

Fiscal Estimate Narratives
SPD 10/30/2009

LRB Number 09-2847/1	Introduction Number AB-0515	Estimate Type Original
Description Reckless bodily harm to a child 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.

Although this bill would not create a new crime, it would increase the penalties for the crime of recklessly causing great bodily harm to a child. The crime would be reclassified from a class G felony to a class E felony. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 for the same fiscal year. The SPD does not have separate data on the average costs for class G and class E felonies; however, an offense with a higher maximum penalty generally requires more attorney time to provide proper representation.

Because probation or prison can be ordered upon conviction for felony crimes, this change would increase the period of time during which a defendant may be placed on probation or, in the case of a prison sentence, may be supervised on extending supervision after release from prison. Thus, the bill would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. The SPD provides representation in proceedings commenced by the Department of Corrections (DOC) to revoke supervision. Thus, the bill would indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The average cost during fiscal year 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$382.18.

Therefore, the SPD would incur additional costs under this bill. Because of the annual caseloads for staff attorney positions specified for budgeting purposes under § 977.08(5), Stats., it would be more cost effective to add staff attorney positions if a significant number of SPD cases resulted from this provision of the bill.

The SPD does not have data to determine the number of cases in which this proposed increased penalty enhancer would apply. In fiscal year 2009, the SPD appointed an attorney in 740 cases involving, as the primary charge, physical abuse of a child contrary to section 948.03, Stats. However, this total includes other allegations brought under section 948.03, in addition to the specific allegation of recklessly causing great bodily injury.

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 higher classification of criminal charges resulting from this bill. The counties could also incur additional costs associated with incarceration of defendants, pending trial (or pending completion of revocation process) and after sentencing.

Long-Range Fiscal Implications