

Fiscal Estimate Narratives

SPD 9/29/2009

LRB Number	09-2067/1	Introduction Number	AB-0419	Estimate Type	Original
Description Rape shield provisions in civil proceedings, discovery and inspection of victims and witnesses, and victims rights					

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. Therefore, the SPD would not be required or authorized to appoint attorneys under this bill, and the SPD does not anticipate any increase in its trial-level caseload if the bill is enacted. As discussed below, the bill could indirectly result in a small increase in the number of post-conviction appointments.

The bill would prohibit the court in certain criminal cases from ordering a witness, as a condition of the admissibility of his or her testimony, to submit to a psychological or psychiatric examination to assess his or her credibility. The bill would also prohibit the defense in a criminal case, subject to narrow exceptions, from compelling a witness to participate in a pretrial interview or deposition. The bill has other provisions that would apply in civil proceedings.

Although the bill would affect pretrial practice in some criminal cases, it is unlikely that a large number of cases would be affected. Attorneys appointed by the SPD rarely retain expert witnesses for the types of evaluations that would be prohibited by this bill. However, despite the small number of cases likely to be affected, the impact in a single case could be significant. A pretrial evaluation might lead to dismissal of an unwarranted charge against an innocent defendant. If the case proceeds to trial, the SPD incurs additional attorney costs, and the SPD might also incur the additional cost of a post-conviction appointment if the trial results in a finding of guilt.

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. However, for the same reason that the SPD does not anticipate any impact on its trial-level caseload, the counties are unlikely to see any such increase in case appointments.

Long-Range Fiscal Implications