

Fiscal Estimate Narratives

SPD 5/2/2011

LRB Number	11-1740/1	Introduction Number	SB-074	Estimate Type	Original
Description Eliminating substitution of judges in criminal matters					

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, juvenile, commitment and appellate 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, expands the reach of other relevant law, changes court procedures or increases the penalties for an existing offense.

This bill repeals a defendant's statutory right to one substitution of a judge assigned to hear a criminal case. The criminal substitution statute was revised by the Judicial Council in 1981 and a Council note states:

"Section 971.20 has been revised to clarify its objective of allowing defendants in criminal trials one substitution of the assigned judge upon making a timely request. The statute is not to be used for delay nor for "judge shopping," but is to ensure a fair and impartial trial for the defendants."

In essence, it is a statutory mechanism to ensure the state and federal constitutional due process rights to a fair and impartial tribunal. When the defense files a substitution request, the court system, as opposed to counsel, decides which new judge is assigned. This discretion protects against forum-shopping and serves as a check on the number of substitutions, which are filed in a small percentage of cases. The substitution requests are processed as ministerial tasks by court staff, as opposed to motions that must state reasons to disqualify a judge for cause, which must be heard and decided by a judge. If motions to disqualify for cause are required to obtain a different judge, more attorney and court time will be spent and costs will increase. It is not possible to predict the number of motions to disqualify that would be filed, heard and decided.

Long-Range Fiscal Implications