

Fiscal Estimate Narratives

SPD 5/2/2011

LRB Number	11-1095/1	Introduction Number	AB-0103	Estimate Type	Original
Description Receiving a stolen firearm 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 and certain commitment 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 create a new class H felony crimes for intentionally receiving a stolen firearm, regardless its value. Under current law, the defendant would face a Class H felony if the value of the property is between \$5,000 and \$10,000, or a misdemeanor if less than \$5,000, under the general statute for receiving stolen property.

The SPD has no data to predict the number of case that would be felonies instead of misdemeanors as a result of the changes proposed in this bill. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case was \$219.07 in fiscal year 2010, compared to an average cost of \$591.49 for a felony during the same period.

Because probation or prison could be ordered upon conviction for the proposed felony crime, this change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. Probation is also an option for misdemeanor cases; however, a felony case may result in a longer term of 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 2010 for SPD representation by a private bar attorney in a revocation proceeding was \$366.09.

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 or reclassified from a misdemeanor to a felony. 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 the higher classification of 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