

Fiscal Estimate Narratives
SPD 4/6/2007

LRB Number 07-1526/1	Introduction Number SB-115	Estimate Type Original
Description Providing a penalty of death or life imprisonment for a first-degree intentional homicide that is vicious		

Assumptions Used in Arriving at Fiscal Estimate

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation that creates a new criminal offense or expands the definition of an existing criminal offense has the potential to increase SPD costs.

Although this bill does not create a new criminal offense, it would substantially increase SPD costs by providing a sentence of death for certain homicide offenses. In FY 2006, the SPD appointed attorneys in 77 homicide cases (including appointments following withdrawal of the previously-appointed attorney). The average cost per homicide appointment is [amount]. Studies from other states show the substantial costs of death-penalty cases, far exceeding the costs of homicide cases in which the death penalty is not an option. [add numbers from other states]

Some of the specific areas in which the SPD would incur additional costs are as follows:

Additional attorney time to investigate possible defenses, including possible challenges related to inconsistent exercise of discretion in seeking the death penalty, motions related to pre-trial publicity, and motions related to juror qualifications.

Additional attorney time to investigate possible mitigating factors, which can include anything in the client's background (including family history, mental disorders, employment and school records, and involvement in community activities).

Additional attorney time for all aspects of litigation, from pretrial motions through sentencing (if a conviction occurs). The risk of a death sentence, which inevitably results in close scrutiny of the case on appeal, requires that the trial attorneys raise and litigate all potential issues in the trial court.

The demands of representation in a death-penalty case are such that most public defenders assign two attorneys to each case and limit the caseload of each attorney to two cases each year.

[insert cost estimate-range?]

Additional attorney time on appeal to review all aspects of the trial-court proceedings (which, as explained above, result in a longer and more complex record from the trial court).

Additional time on appeal to investigate comprehensively whether there are aspects of the case that the trial attorneys failed to present properly (for example, the appellate attorney may determine that the trial attorney should have obtained certain records or talked to certain witnesses to present mitigating factors at the sentencing hearing).

[insert cost estimate for appellate counsel]

Increased costs for private attorneys, because of the likelihood that the SPD could not contract with private attorneys at the present statutory rate of \$40 per hour. [Insert estimate-maybe using other states &/or survey that Deb did w/ PB]

Increased costs for investigators, client service specialists, and expert witnesses.

Counties are also subject to increased costs when a new crime is created. There are some defendants who, despite exceeding the SPD's statutory financial guidelines, are constitutionally eligible for appointment of counsel because it would be a substantial hardship for them to retain an attorney. The court is required to

appoint counsel at county expense for these defendants. Although this bill does not create a new crime, it would substantially increase the costs of appointed counsel to represent defendants (as explained above). Thus, counties would be subject to substantially-increased costs in those cases in which the court appoints an attorney at county expense. Counties would also incur increased costs attributable to the longer time required to litigate a death-penalty case, during which time the defendant is generally incarcerated in the county jail.

Long-Range Fiscal Implications