

Fiscal Estimate Narratives

SPD 11/27/2015

LRB Number	15-2665/1	Introduction Number	AB-0363	Estimate Type	Original
Description Offenses related to operating a vehicle while intoxicated and providing a criminal 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.

Under this bill, a person who commits a first OWI-related offense is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. Under the bill, a person who commits a second OWI-related offense is subject to the increased penalties regardless of whether the person commits the offense within ten years of his or her first OWI-related offense. Under the bill, a court may, upon petition by the person who has been convicted of a first OWI-related offense, vacate the person's criminal conviction and amend the record to a civil violation if, in the five years since the person was convicted of the offense, he or she has not committed any other OWI-related offense. Under the bill, the clerk of courts amends the court records that are available in person and online to show only the civil violation.

According to the Department of Transportation there were 15,277 first-offense and 4,800 second-offense OWI convictions in 2014. However, it is indeterminate how many first-offenses were identified due to a second OWI look-back.

Assuming a high conviction rate of 95% for these cases due to BAC evidence in the majority of cases, and assuming that half of these defendants would meet the SPD's financial eligibility guidelines, we estimate that there are approximately 16,040 OWI 1st cases filed annually (precise numbers may be available from other sources.) The SPD's average cost to provide representation in a misdemeanor case in fiscal year 2014 was \$255.54. If 50% of the defendants were financially eligible for a public defender, the SPD would provide counsel for approximately 8,020 each year at an annual cost increase of \$2,049,431.

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 \$294.04.

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