

Fiscal Estimate Narratives

SPD 3/13/2009

LRB Number	09-1370/1	Introduction Number	AB-0130	Estimate Type	Original
Description Costs of administering tests for intoxication					

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.

This bill does not provide for a new criminal offense, expand the definition of a criminal offense, or increase criminal penalties. The bill makes persons convicted of operating under the influence of alcohol or controlled substances (OWI) responsible for the costs of blood tests taken as part of the investigation. This responsibility may be limited to situations in which the person consented to administration of a blood test under the implied consent law; however, prosecutors may also seek to impose these costs in cases in which a forcible blood draw occurs.

The bill could increase the SPD workload in two ways. First, the bill requires law enforcement to advise the OWI suspect that he or she may be ordered to repay the costs of the blood test. This notification may result in more suspects refusing to consent to the blood test, which in turn may lead to more OWI trials. The additional trials could occur because the absence of a blood test prevents the prosecution from proving the blood alcohol level and, in some cases, may make it difficult for the prosecution to prove that the suspect was impaired.

Second, in cases in which the costs of the test are imposed, SPD clients will often be unable to pay these costs. SPD clients must meet strict financial guidelines before they are eligible for SPD appointment of counsel. Although local practices differ, some counties may utilize contempt-of-court proceedings to sanction persons for failure to pay court-ordered obligations. If the sanctions include incarceration, the person may again be eligible for SPD representation in the contempt proceeding.

The SPD has no data to predict the number of additional trials or the additional contempt proceedings that may result if this bill is enacted.

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 may experience increased costs attributable to additional OWI trials and contempt proceedings. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing in OWI cases and after a finding of contempt for persons who fail to pay the court-ordered costs.

Long-Range Fiscal Implications