

Fiscal Estimate Narratives

SPD 6/2/2015

LRB Number	15-1353/3	Introduction Number	AB-0246	Estimate Type	Original
Description Possession of 25 grams or less of marijuana and distribution and delivery of marijuana					

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 eliminates 1) the penalty for possession of marijuana if the amount of marijuana involved is no more than 25 grams; 2) the penalty for manufacturing or for possessing with the intent to manufacture, distribute, or deliver if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two; and 3) the penalty for distributing or delivering marijuana if the amount of marijuana involved is no more than 25 grams or the number of plants involved is no more than two. The bill retains the current-law penalty for distributing or delivering any amount of marijuana to a person who is no more than 17 years of age (minor) by a person who is at least three years older than the minor. This bill limits local governments to enacting ordinances prohibiting only the possession of more than 25 grams of marijuana. The bill also prohibits establishing probable cause that a person is violating the prohibition against possessing more than 25 grams of marijuana by an odor of marijuana or by the possession of not more than 25 grams of marijuana. Under this bill, when determining the amount of tetrahydrocannabinols, only the weight of the marijuana may be considered.

Since the bill eliminates current penalties, it is possible the SPD will see a decrease in the number of cases in which it provides representation. In FY14, the SPD represented 4,257 felony cases and 2,980 misdemeanor cases related to all drug possession, not just marijuana. We are unable, however, to quantify the actual number of cases that might be reduced due to the provisions in the bill. The SPD's average cost to provide representation with a private bar attorney in a felony case was \$551.02 and \$255.54 in a misdemeanor case in fiscal year 2014.

Long-Range Fiscal Implications