, the fact that there are two prosecutorial entities, however, allows them to go to the most appropriate party. Generally, law enforcement and regulatory agencies reported going to the Office of Statewide Prosecution for the more complex, time-consuming, and multi-jurisdictional cases. According to law enforcement and regulatory staff, they sometimes choose to work with the Office of Statewide Prosecution because the office will assist by suggesting other types of evidence that could be obtained to strengthen a case, and go further to work with the agency to develop a case. In contrast, state attorneys generally take cases in which the investigation is already complete.

State attorneys are elected and therefore must have the political astuteness to respond to their constituents. This translates generally into being proactive and efficient in handling crimes that most

concern citizens: street crimes such as murder, armed robbery and domestic violence. When faced with a choice of pursuing these types of cases, which have frequently already been investigated and arrests made, versus a suspected loan sharking case that spans several circuits and is at the beginning stage of investigation, it is a natural choice for a state attorney to focus time and resources on successfully prosecuting the crime that has the highest priority of their constituents.

Investigators and law enforcement officers are concerned that if the Office of Statewide Prosecution were to be reduced or eliminated, the conditions that existed prior to the creation of the office would recur and some crimes would not be prosecuted. While some state attorneys offices do have specialized units to prosecute complex or white-collar crime cases, investigators did not believe that the state attorneys would always pursue such cases, especially involving defendants and victims in other circuits. In fact, staff from several agencies told us that if the Office of Statewide Prosecution were reduced or eliminated, their ability to fight tax and Medicaid fraud and identity theft crimes would literally shut down. Cases involving these crimes constitute the majority of the office’s workload, as shown in Exhibit 8.

**Exhibit 8**  
**71% of Statewide Prosecution Cases Involve Fraud and Larceny Charges**



Other = violation of probation/community control, computer crimes, conspiracies, perjury, robbery, kidnapping, murder, bribery, and extortion.

RICO = Racketeer Influenced and Corrupt Organization.

Source: Office of Statewide Prosecution, data for Fiscal Years 1999-00 through 2000-01.

Although state attorneys can coordinate with each other to work cases that occur in multiple circuits, only 6 of the 18 state attorneys that responded to our survey reported doing so.

The state attorneys handle the bulk of the state's cases. The Office of Statewide Prosecution reduces the state attorneys workload in specialized areas and provides the focus for targeting crime at the statewide level.

Law enforcement and regulatory staff in the ranks and at the highest levels told us repeatedly and emphatically that there is more than enough prosecutorial work to be done, and that they would like the elected officials to act in a more professional manner regarding this issue. Some of these investigative agencies believe the Office of Statewide Prosecution's jurisdiction should be expanded. None of the law enforcement officials we contacted believe it should be restricted, let alone eliminated.

Better communication needed. To improve the working relationship between the Office of Statewide Prosecution and the state attorneys, both parties should communicate better. Currently, each time the office files a case, it informs the appropriate state attorney. Some state attorneys reported that they are not aware when the office is working on a referral in their circuit prior to the filing of a case. The office should more visibly alert the state attorneys to these efforts. For example, the chief in charge of the case for the Office of Statewide Prosecution could contact the state attorney or a designee to inform him or her of referrals and investigations in that circuit. This would not be an approval or veto by state attorneys, but rather a way of keeping them apprised of the office's work in their circuits.

Similarly, the state attorneys should invite the statewide prosecutor back onto the board of directors of the Florida Prosecuting Attorneys Association. The state attorneys changed their association bylaws to exclude the statewide prosecutor in 1996 following her efforts to expand the office's jurisdiction in Racketeer Influenced and Corrupt Organization (RICO) cases.

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# Agency Response

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STATE OF FLORIDA  
DEPARTMENT OF LEGAL AFFAIRS

## Office of Statewide Prosecution

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January 15, 2002

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Re: Review of The Office of Statewide Prosecution

Dear Mr. Turcotte:

Thank you for your thorough and impartial review of the work of the Office of Statewide Prosecution. We agree with the conclusions and concur in the recommendations. We remain committed to working in a spirit of cooperation with the State Attorneys on criminal justice matters of statewide significance. We will strive to develop a plan with the FPAA to enhance our communication.

Sincerely,

/s/  
Melanie Ann Hines  
Statewide Prosecutor

MAH:prp