

Fiscal Estimate Narratives
SPD 5/17/2007

LRB Number 07-0776/1	Introduction Number AB-0330	Estimate Type Original
Description Voluntary intoxication as a defense to criminal liability		

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.

This bill does not create a new criminal offense or change the maximum penalties for any offense. The bill purports to restrict the circumstances in which a defendant may assert a defense of intoxication in a criminal case.

The proposed change may result in litigation, both in trial and appellate courts, regarding the admissibility of evidence of the defendant's alleged intoxication, regarding the scope of permissible arguments related to intoxication, and the regarding proposed references to intoxication in jury instructions. If the bill is enacted, defendants are nonetheless likely to contend that their level of intoxication is relevant to the issue of whether they, in fact, formed the necessary criminal intent required by many criminal statutes. Their potential argument is that they do not wish to interpose an affirmative defense, but merely wish to present relevant evidence to a necessary element on which the prosecution bears the burden of proof.

Thus, the SPD does not anticipate any significant increase or decrease in the number of trials in which evidence of intoxication is introduced.

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. Since this bill does not create a new offense, it would not lead to increased court appointments at county expense.

Long-Range Fiscal Implications