

Fiscal Estimate Narratives

SPD 9/30/2009

LRB Number	09-3328/1	Introduction Number	AB-0423	Estimate Type	Original
Description Battery to a district attorney or assistant district attorney 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 major 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 increases the penalties for the criminal offense of battery, under certain circumstances. The offense would be a felony when the alleged victim is a district attorney or other prosecutor, amending the current law that makes such an offense a misdemeanor absent additional aggravating circumstances. The SPD's average cost to provide representation in a misdemeanor case is \$217.54, calculated on the basis of the SPD's average cost per case in fiscal year 2008. The SPD's average cost per felony was \$544.58 for the same fiscal year. Therefore, the SPD would incur additional costs in cases that would be reclassified as felonies under this bill.

Because probation or prison could be ordered upon conviction for the proposed felony crime, this change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. Probation is an also option for misdemeanor cases; however, a felony case may result in a longer term of probation. 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 2008 for SPD representation in a revocation proceeding was \$368.86.

The SPD does not have data to predict the number of prosecutions that would occur for alleged violation of the proposed criminal statute. In the future, the SPD could track the number of new cases. Similarly, the SPD does not have the data to determine how many additional persons would be placed on DOC supervision (probation or extended supervision) or the number of additional revocation proceedings that would occur.

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 some criminal charges resulting from this bill. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing.

Long-Range Fiscal Implications