

Fiscal Estimate Narratives

SPD 11/28/2009

LRB Number	09-2190/3	Introduction Number	AB-0590	Estimate Type	Original
Description Elimination of an exception for spiritual treatment of a child in the law criminalizing physical abuse of a child and in the laws governing the practice of medicine or surgery, the investigation of child abuse or neglect, the administration of psychotropic medication to juveniles in correctional custody, the election of Christian Science treatment in lieu of medical or surgical treatment, 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 does not provide for a new criminal offense or increase criminal penalties. However, the bill would eliminate the possible defense to prosecution that applies to parents who decline, for spiritual reasons, to obtain conventional medical treatment for their children. The SPD does not have data to identify the number of additional criminal cases, if any, that might result from this bill. If there are additional cases, they would likely be for felony charges of criminal negligence or recklessness resulting in the death or endangerment of a child. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 for fiscal year 2009.

Under current law, this type of felony charge may be brought, despite the parent's explanation for his or her decision regarding medical care. In two related cases, brought separately against the parents of a girl who reportedly died from untreated diabetes, the prosecution obtained verdicts of guilt despite the parents' defense on the basis of spiritual belief. Therefore, the SPD does not anticipate any substantial increase in its caseload as a result of this proposal.

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. However, for the same reason that the SPD does not anticipate any substantial impact on its caseload or expenditures, the counties are unlikely to see any substantial increase in case appointments or costs.

Long-Range Fiscal Implications