

Fiscal Estimate Narratives

SPD 10/21/2019

LRB Number	19-3999/1	Introduction Number	SB-377	Estimate Type	Original
Description marijuana possession, regulation of marijuana distribution and cultivation, medical marijuana, operating a motor vehicle while under the influence of marijuana, requiring the exercise of rule-making authority, granting rule-making authority, making an appropriation, 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 changes state law so that statute permits both recreational use of marijuana and medical use of marijuana. Wisconsin resident who is over the age of 21 to possess no more than two ounces 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 also eliminates the 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 produce, process, or sell marijuana for recreational use and pay a tax. 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. Also, under this bill, a person who cultivates more than 6 marijuana plants at one time is required to have a permit. A person without a permit who cultivates more than 6 plants at one time but not more than 12, is subject to a civil forfeiture not to exceed \$1,000 or imprisonment not to exceed 90 days or both. A person cultivating more than 12 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.

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. We are unable, however, to quantify the number of cases that might occur or be averted 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 \$540.67 and \$246.18 in a misdemeanor case in fiscal year 2018. 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 2018 for SPD representation by a private bar attorney in a revocation proceeding was \$294.73.

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