



## Fiscal Estimate Narratives

SPD 3/20/2013

LRB Number	13-0731/2	Introduction Number	AB-0071	Estimate Type	Original
<b>Description</b> Penalties for operating-while-intoxicated offenses 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 proceedings. The SPD plays a significant 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 third offense OWI from misdemeanors to Class H felonies; currently only fourth offense OWIs committed within five years of the third offense are classified as felonies, as are all fifth and subsequent offenses. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case was \$237.02, calculated on the basis of the SPD's average cost per case in fiscal year 2012. The SPD's average cost per felony appointed to private bar attorneys was \$576.73 for the same fiscal year, \$340 more than the average misdemeanor cost.

The Department of Transportation (DOT) reported 2,733 convictions for third offense OWIs committed in fiscal year 2011. Assuming a 95% conviction rate, as most prosecutions would be successfully supported by blood alcohol evidence, and assuming that 60% (see note below) of the defendants could meet the SPD's financial eligibility criteria, as many as 1,722 SPD cases that are misdemeanors under current law would become felonies under this bill, at an additional annual cost of \$584,900 (based on the average felony cost listed above).

This bill would also reclassify fourth offense (when not meeting the criteria to charge a felony under current law) from a misdemeanor to a Class G felony. For fourth offense, as many as 738 SPD cases that are misdemeanors under current law would become felonies under this bill, at an additional annual cost of \$250,600 based on the average felony cost listed above.

This bill would also reclassify fifth and sixth offense OWIs from Class H felonies to Class G felonies; seventh, eighth and ninth offense OWIs from Class G felonies to Class F felonies, and tenth or subsequent offenses from Class F felonies to Class D felonies. The potential for longer periods of imprisonment and larger fines could increase the complexity, and resulting cost, of providing representation; however, that incremental cost cannot be quantified. The DOT reported 2,069 convictions for fourth and higher OWI offenses during fiscal year 2011.

Because longer terms of probation or prison could be ordered upon conviction for these crimes than under current law, these changes would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. The longer that a person is under formal DOC supervision, the longer is the period of time during which the person is at risk of revocation of his or her supervision status. 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 2012 for SPD representation by a private bar attorney in a revocation proceeding was \$290.83.

Given the additional caseload added by the provisions of this legislation, additional funding and position authority would be necessary for the SPD to meet its constitutional obligation to provide representation.

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.

Note: The SPD assumed 50% of those charged would qualify for SPD representation in the fiscal estimate prepared for 2009 Wis Act 100. The SPD's financial eligibility standards were subsequently changed by 2009 Wis Act 164, including an exemption of up to \$10,000 in vehicle equity. The SPD had projected a 28% increase in traffic misdemeanors under the new standards, and conservatively estimates a 60% qualification rate for this estimate.

### **Long-Range Fiscal Implications**