

Fiscal Estimate Narratives

SPD 10/31/2013

LRB Number	13-2250/1	Introduction Number	AB-0465	Estimate Type	Original
Description Causing harm to a child by cosleeping while intoxicated, providing information about cosleeping while intoxicated, 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 critical 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 creates new felony offenses for injuring or killing a child under 12 months of age by cosleeping with the child while the person is intoxicated. The severity of the injury determines which felony class the offense is classified under. If the child suffers bodily harm the person is guilty of a Class H felony. If the child suffers great bodily harm the person is guilty of a Class F felony. If the child dies as a result of cosleeping with the child while the person is intoxicated, the person is guilty of a Class D felony. The bill also requires the Child Abuse and Neglect Prevention Board, certain medical professionals and others to develop and/or provide educational and informational materials to specific individuals related to cosleeping while intoxicated.

The SPD has no data to predict the number of additional felony cases resulting from this bill. The SPD's FY2013 average cost to provide representation with a private bar attorney in a felony case was \$556.21. 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.

Because probation or prison could be ordered upon conviction for the proposed felony crimes, the additional felony penalties created under the bill will likely lead to increases in incarceration rates, extended supervision cases and increases to probation caseloads. In addition to the likely increase SPD caseload related to initial charging of the new crimes created under the provisions of the bill, SPD caseloads related to the revocation of extended supervision or probation would also likely increase. The average cost during FY2013 for SPD representation by a private bar attorney in a revocation proceeding was \$303.86.

Counties are also subject to increased costs when new penalties are 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 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