

Fiscal Estimate Narratives

SPD 10/15/2009

LRB Number	09-2317/1	Introduction Number	SB-334	Estimate Type	Original
Description Throwing or expelling a bodily substance at a public safety worker 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 felony criminal offense for throwing or discharging bodily fluids at public safety workers. The bill would eliminate the intent element that exists under current law, thus allowing prosecution to occur if a person committed the act in anger, but without the specific purpose of causing bodily harm. The SPD's average cost in fiscal year 2009 per felony appointed to private bar attorneys was \$584.62.

Because probation or prison could be ordered upon conviction in the additional cases under the proposed expanded scope of the criminal offense, this change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. The SPD provides representation in contested 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 felony and revocation cases attributable to this bill. The SPD has no data to predict the number of additional cases that would result from the change proposed in this bill. 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. Thus, the counties would experience increased costs attributable to additional 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