

Fiscal Estimate Narratives

SPD 11/10/2009

LRB Number	09-3632/1	Introduction Number	AB-0550	Estimate Type	Original
Description The exchange of electronic records contained in the Consolidated Court Automation Program and in the Statewide Automated Child Welfare Information System between the director of state courts and the Department of Children and Families 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 also provides representation to children in juvenile-court proceedings, including delinquency 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. The bill would allow the exchange of confidential information between the director of state courts and the Department of Children and Families. Some of the information that could be made available to judges in juvenile-court proceedings will relate to children receiving legal representation from the SPD.

The bill could increase the SPD workload indirectly. The bill does not appear to contain any safeguard to prevent a judge from receiving information related to a pending case. Also, the bill does not appear to include a requirement that information disclosed, if pertinent to a pending case, must be disclosed to the parties to the case. Under current law, information contained in court records is generally limited to information that the judge may properly consider in adjudicating the case. Further, the information is available to all parties to the litigation, so that they have the opportunity to object to the accuracy of information or to present additional information to explain or rebut information that is harmful to their client or their legal claim.

Because of the considerations discussed above, the SPD could incur additional costs related to attorneys either seeking to learn whether the court has received confidential information or seeking to ensure that the court does not rely upon inadmissible or inaccurate information. The SPD does not have data to estimate any such costs. It is possible that appropriate procedural safeguards could minimize the impact of the bill.

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. This process applies to appointments of counsel for parents in proceedings to terminate their parental rights. There are other proceedings in juvenile court in which the county appoints on a discretionary basis, because of a statutory prohibition against SPD appointments for parents in these proceedings. Thus, if additional attorney time is required to resolve issues related to the court's receipt of information pursuant to this bill, the counties could incur increased costs.

Long-Range Fiscal Implications