



## Fiscal Estimate Narratives

SPD 5/29/2015

LRB Number	<b>15-0188/2</b>	Introduction Number	<b>AB-0224</b>	Estimate Type	<b>Original</b>
<b>Description</b> Marijuana possession, regulation of marijuana distribution and cultivation, medical marijuana, operating a motor vehicle while under the influence of marijuana, making appropriations, requiring the exercise of rule-making authority, and providing criminal 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 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 changes state law so that state law permits a Wisconsin resident who is over the age of 21 to possess no more than one-half an ounce of marijuana and to permit a nonresident of Wisconsin who is over the age of 21 to possess no more than a quarter ounce of marijuana. A person who possesses more than the maximum allowable amount of marijuana but not more than 28 grams is subject to civil forfeiture not to exceed \$1,000 or imprisonment not to exceed 90 days or both. A person who possesses more than 28 grams of marijuana is guilty of a class B misdemeanor except in some cases where the person is guilty of a Class I felony. This bill prohibits the sale for recreational use of product intended for human consumption that contains marijuana or marijuana extracts and that is edible. This bill prohibits the sale of marijuana for recreational via telephone, mail or internet. A person who violates these provisions is subject to a Class A misdemeanor. This bill prohibits the use of marijuana in public and a person who violates this prohibition is subject to a civil forfeiture of not more than \$100. This bill eliminates the current prohibition on possessing or using drug paraphernalia that relates to marijuana consumption. This bill creates a process by which a person may obtain a permit to sell marijuana for recreational use and pay a tax equal to 25 percent of the sales price. A person selling marijuana without a permit is guilty of a Class I or H felony dependent on the age of the buyer. All selling of recreational marijuana to minors is prohibited. Any permittee selling to a minor is subject to a civil forfeiture of not more than \$500 and the permit may be suspended for up to 30 days. Minors are subject to a forfeiture of not less than \$250 nor more than \$500 for attempting to procure or procuring marijuana from a permittee; possessing marijuana for recreational use; or knowingly entering a premises for which a permit has been issued without being accompanied by his or her parent, guardian or spouse who is at least 21 years of age. This bill also allows a person to obtain an annual permit for a \$250 fee to cultivate no more than 12 marijuana plants at one time. A person without a permit who cultivates plants, and the number of plants is not more than 12, is subject to a civil forfeiture that is no more than twice the fee to obtain a permit. A person cultivating more than 12 plants at one time but not more than 24 is subject to a civil forfeiture not to exceed \$1,000 or imprisonment not to exceed 90 days or both. If a person cultivates more than 24 plants at one time, the person is guilty of a Class B misdemeanor, except in certain circumstances where they would be subject to a Class I felony. With respect to the medical use of marijuana, this bill changes state law to permit a person registered with the Department of Health Services (DHS) to use marijuana for medical use. This bill also allows a person's primary caregiver to acquire, possess, cultivate, or transport marijuana for a person registered with DHS. This bill identifies requirements for DHS regarding a medical use of marijuana registry and the medical use of marijuana permitting and oversight program. This bill also clarifies current law by stating that a person may not operate a vehicle with a THC concentration of 5.0 ng/mL or more, instead of a detectable amount, in his or her blood.

This bill changes state law regarding marijuana. It does not affect federal law, which generally prohibits persons from manufacturing, delivering, or possessing marijuana and applies to both intrastate and interstate violations.

Since the bill adds new penalties, it is possible the SPD will see an increase in the number of cases in which it provides representation; however, these may be offset by the potential decrease in cases due to decriminalization of marijuana possession based on quantity. According to CCAP, there were 1,964 distinct

cases that were criminally charged as felonies in FY2013 but would not be if the provisions of this bill are made into law. If all of these cases were represented by the SPD, this would equate to a cost savings of \$1,082,203; however, it is highly unlikely that all of these cases were represented by the SPD. We are unable, however, to quantify the number of cases that might occur due to the provisions in the bill. The SPD's average cost to provide representation with a private bar attorney in a felony case was \$551.02 and \$255.54 in a misdemeanor case in fiscal year 2014. 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 crime, this change could 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 proceedings commenced by the Department of Corrections (DOC) to revoke supervision. Thus, the bill could indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The average cost during fiscal year 2014 for SPD representation by a private bar attorney in a revocation proceeding was \$303.86.

This bill could also have a fiscal impact on counties. 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. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing.

### **Long-Range Fiscal Implications**