

Fiscal Estimate - 2015 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 15-1582/2	Introduction Number AB-0447
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Description
 Penalties for operating-while-intoxicated offenses and providing a criminal penalty

Fiscal Effect

State:

- No State Fiscal Effect
- Indeterminate
 - Increase Existing Appropriations
 - Decrease Existing Appropriations
 - Create New Appropriations
 - Increase Existing Revenues
 - Decrease Existing Revenues
 - Increase Costs - May be possible to absorb within agency's budget
 - Yes
 - No
 - Decrease Costs

Local:

- No Local Government Costs
 - Indeterminate
 - 1. Increase Costs
 - Permissive
 - Mandatory
 - 2. Decrease Costs
 - Permissive
 - Mandatory
 - 3. Increase Revenue
 - Permissive
 - Mandatory
 - 4. Decrease Revenue
 - Permissive
 - Mandatory
5. Types of Local Government Units Affected
- Towns Village Cities
 - Counties Others
 - School Districts WTCS Districts

Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	Affected Ch. 20 Appropriations
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Fiscal Estimate Narratives

SPD 11/25/2015

LRB Number	15-1582/2	Introduction Number	AB-0447	Estimate Type	Original
Description Penalties for operating-while-intoxicated offenses and providing 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.

Under this bill, a person who commits a third OWI offense is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 45 days. A person who commits a fourth OWI offense is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 60 days. A person who commits a fourth OWI offense within five years of a prior offense is guilty of a Class G felony and must be fined not less than \$600 and imprisoned for not less than six months. A person who commits a fifth or sixth OWI offense is guilty of a Class G felony and the person must be fined not less than \$600 and must be imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI offense is guilty of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or greater OWI offense is guilty of a Class E felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than four years.

According to the Department of Transportation, in 2014, there were 2,142 third-offense, 971 fourth-offense, 463 fifth-offense, 359 sixth or more-offense OWI convictions in Wisconsin.

It is possible that given the new criminal charges, the SPD will see an increase in the number of cases and case complexity in which it provides representation. We are unable, however, to quantify the number of cases that might occur due to the provisions in the bill and how many people would meet the eligibility requirements for SPD services; however, it is likely that the majority (60%) of these cases would require representation by the SPD. The SPD's average cost to provide representation with a private bar attorney in a felony case was \$551.02 in fiscal year 2014. Therefore, the SPD could appoint counsel in as many as 2,361 new felony cases under this bill, at an annual cost of \$1,300,958. 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.

Because probation or prison could be ordered upon conviction for the proposed crime, this change could 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 could indirectly increase the number of cases in which the SPD appoints attorneys in revocation proceedings. The average cost during fiscal year 2014 for SPD representation by a private bar attorney in a revocation proceeding was \$294.04.

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