

Fiscal Estimate Narratives

DOJ 12/5/01

LRB Number 01-3845/3	Introduction Number SB-328	Estimate Type Original
Subject Crimes related to terrorism; death penalty for first-degree homicide committed with intent to terrorize; permit retired law enforcement personnel to obtain license for carrying a concealed weapon		

Assumptions Used in Arriving at Fiscal Estimate

This bill pertains to three broad areas that relate to functions within the Department of Justice. The first section relates to new definitions and increased penalties for terrorism or terrorist-related activities. The second section relates to establishing a concealed weapons program to be administered by the department with coordination required from the Department of Transportation and from the county sheriffs. The third section relates to establishing the death penalty for first degree intentional homicide that is the result of terrorist activity.

This fiscal estimate will address all three areas of this bill, as they impact various divisions within the department.

Terrorism Penalties and Increased Penalties

Increasing the penalties and creating new definitions for terrorism related activity should not produce a fiscal effect on the department or local governments. Annual training and updates by the department have routinely included new laws and their applications. Continuing education of this type should be able to be used to update state and local officials if this bill were to become law. We have, however, separated out the death penalty portion, which will produce some fiscal effect on the department, especially in the appeals process.

Concealed Carry.

The department has a number of responsibilities as set forth in this bill. The County Sheriff Departments will likewise have additional responsibilities. Below is a delineation of each of the new responsibilities.

DOJ Responsibilities

- 1) Work with DOT to design new license for concealed weapons owners.
- 2) Maintain computerized records of individuals provided a license.
- 3) Develop rules which govern the application process for concealed carry licenses.
- 4) Design application forms and distribute to all Sheriffs.
- 5) Receive hotline calls and issue confirmation number and approval or non-approval numbers. (DOJ may charge an \$8 fee for this portion of the process)
- 6) Receive duplicate of application form from Sheriffs but the department must destroy within 30 days.
- 7) Accept fingerprint cards with 1 index fingerprint impression in order to search through the FBI database. (FBI, however, does not process fingerprint cards with a single impression and will not accept a card for this purpose unless it is searched through the Crime Information Bureau first.)

Of these two areas, DOJ and sheriffs, only one fee is collected which is forwarded to DOJ. The many duties for sheriffs that are outlined in the bill appear to contain added responsibilities with no corresponding dues, fees or reimbursements.

Sheriff Responsibilities

- 1) Accept applications that include the index finger and do fingerprint. (no charge)
- 2) Must call Hotline with any application and monitor and record the non-approval or approval number. (no charge)
- 3) Maintain original record of application forms and send duplicate to DOJ. (no charge)
- 4) Must notify DOT in writing to issue license and DOJ to maintain a computerized listing with name and data. (no charge)
- 5) Must keep data current including address changes. (no charge)
- 6) May be able to revoke licenses under certain conditions and must notify subject by certified mail. (no charge)
- 7) Must respond to any appeal filed with a Circuit Court. (no charge)

DOJ related expenses for the implementation of concealed carry license.

Programming to develop database: \$85,000

On-going maintenance of database: \$ 8,500

2 Handgun Hotline Operators \$61,267
(database entering and maintenance)
Supplies and Services (1st year) \$ 9,600
On going supplies and services \$ 8,000

Forms, licenses and rules design
1 Project Program Planning Analyst 4 \$21,904
Supplies and Services \$ 4,800

Forms and mailing costs per year \$ 1,000

Total Costs year 1 \$200,071
Year 2 and thereafter \$ 78,767

This fiscal estimate does not consider the costs of fingerprint card processing. As currently written, the statutes will not provide for that process.

The department may receive increased revenues which will off-set this estimate. The department can expect increased revenues of \$40,000 if 5000 individuals apply for licenses.

Death Penalty

Because the death penalty is not currently utilized in Wisconsin, it is difficult to predict what the costs will be to the department for the appeals process. It is highly unlikely that a first degree intentional homicide brought on by an intentional terrorism act will be charged under state law. Timothy McVeigh, a so-called domestic terrorist, was indicted and convicted under federal law and received the death penalty for his actions. His accomplice, Terry Nichols, was also convicted under federal law but did not receive the death penalty. The State of Oklahoma has now charged Terry Nichols under their state statutes and are seeking the death penalty. Wisconsin law, however, does not allow for this type of dual prosecution so it would be highly unlikely that the state would have reason to prosecute in a case that would likely be in violation of federal law.

