

Fiscal Estimate Narratives

SPD 3/5/2010

LRB Number	09-4161/1	Introduction Number	AB-0775	Estimate Type	Original
Description Throwing or expelling a bodily substance at a public safety worker 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 and certain commitment 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 eliminate the element of intent to cause bodily harm that is necessary under current law for a person to be charged with causing bodily harm for deliberately throwing or expelling a bodily substance at a public safety worker. This change in the law will likely result in additional felony charges under this section, in which some of the defendants would qualify for SPD representation. We are not able to project how many additional SPD cases would result. During the past three fiscal years the SPD has appointed counsel in a total of 107 cases under this section. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 in fiscal year 2009 for the same fiscal year.

Because probation or prison could be ordered upon conviction for the proposed felony crime, this change 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.

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, both pending trial and after sentencing.

Long-Range Fiscal Implications