

Fiscal Estimate Narratives

SPD 1/13/2014

LRB Number	13-3582/1	Introduction Number	SB-472	Estimate Type	Original
Description Unauthorized possession of a correctional employee's or a health services employee's personal identifying information 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.

This bill creates a new Class H felony for the possession of a correctional employee's or health services employee's personal identifying information or a document relating to the employee's personal identifying information by a person who is imprisoned or otherwise in the custody of or supervised by the Department of Corrections, or who is a patient at a mental health facility or who resides in a mental health facility. Personal identifying information would include the employee's name, address, or telephone number, which might be readily available to members of the public, as well as information less likely to be generally known, such as the person's biometric data. Under current law, unauthorized use of such information by any person is a Class H felony, whereas under this bill it would be a felony for an inmate or mental health facility resident to possess the information, even if there was no evidence that he or she intended to use it for any purpose.

The SPD can not predict the number of additional felony cases that would result from the change proposed in this bill, as we have no data regarding how often the situation occurs when an inmate or mental health facility resident is in possession of such data, nor can we predict how often such possession would actually result in a person who meets the SPD's financial eligibility guidelines being charged with the new felony. The SPD's average cost to provide representation with a private bar attorney in a felony case is \$556.21, calculated on the basis of the SPD's average cost per case in fiscal year 2013.

Because probation or prison could be ordered upon conviction for the proposed felony crimes, 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 2013 for SPD representation by a private bar attorney in a revocation proceeding was \$303.86.

Because of the annual caseload 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