

Fiscal Estimate Narratives

SPD 11/12/2009

LRB Number	09-3681/1	Introduction Number	AB-0558	Estimate Type	Original
Description The possession of a firearm by a person who has committed a misdemeanor crime of domestic violence 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 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.

Although this bill would not create a new crime, it would expand the scope of the felony offense for unlawful possession of a firearm. The bill prohibits possession of a firearm by anyone convicted of a misdemeanor offense involving domestic violence. Thus, persons convicted of such a misdemeanor are subject in the future to prosecution for the felony offense of unauthorized possession of a firearm. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 for fiscal year 2009.

Because probation or prison can be ordered upon conviction for felony crimes, the bill would 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 would indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The average cost during fiscal year 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$382.18.

Therefore, the SPD would incur additional costs under this bill. 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.

The SPD does not have data to determine the number of additional felony and revocation cases that would result from the expanded scope of the felony offense for unauthorized possession of a firearm. Similarly, the SPD does not have data to estimate the potential impact upon the average cost of representation in misdemeanor cases that would result in the loss of the privilege to possess a firearm. In some cases, defendants will likely be concerned about this collateral consequence and therefore, they may be more likely to assert their right to a jury trial in the misdemeanor case.

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. Thus, the counties would experience increased costs attributable to the higher classification of criminal charges resulting from this bill. The counties could also incur additional costs associated with incarceration of defendants, pending trial (or pending completion of revocation process) and after sentencing.

Long-Range Fiscal Implications