



**Fiscal Estimate Narratives**  
**SPD 2/27/2009**

LRB Number	<b>09-1443/1</b>	Introduction Number	<b>SB-066</b>	Estimate Type	<b>Original</b>
<b>Description</b> operation of a motor vehicle while under the influence of an intoxicant 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.

Although this bill does not create a new criminal offense, it would increase the maximum penalties for certain offenses of operating while under the influence of an intoxicant (OWI). Some third-offense OWI cases - as many as 1,300 annually, according to DOT data - would be classified as felonies under this bill, as would all fourth-offense OWIs, of which there are approximately 1,700 annually per DOT (under current law, these offenses are misdemeanors, and OWI fifth-offense and subsequent OWIs are felonies). In fiscal year 2008, the SPD's average cost per felony was \$544.58, compared to an average cost per misdemeanor of \$217.54. If half of the defendants charged with felony third or fourth offense OWI qualified for SPD representation, the increased cost for the SPD to provide representation in those 1,500 cases would be \$490,600 per year.

The proposed changes could also result in additional trials and contested sentencing hearings. These proceedings require additional attorney time and therefore increase SPD costs. The increased penalties (felony record, increased incarceration, ignition interlock, and/or mandatory alcohol or drug assessment, depending on the specific allegations) make it likely that more defendants will choose to proceed to trial, rather than to plead guilty and accept the more-severe consequences of a conviction. The increase in contested sentencing hearings is likely to occur most often in the felony cases, when the court has the discretion to impose incarceration in either county jail or state prison. Also, in the felony cases, there are likely to be additional challenges to the validity of the previous convictions that serve as the basis for the felony classification. The SPD cannot predict the number of increased trials or contested sentencing hearings; however, we could track the number of trials before and after the implementation of the bill to estimate its effect.

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 possibility of additional contested sentencing hearings could add to county costs in cases in which the court appoints the defense attorney. The counties could also incur additional costs associated with longer incarceration of defendants, both pending trial and after sentencing. Depending on the number of cases resulting in prison sentences instead of jail sentences, some of the increased incarceration costs could be incurred by the Department of Corrections instead of by counties.

**Long-Range Fiscal Implications**