



## Fiscal Estimate Narratives

SPD 10/23/2009

LRB Number	<b>09-3595/1</b>	Introduction Number	<b>AB-0511</b>	Estimate Type	<b>Original</b>
<b>Description</b> Requiring a person arrested for a felony or a juvenile taken into custody for certain sexual assault offenses to provide a biological specimen for deoxyribonucleic acid analysis, inclusion of the analysis results in the Department of Justice deoxyribonucleic acid data bank, requiring the exercise of rule-making authority, and providing a penalty					

### 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 expands the scope of the persons required to provide a DNA sample for inclusion in a law-enforcement database. Specifically, the bill would require collection of DNA specimens from any adult arrested for a felony and from any juvenile arrested for specified offenses. The bill also provides that upon dismissal of the charges, the arrestee may have the DNA sample removed from the database. The bill would indirectly expand the scope of the misdemeanor criminal offense for intentional failure to provide a DNA sample, see § 165.765 (2)(a), Stats. The SPD's average cost to provide representation in a misdemeanor case is \$214.11, calculated on the basis of the SPD's average cost per case in fiscal year 2009. Juveniles could also be charged with this offense in a delinquency proceeding. The SPD's average cost to provide representation in a juvenile case is \$200.98, calculated on the basis of the SPD's average cost per case in fiscal year 2009.

Because probation could be ordered upon conviction for the additional cases attributable to the proposed expansion of the criminal offense, this change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation. The SPD provides representation in proceedings commenced by the Department of Corrections (DOC) to revoke supervision. Thus, the bill would indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The average cost during fiscal year 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$382.18.

Therefore, the SPD would incur additional costs because of additional misdemeanor, juvenile, and revocation cases attributable to this bill. A third way in which the bill may increase SPD costs is that it may lead to litigation and negotiations in some felony and juvenile cases regarding the defendant's eligibility to have the DNA sample removed from the database. The SPD has no data to predict the number of additional cases that would result from the change proposed in this bill or to estimate the additional time in felony and juvenile cases. Because of the annual caseloads for staff attorney positions specified for budgeting purposes under § 977.08(5), Stats., it would be more cost effective to add staff attorney positions if a significant number of SPD cases resulted from this provision of the bill.

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. Because a juvenile in a proceeding under chapter 938, Stats., is eligible for SPD representation without the need to complete a financial evaluation, county appointments are extremely rare in delinquency proceedings. Thus, the counties would experience increased costs attributable to additional criminal charges and attributable to additional attorney time in felony cases resulting from this bill. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing.

### Long-Range Fiscal Implications