

Fiscal Estimate Narratives

SPD 2/22/2007

LRB Number	07-1015/1	Introduction Number	AB-0089	Estimate Type	Original
Description Operating an aircraft recklessly or under the influence of an intoxicant and providing a penalty and granting rule-making authority					

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 increase the maximum penalties for certain repeat intoxicated-operation offenses (OWI). The proposed changes could result in additional contested sentencing hearings and also more cases in which the defense attorney needs to research the validity of the prior convictions. There are already some OWI cases in which the defendant challenges the prior offenses because the defendant did not have an attorney (or knowingly waive the right to an attorney) in one or more of the previous cases. This type of challenge may entail an extensive investigation to obtain and review court records from several previous proceedings.

The SPD does not have the data to predict the increased costs that are likely to result from the changes proposed in this bill. However, since the changed penalties relate to operation of an aircraft, the demographics of airplane pilots suggest that most defendants would exceed the SPD's strict financial-eligibility criteria.

Counties are also subject to increased costs when a new crime is created or when penalties are increased. 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. Thus, the factors discussed above (contested sentencing hearings and investigation of prior offenses) would add to county costs in cases in which the court appoints the defense attorney. The counties also incur additional costs associated with longer incarceration of defendants, both pending trial and after sentencing.

Long-Range Fiscal Implications