

Fiscal Estimate Narratives

SPD 9/30/2009

LRB Number	09-2979/3	Introduction Number	SB-303	Estimate Type	Original
Description Requesting a person who operates a vehicle that is involved in an accident that causes death or injury to submit to a test for intoxication					

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, expand the definition of a criminal offense, or increase criminal penalties. The bill would broaden the circumstances under which a law enforcement officer may invoke the implied-consent law, which requires a driver to submit to a chemical test for alcohol. The test helps to determine whether the driver should be charged with operating under the influence of alcohol or controlled substances (OWI). The broader circumstances for requiring the test would apply following an accident involving death or injury.

The bill could increase the SPD workload in two ways. First, the bill could result in additional criminal cases if chemical tests are obtained that show a prohibited alcohol concentration or the presence of a controlled substance. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case is \$214.11, calculated on the basis of the SPD's average cost per case in fiscal year 2009. The SPD's average cost per felony appointed to private bar attorneys was \$584.62 for the same fiscal year. Based on the annual caseloads 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.

Second, because probation or prison could be ordered upon conviction for a 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. 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 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$382.18. Based on the annual caseloads 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.

The SPD has no data to predict the number of additional criminal cases or revocation proceedings that would occur as a result of the proposed changes.

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 may experience increased costs attributable to additional criminal cases.

Long-Range Fiscal Implications