

Fiscal Estimate Narratives

SPD 3/5/2008

LRB Number	07-3075/1	Introduction Number	AB-0890	Estimate Type	Original
Description Driving a motor vehicle while using a cellular telephone 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 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 that creates a new criminal offense or expands the definition of an existing criminal offense has the potential to increase SPD costs.

This bill does not create a new criminal offense. It proposes a new non-criminal, forfeiture offense within the motor vehicle statutes. The SPD does not provide representation to defendants in forfeiture proceedings unaccompanied by a criminal charge. Thus, the bill is unlikely to have any direct fiscal effect on the SPD.

However, although the bill would not directly increase the number of SPD cases, it would indirectly have that effect. When an officer stops a vehicle for a suspected violation, there is a chance that during the stop, the officer will discover evidence tending to show another violation. Traffic stops for improper cell-phone usage would likely lead, in some unknown number of cases, to subsequent criminal charges for operating after revocation (revocation for reason related to alcohol or controlled substance or second or subsequent offense), operating while intoxicated (second or subsequent offense), possession of controlled substance, fleeing an officer, obstructing an officer, and other offenses.

Counties are also subject to increased costs when a new crime is created. 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. Because the constitutional right to counsel does not extend to a civil proceeding for this type of non-criminal charge, it is unlikely that circuit courts will appoint counsel often at county expense for the forfeiture proceeding.

However, because of the indirect effect on the number of criminal cases, explained above, circuit courts would be required to appoint counsel in an unknown number of additional criminal cases. In addition, the counties would incur additional costs related to the incarceration of defendants for the criminal charges in question, both pending trial and after sentencing.

It would likely be difficult to track the additional cases related to this bill, because it would require a case-by-case determination whether the officer would have stopped the vehicle in question for a reason other than the cell-phone violation. In addition, if more-serious violations are discovered, the officer might elect not to issue a ticket for the cell-phone violation. Therefore, a check of computerized court records for the number of cell-phone violations would not provide or lead to an accurate measure of related criminal charges.

Long-Range Fiscal Implications