

Fiscal Estimate Narratives

SPD 8/15/2009

LRB Number	09-3022/1	Introduction Number	SB-248	Estimate Type	Original
Description Penalty enhancers for committing domestic abuse in the presence of a child and providing 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 increases the penalties for domestic-abuse offenses, under certain circumstances. The maximum penalties would be increased by nine months for class B misdemeanors, by thirteen months for class A misdemeanors, by three years for class I felonies, and by five years for class A-H felonies. These increased penalties would apply when the underlying crime occurred in the presence of a child and when the defendant knew of the child's presence (or had reason to know).

The bill would increase SPD costs for representation in the cases subject to the increased penalties. In some cases, additional SPD costs would be attributable to investigation or litigation (or both) regarding the factual issues relevant to the increased penalty (was a child present and, if so, was the defendant aware of the child's presence). In some cases, additional SPD costs would be attributable to the higher potential penalties, which are likely to result in more trials and other contested hearings.

The SPD does not have any data regarding the number of domestic-abuse cases in which children are allegedly present. If the bill is enacted, the SPD could track the number of future cases in which the penalty enhancer is charged.

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, for the same reasons that the SPD would incur higher costs, the counties would experience increased costs attributable to the higher penalties for some criminal charges 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