

Fiscal Estimate Narratives
SPD 11/10/2009

LRB Number	09-3640/1	Introduction Number	AB-0547	Estimate Type	Original
Description Operating a vehicle while intoxicated, granting rule-making authority, 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.

The bill would create a new criminal offense for operating while under the influence of an intoxicant (OWI), as a first offense. 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). The SPD's average cost to provide representation in a misdemeanor case is \$214.11, calculated on the basis of the SPD's average cost per case in fiscal year 2009. 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 \$214.11, for an annual cost increase of \$2,817,259.

Because probation could be ordered upon conviction for the new criminal 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. 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 because of additional revocation cases attributable to 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 to provide representation in the additional 13,158 misdemeanor cases and the indeterminate number of additional revocation proceedings.

The bill has other provisions that will indirectly lead to an increased, but indeterminate number of SPD cases. These provisions include a lower threshold for a prohibited blood alcohol concentration and increased monetary penalties following certain OWI convictions. These provisions will indirectly result in an increase in OWI cases (in addition to the increase estimated above for first-offense OWI cases), in operating after revocation cases (attributable to longer periods of revocation that will result from inability to satisfy heightened monetary requirements to regain driving privileges), and in contempt proceedings (SPD appoints in these proceedings when the State seeks imprisonment for non-payment of fines assessed in criminal 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 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, pending trial or other disposition, serving sentences, and awaiting revocation proceedings in OWI cases.

Long-Range Fiscal Implications