



## Fiscal Estimate Narratives

SPD 10/20/2009

LRB Number	<b>09-3598/1</b>	Introduction Number	<b>SB-344</b>	Estimate Type	<b>Original</b>
<b>Description</b> Making crimes based on gender of victim subject to a penalty enhancer 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.

Although this bill would not create a new crime, it would increase the penalties for many criminal offenses if the defendant selected the victim in whole or in part because of the victim's gender. Some offenses (specifically, Class A misdemeanors) would be increased from misdemeanors to felonies; others would have increased maximum penalties, but would retain their present classification as either a misdemeanor or a felony. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case is \$214.11, calculated on the basis of the SPD's average cost per case in fiscal year 2009. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 for the same fiscal year.

Because probation or prison could be ordered upon conviction for the proposed felony crime, this change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. Probation is also an option for misdemeanor cases; however, a felony case may result in a longer term of 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 in cases that would be reclassified as felonies 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 cases in which this proposed penalty enhancer would be invoked. This number may would depend upon interpretation of the new law by prosecutors and, ultimately, by courts. If this enhancer is interpreted as applicable to cases of alleged domestic abuse or sexual assault, the frequency of its application could be significantly higher than it would otherwise be.

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 higher classification of 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