

FISCAL ESTIMATE

DOA-2048 N(R10/96)

- X ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 LRB-3532/2

Amendment No. if Applicable
 SB 280

Subject

Reimbursements of counties for payments made to court-appointed counsel and making an appropriation

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This bill would create a sum sufficient appropriation in the director of state courts' budget to reimburse counties for the costs of court-appointed counsel. Although enactment of this bill would not have a fiscal effect on the State Public Defender's Office (SPD), enactment of the bill would have a significant fiscal impact on the state of Wisconsin's budget, as explained below.

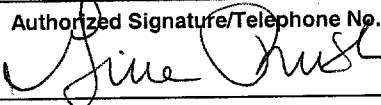
Under chapter 977 of the Wisconsin statutes, the SPD represents indigent persons who are charged with crimes. The statutes specify the indigency standards the SPD must apply as well as the types of cases for which the SPD is authorized to provide representation. If a person does not meet these indigency standards or if the SPD is not authorized to represent a person in a particular matter, the court may appoint counsel for the person. Such appointment, however, is at county expense. It should be noted that the LRB draft states "...the director of state courts shall pay each county the amount that a circuit court has ordered the county to pay to an attorney appointed by the court to represent an individual if that individual *has been denied his or her request for the appointment of counsel under s. 977.08.*" Because chapter 977 sets forth the eligibility requirements for SPD representation, the draft may more appropriately state "...the director of state courts shall pay each county the amount that a circuit court has ordered the county to pay to an attorney appointed by the court to represent an individual if that individual *is ineligible for representation under chapter 977.*"

(CONTINUED ON ATTACHED SHEETS)

Long-Range Fiscal Implications

Using the above assumptions, an increased annual cost to the state of Wisconsin of \$8.2 million (if counties are reimbursed at the \$40 per hour rate) to \$14.3 million (if counties are reimbursed at the Supreme Court rate of \$70 per hour).

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Authorized Signature/Telephone No.


Date
 Oct. 19, 1999

Fiscal estimate LRB 3532/2 continued...

If courts applied the federal poverty guidelines (which are less stringent than the standards set forth for SPD representation in chapter 977), then the additional cost to the state upon enactment of this LRB draft would be as much as \$6.6 million per year. This figure is based on the SPD's 1996 review of 300 financial evaluation forms of applicants who did not qualify for SPD representation. This figure assumes a reimbursement rate of only \$40 per hour, however. (SPD-certified private bar attorneys are paid \$40 per hour pursuant to section 977.08(4m), Stats.) If courts appointed counsel at the Supreme Court rate of \$70 per hour (see SCR 81.02), then the additional cost to the state would be \$11.5 million per year. Moreover, if courts appointed counsel for persons who did not even meet the federal poverty guidelines, then the additional cost to the state would be even more.

In addition, courts appoint counsel at county expense for parents in child in need of protection or services (CHIPS) and juvenile in need of protection or services (JIPS) cases. Under current law, the SPD is not authorized to represent parents in CHIPS/JIPS cases. If counties were reimbursed for such appointments, then the additional cost to the state would be at least \$1.6 million per year. (This figure is derived from the SPD's estimate of the cost of representing indigent CHIPS/JIPS parents if such authorization was granted to the SPD.) Like above, this figure assumes a reimbursement rate of only \$40 per hour, however. If courts appointed counsel at the Supreme Court rate of \$70 per hour (see SCR 81.02), then the cost increase would be \$2.8 million per year for CHIPS/JIPS cases. It should be noted, however, that the cost of appointing counsel in CHIPS/JIPS cases could be more than the \$2.8 million per year if courts appoint counsel for CHIPS/JIPS parents who would not meet the SPD's indigency standards but nevertheless could not afford to hire an attorney.

It should be noted that judges do not presently appoint counsel for all persons who do not qualify for SPD representation or all CHIPS/JIPS parents. If this LRB draft becomes law, the constraints judges presently have to not appoint counsel in every case, such as limited county budgets, would no longer exist. Moreover, the \$70 per hour Supreme Court rate may be used more often if counties were no longer required to pay for the cost of appointed counsel. Finally, because the cost of appointed counsel would no longer be paid by the counties, counties may be less inclined to expend their limited resources to verify the financial situation of persons who are appointed counsel by the courts and to pursue repayment of attorneys' fees.

Therefore, assuming that the courts will assign counsel in every case in which a criminal defendant does not qualify for SPD representation yet cannot afford to hire an attorney and for all CHIPS/JIPS parents, the total additional cost to the state would be \$8.2 million per year (if counties are reimbursed at the \$40 per

hour rate) to \$14.3 million per year (if counties are reimbursed at the Supreme Court rate of \$70 per hour).

Finally, obviously, local government costs (i.e. county costs) would decrease upon enactment of this LRB draft.