

Fiscal Estimate Narratives

SPD 4/12/2011

LRB Number	11-1069/2	Introduction Number	SB-056	Estimate Type	Original
Description Evidentiary recordings of persons under the age of 18 engaging in sexually explicit conduct and certain sex offenses against children 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 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 that creates a new criminal offense or expands the definition of an existing criminal offense has the potential to increase SPD costs.

This bill does not create a new criminal offense. However, the bill expands the scope of an existing crime by providing a broader definition of a victim of the crime specified in section 948.055(1), Stats. In addition, the bill increases the penalty for attempting to commit this crime.

The SPD cannot reliably estimate the number of additional cases that would be prosecuted as a result of this change. The SPD does not have access to any information regarding cases that have not been charged in the past because of the present scope of the statute that would have been charged under the proposed definition of a victim under section 948.55(1).

The average cost during fiscal year 2010 for an SPD appointment by a private bar attorney in a felony case is \$544.58. The cost for cases involving an alleged sexual offense often exceeds this average because of such factors as the likelihood of a trial or the need for a risk assessment to prepare for a contested sentencing hearing. The increased penalties proposed for attempted crimes are likely to increase the probability of a trial or a contested sentencing hearing.

Because probation or prison can be ordered upon conviction for felony crimes, the bill 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 to revoke supervision. Thus, the bill could 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 \$382.18.

Therefore, the SPD would incur additional costs 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 additional felony and revocation cases that would result from the expanded scope of the felony offense in section 948.055 (1), Stats.

One other provision in this bill could increase costs for the SPD. The proposed restrictions on defense access to recorded evidence is likely to result in higher attorney costs for time spent arranging access to the evidence and, in some cases, in pre-trial motions regarding the need to consult with the client regarding the nature of the evidence. The latter issue is likely to arise when the client is incarcerated if the law is interpreted to require the presence of law enforcement when the defense reviews this evidence.

Counties are also subject to increased costs when a new crime is created or when the scope of an existing crime is expanded. 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. The counties also incur costs associated with incarceration of defendants, both pending trial and after sentencing.

Long-Range Fiscal Implications