

### Fiscal Estimate - 2009 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>09-2950/1</b>	<b>Introduction Number</b> <b>AB-0346</b>
<b>Description</b> Penalties for driving a vehicle while under the influence of an intoxicant	
<b>Fiscal Effect</b>	
<b>State:</b>	
No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriations	
<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
<b>Local:</b>	
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate	
1. <input checked="" type="checkbox"/> Increase Costs                      3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs                      4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b>	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
<b>Affected Ch. 20 Appropriations</b>	
<b>Agency/Prepared By</b> SPD/ Mike Tobin (608) 266-8259	<b>Authorized Signature</b> Krista Ginger (608) 264-8572
<b>Date</b> 7/22/2009	

## Fiscal Estimate Narratives

SPD 7/22/2009

LRB Number	09-2950/1	Introduction Number	AB-0346	Estimate Type	Original
<b>Description</b> Penalties for driving a vehicle while under the influence of an intoxicant					

### 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.

The bill would create a new criminal offense for operating while under the influence of an intoxicant (OWI), as a first offense, when the blood alcohol concentration (BAC) is at or above a certain level. The bill would create a presumptive threshold of .20 at which OWI 1st becomes a criminal offense. However, this BAC level is reduced to .16 when the driver has a detectable amount of a restricted controlled substance. This offense is presently classified as a non-criminal forfeiture offense, which is not an offense for which a defendant is eligible for a public defender.

The Department of Transportation (DOT) reported approximately 25,000 convictions each year for first offense OWI in 2005, 2006, and 2007. Assuming a high conviction rate of 95% for these cases due to BAC evidence in the majority of cases, and assuming that half of these defendants would meet the SPD's financial eligibility guidelines, we estimate that there are approximately 26,250 OWI 1st cases filed annually (precise numbers may be available from other sources). If all of these cases became criminal offenses and if 50% of the defendants were financially eligible for a public defender, the SPD would provide counsel for approximately 13,158 cases each year at an average cost of \$217.54, for an annual cost increase of \$2,862,400. However, because this bill does not make all OWI 1st cases criminal, the cost would not be as great. The SPD does not have the data to determine the percentage of OWI cases that would be criminal under this bill (this data may be available through other sources).

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 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.

This bill does not criminalize OWI 1st cases in which the driver refuses to submit to a chemical test to determine the BAC. Thus, law enforcement agencies may, in cases of such refusal, wish to have blood drawn to determine BAC. When blood is drawn, there may be a time lag before the results are reported, which may result in a period of time during which it is unknown whether the case will proceed as a criminal case or a non-criminal forfeiture. This uncertainty may lead to some delays and other inefficiencies in the court system.

### Long-Range Fiscal Implications