

Fiscal Estimate Narratives

SPD 12/23/2015

LRB Number	15-3717/1	Introduction Number	SB-410	Estimate Type	Original
Description Invasions of privacy 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.

This bill prohibits certain acts that violate a person's right to privacy. Current law prohibits installing or using a surveillance device that has been installed in a private place to observe a nude or partially nude person without that person's consent. The bill clarifies that a surveillance device need only be capable of observing the activities of a person and need not be primarily designed for that purpose. Under the bill, a person may not install or use in a private place a surveillance device to view a nude or partially nude person in a private place without that person's consent. Under the bill, a person is guilty of a Class I felony if he or she makes, reproduces, exhibit, or distributes a video or audio representation of a person who is nude or partially nude; of a person's clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public; of a person urinating, defecating, or using a feminine hygiene product; or of a person engaged in sexual intercourse or sexual contact, and if the same conditions of lack of consent and expectation of privacy exist.

It is possible that given the expansion to violations of a person's right to privacy and the increased criminal charges that could occur, the SPD would see an increase in the number of cases 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. The SPD's average cost to provide representation with a private bar attorney in a felony case was \$551.02 in fiscal year 2014. 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