

Fiscal Estimate Narratives
SPD 2/3/2010

LRB Number 09-4136/1	Introduction Number SB-495	Estimate Type Original
Description Operating a motor vehicle without a valid driver's license or after suspension or revocation of an operating privilege and providing penalties		

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 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 would create a new misdemeanor offense applicable when a person is unknowingly operating after revocation and causes great bodily harm or death to another.

This bill would also reclassify certain misdemeanors under current law as Class H or Class I felonies, when a driver causes great bodily harm or death to another while knowingly driving without a valid driver's license (the precise felony classification depends upon the status of the driving privileges and upon the degree of harm to the victim). The SPD has no data to predict the number of felony cases that would result from this change, but could track the additional cases going forward. However, based on the fiscal year 2009 average cost to provide representation with a private bar attorney, the SPD's cost to appoint counsel for each new felony would be \$370.51 greater than if the crime remained a misdemeanor. 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 crimes, these changes would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. Both the creation of new crimes and the increase of penalties for existing crimes lead, indirectly, to additional revocation proceedings. 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 these proceedings. The average cost during fiscal year 2009 for SPD representation by a private bar attorney in a revocation proceeding was \$382.18.

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.

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, pending trial, after sentencing, and pending revocation proceedings.

Long-Range Fiscal Implications