

Fiscal Estimate Narratives

SPD 10/15/2015

LRB Number	15-3177/1	Introduction Number	AB-0403	Estimate Type	Original
Description Increasing prison terms upon conviction for gang-related crimes and creating a criminal 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 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 creates an enhanced penalty for persons who are convicted of a crime that a fact-finder determines to be gang-related. Under the bill, if a person is convicted of a violation of the criminal code or of a violation related to a controlled substance, and the violation was committed for the benefit of, at the direction of, or in association with a criminal gang or committed with the intent to promote or otherwise assist any criminal conduct by criminal gang members, the term of imprisonment for the crime may be increased. Under the bill, if the underlying offense is a misdemeanor, the court may increase the maximum term of imprisonment for the misdemeanor by up to six months. The court may increase the maximum term of imprisonment for a Class A to Class D felony by up to five years, for a Class E to Class G felony by up to four years, and for a Class H or Class I felony by up to three years.

It is possible that given the enhanced length of the possible sentence, the SPD may see an increase in the complexity and length of cases in which it provides representation. We are unable, however, to quantify the fiscal impact that might occur due to the provisions in the bill. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case was \$255.54 and \$551.02 in a felony case in fiscal year 2014.

This bill could also have a fiscal impact on counties. 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 could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing.

Long-Range Fiscal Implications