

Fiscal Estimate Narratives

SPD 10/10/2013

LRB Number	13-1757/2	Introduction Number	AB-0406	Estimate Type	Original
Description Controlled substances, 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 defines by chemical structure synthetic cannabinoids, certain designer drugs and substances known as bath salts and controls them by that structural definition. This bill adds several new hallucinogenic and stimulant substances to Schedule I, and includes Salvinorin A in the list of Schedule I controlled substances. The bill also adds several new Schedule II, III, IV and V controlled substances by including in those schedules a description of the chemical structure of those substances.

The SPD has no data to predict the number of additional misdemeanor and/or felony 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 is \$247.54, calculated on the basis of the SPD's average cost per case in fiscal year 2013. The SPD's average cost per felony appointed to private bar attorneys was \$538.20 for the same fiscal year.

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. Probation is also an option for misdemeanor cases; however, a felony case may result in a longer term of probation. The SPD provides representation in proceedings commenced by the 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 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 drug schedules are modified.. 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 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