

Fiscal Estimate Narratives
SPD 5/28/2009

LRB Number	09-2173/1	Introduction Number	AB-0274	Estimate Type	Original
Description Allowing probation after certain convictions related to drunken driving					

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 does not create a new criminal offense, it would change the dispositional options available to the court following convictions for 2nd-offense and 3rd-offense operating while intoxicated. Specifically, the bill would repeal statutory language that currently prohibits placing defendants on probation for these offenses.

The SPD provides representation in proceedings commenced by the Department of Corrections (DOC) to revoke supervision (the forms of supervision are probation, parole, and extended supervision). The bill would increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The SPD does not have the data to determine how many additional persons would be placed on probation or the number of persons who would have their probation revoked. The average cost during fiscal year 2008 for SPD representation in a revocation proceeding was \$368.86.

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. The constitutional right to counsel applies to revocation proceedings in which the legal issues are too complex for the person facing revocation to address without legal assistance. Thus, the counties will incur increased costs because of the increased number of revocation proceedings in which defendants have a constitutional right to counsel, but will exceed the SPD statutory criteria. The counties could also incur additional costs associated with incarceration of defendants, both pending revocation proceedings and after revocation of probation.

Long-Range Fiscal Implications