



## Fiscal Estimate Narratives

SPD 3/25/2009

LRB Number	09-1371/2	Introduction Number	AB-0156	Estimate Type	Original
<b>Description</b> Reimbursement to counties by prisoners and increasing drunk driving penalties					

### 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 would increase the workload and associated costs for the SPD in five major respects, as follows:

1. New criminal charge of operating while intoxicated (OWI), first offense
2. Change in classification of some OWI cases from misdemeanor to felony
3. Increased litigation in OWI cases because of increased penalty
4. Increased number of cases of operating after revocation
5. Increased number of cases for contempt of court

1. The bill would create 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 (DOT) 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.

2. The bill would also increase the maximum penalties for certain OWI offenses. Some third-offense OWI cases and 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. The SPD provided representation in 5,057 misdemeanor OWI cases in fiscal year 2008.

3. The proposed changes could also result in additional trials and contested sentencing hearings. These effects are likely not only in the cases described in points 1. and 2., above, but also in OWI cases that remain classified as misdemeanors or felonies under the bill, but would carry higher mandatory penalties. These proceedings require additional attorney time and therefore increase SPD costs. The increased penalties (felony record and/or increased incarceration, 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.

4. The bill would indirectly result in an increased number of criminal proceedings for the charge of operating a vehicle after revocation. The bill proposes to extend the length of revocations of driving privileges for the period of time that a person has not reimbursed the county for the costs of his or her incarceration. Therefore, it appears that the period of revocation will be indefinitely extended if the person fails to pay these expenses or to obtain a court order waiving the duty to pay.

The SPD has no data to predict the number of additional cases of operating after revocation that would result from the change proposed in this bill.

5. In cases in which the obligation exists to reimburse for the costs of incarceration, SPD clients will often be unable to pay these costs. SPD clients must meet strict financial guidelines before they are eligible for SPD appointment of counsel. Although local practices differ, some counties may utilize contempt-of-court proceedings to sanction persons for failure to pay court-ordered obligations. If the sanctions include incarceration, the person may again be eligible for SPD representation in the contempt proceeding.

The SPD has no data to predict the number of additional trials or the additional contempt proceedings that may result if this bill is enacted.

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, the increased number of felony cases, and (in some counties) contempt proceedings in which defendants will have a constitutional right to counsel, but will exceed the SPD statutory criteria. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing in OWI cases and after a finding of contempt for persons who fail to pay the court-ordered costs. Also, the possibility of additional contested sentencing hearings could add to county costs in cases in which the court appoints the defense attorney.

The counties will incur additional costs associated with longer incarceration of defendants, both pending trial and after sentencing. Depending on the number of felony cases resulting in prison sentences instead of jail sentences, some of the increased incarceration costs could be incurred by the Department of Corrections instead of by counties.

### **Long-Range Fiscal Implications**