

Fiscal Estimate Narratives

SPD 10/15/2009

LRB Number	09-1911/3	Introduction Number	SB-336	Estimate Type	Original
Description Requiring a person arrested for a felony or a juvenile taken into custody for certain sexual assault offenses to provide a biological specimen for deoxyribonucleic acid analysis, inclusion of the analysis results in the Department of Justice deoxyribonucleic acid data bank, requiring the exercise of 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.

This bill expands the scope of the misdemeanor criminal offense for intentional failure to provide a DNA sample. 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 expansion of the 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 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.

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, both pending trial and after sentencing.

Long-Range Fiscal Implications