

Fiscal Estimate Narratives

SPD 1/5/2010

LRB Number	09-0761/2	Introduction Number	AB-0627	Estimate Type	Original
Description Admissibility of a digitally produced photograph, film, motion picture, audio, or video 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.

This bill creates a new misdemeanor criminal offense related to altering a digital recording or image and then introducing into evidence that recording or image. 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.

Because probation could be ordered upon conviction for the additional cases attributable to the proposed new criminal offense, this bill 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 misdemeanor and revocation cases attributable to this bill. The SPD has no data to predict the number of additional cases that would result from the change proposed in 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 additional costs may be mitigated because the nature of the proposed crime may correlate mainly to persons with income or assets in excess of the SPD's strict financial criteria for services. Persons with the equipment and the knowledge to alter digital recordings may tend to be employed or to have own assets that exceed the SPD standards. If so, they would have the option of hiring an attorney or applying for a court-appointed attorney (discussed below).

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 additional criminal charges resulting from this bill. The counties could also incur additional costs associated with incarceration of defendants, pending trial (or pending a proceeding to revoke probation) and after sentencing.

Long-Range Fiscal Implications