

Fiscal Estimate Narratives

SPD 5/29/2009

LRB Number	09-2859/1	Introduction Number	AB-0283	Estimate Type	Original
Description Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, 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.

This bill would increase the workload and associated costs for the SPD in five respects, as follows:

- „X Increased number of cases of operating after revocation
- „X Change in classification of some OWI cases from misdemeanor to felony
- „X Increased litigation in OWI cases because of increased penalty
- „X New crimes and expanded definitions of crimes
- „X Increased number of cases for proceedings to revoke probation or extended supervision

1. The bill would indirectly result in an increased number of criminal proceedings for the charge of operating a vehicle after revocation (OAR). Several provisions in the bill add to the length of time during which persons are unable to reinstate their driving privileges or establish conditions that some persons will not satisfy as prerequisites for reinstatement. These provisions include the following:

The bill would make it mandatory for the court to require that certain persons are limited to operating vehicles equipped with ignition interlock devices. The bill would also require a person subject to such an order to pay all or part of the costs of installing an interlock device on all vehicles that the person owns. These requirements would result in some persons being unable or unwilling to comply with the requirements and incurring subsequent criminal charges for operating after revocation of driving privileges.

The bill would extend the length of revocations of driving privileges for the period of time that a person is incarcerated and would place the burden on the person to notify the Department of Transportation (DOT) when he or she is released. Therefore, it appears that the revocation period would be extended at least for the time while the person is incarcerated and, if the person fails to notify DOT of his or her release, the revocation period would be extended indefinitely.

The bill would eliminate a distinction that presently exists in cases of operating under the influence of intoxicants (OWI), first offense, according to the driver's blood alcohol concentration (BAC). The bill would require all defendants convicted of OWI, first offense, to pay surcharges and fees not required under current law when the BAC is less than 0.1. The bill would also require an alcohol or other-drug assessment in all cases before the defendant is eligible to reinstate driving privileges. These changes would also result in longer periods of revoked driving privileges for some persons, which indirectly would lead to additional charges of OAR.

The SPD has no data to predict the number of additional cases of operating after revocation that would result from the changes proposed in this bill. In fiscal year 2008, the SPD's average cost per misdemeanor case was \$217.54.

2. The bill would also increase the maximum penalties for certain OWI offenses. Some fourth-offense OWI cases would be classified as felonies under this bill (under current law, these offenses are misdemeanors, and OWI fifth-offense and subsequent OWIs are felonies). Also, charges of OWI causing injury would be classified as felonies if the driver had a previous OWI conviction (these charges are misdemeanors under current law). In fiscal year 2008, the SPD's average cost per felony was \$544.58, compared to an average cost per misdemeanor of \$217.54. Because the SPD tracking of misdemeanor cases does not presently differentiate between those charges that would be felonies under this bill and those that would remain

misdemeanors, the SPD cannot predict with precision the number of cases affected. The SPD provided representation in 5,057 misdemeanor OWI cases in fiscal year 2008.

3. The proposed increased penalties in many OWI cases could also result in additional trials and contested sentencing hearings. These effects are likely not only in the cases described in point 2., above, but also in OWI cases that are already classified as felonies under current law, but would carry higher mandatory penalties under the bill. These proceedings require additional attorney time and therefore increase SPD costs. The increased penalties (felony record and/or increased incarceration, depending on the specific allegations) make it likely that more defendants will choose to proceed to trial, rather than to plead guilty and accept the more-severe consequences of a conviction. Also, in the felony cases, there are likely to be additional challenges to the validity of the previous convictions that serve as the basis for the felony classification. The SPD cannot predict the number of increased trials or contested sentencing hearings; however, we could track the number of trials before and after the implementation of the bill to estimate its effect.

4. The bill would create a new misdemeanor offense for circumventing the proper operation of an ignition interlock device. The bill would also expand the class of persons who are subject to the BAC of .02, instead of .08, which would indirectly lead to additional misdemeanor OWI cases.

The SPD has no data to predict the number of additional misdemeanor cases that would result from the new crime and expanded crime proposed in this bill. In fiscal year 2008, the SPD's average cost per misdemeanor case was \$217.54.

5. The bill would authorize courts to place defendants on probation following conviction for OWI, 2nd or 3rd offense. This change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation. 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 also lead to additional cases in which DOC would supervise persons on extended supervision, which is a required second part of a bifurcated prison sentence (the bill's mandatory prison sentences in all felony OWI cases would result in this increase). Thus, the bill would indirectly 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 DOC supervision (probation or extended supervision) or the number of additional revocation proceedings that would occur. 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. Thus, the counties will incur increased costs because of the increased number of criminal cases and the increased number of felony cases in which defendants will 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 trial and after sentencing in OWI cases and after a finding of contempt for persons who fail to pay the court-ordered costs. Also, the possibility of additional contested sentencing hearings could add to county costs in cases in which the court appoints the defense attorney.

The counties will incur additional costs associated with longer incarceration of defendants, both pending trial and after sentencing. Depending on the number of felony cases resulting in prison sentences instead of jail sentences, some of the increased incarceration costs could be incurred by the Department of Corrections instead of by counties.

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 also 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