

Fiscal Estimate Narratives

SPD 5/9/2011

LRB Number	11-1590/1	Introduction Number	AB-0116	Estimate Type	Original
Description Creating a microstamping requirement for certain handguns, certification of compliance with the microstamping requirement, requiring the exercise of rule-making authority, 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 and certain commitment 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 would create three new misdemeanor crimes by prohibiting: a gun manufacturer or firearms dealer from transferring a semiautomatic handgun that doesn't produce a microstamp on each cartridge case it expends, a manufacturer from selling a semiautomatic handgun that does not produce a microstamp, and an individual from modifying a semiautomatic handgun to prevent law enforcement from accessing the microstamp on an expended cartridge. Only the latter of the three new crimes would likely result in charges against an individual who would qualify for SPD representation.

The SPD has no data to predict the number of additional misdemeanor cases that would result from the changes proposed in this bill. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case was \$2219.07, calculated on the basis of the SPD's average cost per case in fiscal year 2010.

Because probation could be ordered upon conviction for the proposed misdemeanor crime, this change could indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. 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 2010 for SPD representation by a private bar attorney in a revocation proceeding was \$366.09.

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 increased 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