

Fiscal Estimate Narratives

SPD 10/7/2009

LRB Number	09-3343/1	Introduction Number	SB-330	Estimate Type	Original
Description Exposure to a minor 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 exposing genitals or pubic area to a child, if the defendant has attained age 17. This offense is presently classified as a misdemeanor, regardless of the defendant's age. 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.

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 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$382.18.

Therefore, the SPD would incur additional costs in cases that would be reclassified as felonies under this bill. 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.

For the last two fiscal years, the SPD has averaged 9 misdemeanor appointments per year for charges of exposing genitals or pubic area to a child. In addition, the SPD has averaged 96 appointments per year for the misdemeanor offense of sexual intercourse with a child between the ages of 16 and 18. These cases would also likely meet the criteria for the proposed felony offense; therefore, the prosecutor might choose to charge the new felony offense in addition to (or instead of) the misdemeanor intercourse charge. Thus, the SPD could incur 105 additional felony appointments annually, with a cost of \$38,903.55. The SPD does not have data to estimate the additional revocation hearings that could occur as a result of these additional felony cases.

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 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