

Fiscal Estimate Narratives
SPD 3/24/2009

LRB Number	09-0914/3	Introduction Number	AB-0151	Estimate Type	Original
Description Drunk driving penalties, consumption reports, and intoxicated driver deterrence					

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 has the potential to increase SPD costs if it creates a new criminal offense, expands the definition of an existing criminal offense, or increases the penalties for an existing offense.

This bill creates a new criminal offense for operating while under the influence of an intoxicant (OWI), as a first offense. This offense is presently classified as a non-criminal forfeiture offense, which is not an offense for which a defendant is eligible for a public defender. The Department of Transportation reported approximately 25,000 convictions each year for first offense OWI in 2005, 2006, and 2007. Assuming a high conviction rate of 95% for these cases due to BAC evidence in the majority of cases, and assuming that half of these defendants would meet the SPD's financial eligibility guidelines, we estimate that the SPD would provide counsel for approximately 13,158 cases each year at an average cost of \$217.54, for an annual cost increase of \$2,862,400.

The bill would also increase the maximum penalties for certain offenses. All fourth-offense OWI cases would be classified as felonies under this bill (under current law, these offenses are misdemeanors, and OWI fifth-offense and subsequent OWIs are felonies). In fiscal year 2008, the SPD's average cost per felony was \$544.58, compared to an average cost per misdemeanor of \$217.54. Because the SPD tracking of misdemeanor cases does not presently differentiate between those charges that would be felonies under this bill and those that would remain misdemeanors, the SPD cannot predict with precision the number of cases affected. However, using the same methodology as in the previous paragraph, we project that the approximately 1,700 annual convictions for fourth-offense OWI would translate into 892 SPD misdemeanors per year under current law would become felonies, for an increased annual cost of \$291,700.

The proposed changes could also result in additional trials and contested sentencing hearings. These proceedings require additional attorney time and therefore increase SPD costs. The increased penalties (felony record, increased incarceration, ignition interlock, and/or mandatory elements of alcohol or drug assessment, depending on the specific allegations) make it likely that more defendants will choose to proceed to trial, rather than to plead guilty and accept the more-severe consequences of a conviction. The increase in contested sentencing hearings is likely to occur most often in the felony cases, when the court has the discretion to impose incarceration in either county jail or state prison. Also, in the felony cases, there are likely to be additional challenges to the validity of the previous convictions that serve as the basis for the felony classification. The SPD cannot predict the number of increased trials or contested sentencing hearings; however, we could track the number of trials before and after the implementation of the bill to estimate its effect.

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. Thus, the counties will incur increased costs because of the increased number of criminal cases and the increased number of felony cases in which defendants will have a constitutional right to counsel, but will exceed the SPD statutory criteria. Also, the possibility of additional contested sentencing hearings could add to county costs in cases in which the court appoints the defense attorney.

Long-Range Fiscal Implications