However, if the death penalty were established and 1 appeal was generated. The following costs would be produced.

Appellate Costs

The appellate process in a capital case involves multiple levels of state and federal court review. The DOJ's Criminal Appeals Unit would represent the state in all of these proceedings in every capital case. The expected course of review in every capital case would include:

1. Automatic appeal and review of the conviction and death sentence by the Wisconsin Supreme Court.
2. Petition for writ of certiorari in U.S. Supreme Court to review decision of Wisconsin Supreme Court.
3. One or more post-conviction motions by the defendant, with possible evidentiary hearings, in the Wisconsin trial court.
4. Appeal to the Wisconsin Court of Appeals to review the trial court's decision on the post-conviction motion(s).
5. Petition for review in Wisconsin Supreme Court to review decision of the Wisconsin Court of Appeals.
6. Petition for writ of certiorari in U.S. Supreme Court to review decision of Wisconsin Supreme Court.
7. Petition for writ of habeas corpus, with possible evidentiary hearings, in United States District Court.
8. Appeal to the United States Court of Appeals (Seventh Circuit) to review decision of the district court.
9. Petition for writ of certiorari in U.S. Supreme Court to review decision of U.S. Court of Appeals.

Experience in states with the death penalty indicates that this process of review commonly lasts eight to ten years.

Experience in death penalty states indicates that the elongated appellate process in capital cases consumes an enormous amount of attorney time. According to the State Public Defender's Office, the nationwide median

expenditure of defense time in a capital appeal is 1470 hours. Given the importance of the capital case, there is every reason to expect that the state would devote just as much time, if not more, on a capital appeal. Since a work year consists of some 2080 hours (exclusive of vacation), it can be seen that the appellate process in a single capital case could easily consume the equivalent of one full year of a state attorney's time over the eight to ten-year course of the process. This suggests that a state appellate attorney specializing in capital appeals could handle no more than eight to ten such cases over a period of eight to ten years. By comparison, attorneys in the Department's Criminal Appeals Unit are now routinely assigned from 30 to 40 new appeals per year.

Cases involving death sentences are subject to automatic appellate review by the Wisconsin Supreme Court. All these appeals would need to be handled by the Department's Criminal Appeals Unit. The states of New York and Kansas have estimated that capital appeals take between 500 and 1000 hours of defense attorney time. According to the State Public Defender's Office, the nationwide median for defense time in a capital appeal is 1470 hours for two attorneys. We will again assume the same for the prosecution.

Cost Estimates (based one appeal)

The cost per capital case for attorneys workload alone can be estimated by using the assumptions outlined above. At the appellate level, DOJ requires one attorney at approximately 1470 hours. The figures below show a rough estimate of the costs of that time in attorney salary and fringe benefits, plus one-time costs associated with those positions. It does not take into account additional staffing needs for the attorneys assigned to capital cases.

Appeal:

1470 hours. As a percentage of one Attorney-15's workload. The following would be the amount to cover these activities: \$38,817 for Salary, \$13,443 for benefits, \$10,950 for supplies and services (on-going) for a total attorney cost of \$63,210. An additional \$5000 one-time start-up for supplies and services would also be needed.

It should be noted that these figures use the minimum pay range for an Attorney-15 position. The Department would be in need of experienced litigators for capital cases and would most likely have to hire at above the minimum wage level.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2001 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

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Subject			
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I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):			
Programming to develop database: \$85,000. On-time supplies and services for CID: \$9000. On time start up for attorney-15 position: \$5000. Total start up costs: \$99,600.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$135,431	
(FTE Position Changes)		(4.0 FTE)	
State Operations - Other Costs		33,250	
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category		\$168,681	\$
B. State Costs by Source of Funds			
GPR		168,681	
FED			
PRO/PRS			
SEG/SEG-S			
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
		Increased Rev	Decreased Rev
GPR Taxes		\$	\$
GPR Earned			
FED			
PRO/PRS		40,000	
SEG/SEG-S			
TOTAL State Revenues		\$40,000	\$
NET ANNUALIZED FISCAL IMPACT			
		<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS		\$168,681	\$
NET CHANGE IN REVENUE		\$40,000	\$
Agency/Prepared By		Authorized Signature	Date
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