

### Fiscal Estimate - 2015 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>15-3642/2</b>	<b>Introduction Number</b> <b>AB-0536</b>
<b>Description</b> Penalties for, and elements of, certain operating-while-intoxicated offenses and providing a criminal penalty	
<b>Fiscal Effect</b>	
<b>State:</b>	
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Local:</b>	
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate	
1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b>	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
<b>Affected Ch. 20 Appropriations</b>	
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>
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<b>Date</b>	
12/21/2015	

**Fiscal Estimate Narratives**  
**SPD 12/21/2015**

LRB Number	<b>15-3642/2</b>	Introduction Number	<b>AB-0536</b>	Estimate Type	<b>Original</b>
<b>Description</b> Penalties for, and elements of, certain operating-while-intoxicated offenses 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.

This bill increases the penalties for fourth or subsequent drunken driving offenses, eliminates a special penalty for certain fourth drunken driving offenses, and changes the definition of "injury" for certain purposes. Under this bill, a person who commits a fourth OWI offense is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 60 days. A person who commits a fifth or sixth OWI offense is guilty of a Class G felony and the person must be fined not less than \$600 and must be imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI offense is guilty of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or greater OWI offense is guilty of a Class E felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than four years.

According to the Department of Transportation, in 2014, there were 971 fourth-offense OWI convictions. Assuming a 95% conviction rate, as most prosecutions would be successfully supported by blood alcohol evidence, and assuming that 60% of the defendants could meet the SPD's financial eligibility criteria, as many as 612 SPD cases that are misdemeanors under current law would become felonies under this bill, at an additional annual cost of \$180,800. The SPD's average cost to provide representation in a felony case in fiscal year 2014 was \$551.02 and \$255.54 in a misdemeanor case. Due to the provisions of this bill there may also be an increase in the complexity of the cases.

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**