

Fiscal Estimate Narratives

SPD 7/15/2011

LRB Number	11-0079/2	Introduction Number	AB-0199	Estimate Type	Original
Description Creating a civil cause of action for acts of violence motivated by gender, 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 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.

Although this bill would not create a new crime, it would add "gender" to the list of victim characteristics that qualify for a "hate crime" penalty enhancer, and would increase maximum penalties for certain crimes. The potential for larger fines and/or longer periods of imprisonment could increase the complexity, and resulting cost, of providing representation. However, that incremental cost cannot be quantified, as the SPD does not have data to determine the number of cases in which the proposed penalty enhancers would be invoked.

The SPD would experience increased costs for each new misdemeanor or felony case under this bill. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case was \$225.41, calculated on the basis of the SPD's average cost per case in fiscal year 2011. The SPD's average cost per felony appointed to private bar attorneys was \$613.83 for the same fiscal year.

Because longer terms of probation or prison could be ordered upon conviction for these crimes than under current law, this change would 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 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$322.46.

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 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