

Fiscal Estimate - 2011 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 11-2963/1	Introduction Number AB-0405
Description Making fourth offense operating while intoxicated a felony and providing a penalty	
Fiscal Effect	
State:	
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues
<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
Local:	
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate	
1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
Fund Sources Affected	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.550(1)(d)	
Affected Ch. 20 Appropriations	
Agency/Prepared By	Authorized Signature
SPD/ Adam Plotkin (608) 264-8572	Adam Plotkin (608) 264-8572
Date	
12/7/2011	

Fiscal Estimate Narratives

SPD 12/7/2011

LRB Number	11-2963/1	Introduction Number	AB-0405	Estimate Type	Original
Description Making fourth offense operating while intoxicated a felony 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 critical 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 reclassify all fourth offense Operating While Intoxicated (OWI) crimes from misdemeanors to Class H felonies; currently only fourth offense OWIs committed within five years of the third offense are classified as felonies. 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 \$559.41 for the same fiscal year, \$334 more than the average misdemeanor cost.

The Department of Transportation (DOT) reported 1,756 convictions for fourth offense OWIs in fiscal year 2010. Assuming a 95% conviction rate, as most prosecutions would be successfully supported by blood alcohol evidence, and that 60%(*) of the defendants would meet the SPD's financial eligibility criteria, it is estimated that if all 1,756 cases, some of which were misdemeanors under current law, would become felonies under this bill, the annual cost to provide representation would be \$982,323.

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 2011 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 or current penalty for an existing crime is revised. 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.

(*) The SPD assumed 50% would qualify for SPD representation in the fiscal estimate prepared for 2009 Wis Act 100. The SPD's financial eligibility standards were subsequently adjusted by 2009 Wis Act 164, including exempting up to \$10,000 in vehicle equity. The SPD had projected a 28% increase in traffic misdemeanor appointments under the new standards, and conservatively estimates a 60% qualification rate for this fiscal estimate.

Long-Range Fiscal Implications