



**Fiscal Estimate Narratives**  
**SPD 12/30/2009**

LRB Number <b>09-2390/5</b>	Introduction Number <b>AB-0613</b>	Estimate Type <b>Original</b>
<b>Description</b> Aiding a felon 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.

Although this bill would not create a new crime, it would expand the scope of the felony offense for aiding a felon. The bill eliminates an exception that exists under present law to exclude the alleged felon and certain family members from criminal liability. Thus, some persons presently protected against prosecution under this statute could be prosecuted for a felony offense under the bill's provisions. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 for fiscal year 2009.

Because probation or prison can be ordered upon conviction for felony crimes, the bill would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. The bill also increases the maximum penalty for this felony offense in some cases that are already within the scope of the statute; the increased penalties would apply when the underlying felon is classified as a Class D or higher (more serious) felony. By increasing the maximum periods of DOC supervision, longer sentences increase the number of subsequent revocation proceedings. 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.

The bill would create a new exception from prosecution if the person in question is the alleged victim in a case of domestic abuse filed against the alleged felon and if the person has been a witness or is a likely witness against the alleged felon in any criminal case. The SPD does not have any data regarding previous charges being filed under this statute against alleged victims who would be exempted from prosecution under this proposed provision. An alleged victim who is the spouse of the alleged felon is exempt from prosecution under current law, so the net effect of the proposed changes is to provide a new exemption for alleged victims in a non-marital relationship and to narrow the exception for the alleged felon and for family members.

Therefore, the SPD anticipates 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 additional felony and revocation cases that would result from the proposed changes to this criminal statute.

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 broader criminal liability and 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**