

### Fiscal Estimate - 2009 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>09-2768/2</b>	<b>Introduction Number</b> <b>AB-0366</b>
<b>Description</b> Probation for certain drunken driving offenses and providing penalties	
<b>Fiscal Effect</b>	
<b>State:</b>	
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> 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 <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <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>	<b>Authorized Signature</b>
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<b>Date</b>	
8/25/2009	

## Fiscal Estimate Narratives

SPD 8/25/2009

LRB Number	09-2768/2	Introduction Number	AB-0366	Estimate Type	Original
<b>Description</b> Probation for certain drunken driving offenses and providing penalties					

### 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 authorize courts to place defendants on probation following conviction for OWI, 2nd or 3rd offense, if the court requires the person to take the drug naltrexone as a condition of probation. 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). 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.

The SPD provided representation in 5,057 misdemeanor OWI cases in fiscal year 2008. Under current law, these cases comprise cases of OWI 2d offense, 3rd offense, and 4th offense. The SPD does not have a breakout of how many cases were in each of these subcategories, but DOT data shows that as the number of the alleged OWI violation increases, there are fewer defendants charged as repeat offenders (for example, in any given year, there are more charges of OWI 1st than of OWI 2d, more charges of OWI 2d than OWI 3rd, etc.). Therefore, SPD conservatively estimates that at least two-thirds of the misdemeanor OWI cases (3,391 cases for fiscal year 2008) would be eligible for the probationary disposition. As noted in the previous paragraph, the SPD does not have data to estimate the number of probationary dispositions or the number of ensuing revocation proceedings associated with these cases.

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 revocation proceedings that would be brought against an undetermined number of defendants. Appointments might occur for the administrative revocation hearing, for a sentencing hearing in court following revocation, or for both proceedings.

### Long-Range Fiscal Implications