

Fiscal Estimate Narratives
SPD 2/12/2008

LRB Number 07-3260/2	Introduction Number SB-401	Estimate Type Original
Description Defining the age at which a person who is alleged to have violated a criminal law, a civil law, or a municipal ordinance is subject to circuit court or municipal court rather than juvenile court jurisdiction, imposing a fee on the sale of video games and video gaming devices, and making an appropriation.		

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 and juvenile delinquency 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.

Because this bill raises the age from 17 to 18 for all criminal charges to be brought in adult court, it would reduce the number of adult felony and misdemeanor cases in which SPD provides representation. Conversely, it would increase the number of juvenile delinquency cases in which SPD provides representation because many cases that would result in adult criminal cases (against 17-year-olds) under current law would result in delinquency proceedings. The average SPD cost to provide representation in a felony case is \$1,471.12 for felony classes A-C (excluding first-degree intentional homicide) and \$543.01 for felony classes D-I (based upon fiscal year 2007 data). The average SPD cost to provide representation in a misdemeanor case is \$224.78. The average cost for a juvenile misdemeanor case is \$188.62, and the average cost for a juvenile felony case is \$374.03.

In fiscal year 2007, SPD appointed attorneys for 17-year-olds in 184 class A-C felony cases (excluding first-degree homicide), 1,637 class D-I felony cases, and 2,722 misdemeanor cases. In estimating the effect of the proposed change upon SPD costs, one important variable is how many cases would involve petitions to waive juvenile jurisdiction, thus transferring the case of a 17-year-old to adult court. The prosecution typically relies upon the nature of the crime, the age of the child, and/or the child's history to ask to transfer a case to adult court. If the court grants the waiver petition (and if the child is financially eligible for SPD representation in adult court), a waiver proceeding results in SPD providing representation in adult court as well as in juvenile court. The average SPD cost to provide representation in a waiver proceeding is \$286.61.

Because of the likelihood that the prosecution would seek waiver to adult court in class A-C felony cases against 17-year-olds (this likelihood exists because of the serious nature of these felony offenses), SPD does not anticipate any savings associated with those cases. The maximum savings associated with the class D-I felonies could be as much as \$276,620.30 (a savings of \$168.90 per case); however, the actual savings could be significantly less depending upon the number of cases in which the prosecution seeks waiver to adult court. The maximum savings associated with misdemeanors could be as much as \$98,427.50 (a savings of \$36.10 per case); however, the actual savings could be significantly less depending upon the number of cases in which the prosecution seeks waiver to adult court. Another related factor reducing the potential saving is that some of the charges against 17-year-olds would remain in adult court because of the "once waived, always waived" rule that applies to juveniles who previously have had charges transferred to adult court. Thus, the maximum savings for SPD could be as much as \$375,047.80.

Counties are also subject to increased costs when a new crime is created. There are some adult 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 SPD provides representation to children in delinquency cases without the need for financial screening, the counties would not need to appoint attorneys in juvenile proceedings. However, 17-year-olds generally qualify for SPD representation in adult cases (most of them are single and unemployed), so the counties are unlikely to save significant amounts related to fewer court appointments.

The counties also incur costs associated with incarceration of defendants, both pending trial and after sentencing. The counties will have fewer 17-year-olds in jail as adult defendants, but more in juvenile detention. SPD does not have data available to determine how the decreased costs of adult incarceration will compare to the increased costs of juvenile detention.

Long-Range Fiscal Implications

Research shows that the recidivism rate is lower for children whose criminal conduct is addressed within the juvenile system rather than the adult system. SPD does not have the data to quantify potential savings from reduced recidivism, and it is likely that the programs and services provided in each county are significant factors in determining the extent of this reduction.