



## Fiscal Estimate Narratives

SPD 1/5/2012

LRB Number	11-2984/1	Introduction Number	AB-0449	Estimate Type	Original
<b>Description</b> Increased penalty for repeated domestic abuse offenses 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 and certain commitment proceedings. The SPD plays a critical 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.

Current law allows a second charge of domestic abuse within 72 hours of an initial arrest for the same crime to be charged as a felony rather than a misdemeanor and extends the maximum term of imprisonment by two years. This bill provides that the same increased penalties and felony status apply to a person charged with a domestic abuse crime who has previously been convicted of two such crimes within the previous 10 years.

In the previous five fiscal years for which data is available, the SPD provided representation in 88,383 cases in which the accused was charged with domestic abuse. In the same time period, the SPD provided representation in 1,966 cases in which the accused was charged with a felony having been re-arrested for domestic abuse within 72 hours of the first charge. The SPD's database does not have sufficient information to quantify the number of new felony charges that could be filed as a result of this bill. In Fiscal Year 2011, the SPD's average cost to provide representation with a private bar attorney in a felony case was \$613.83.

Because probation could be ordered upon conviction for the proposed felony crime, this change could indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke probation or extended supervision. 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 2011 for SPD representation by a private bar attorney in a revocation proceeding was \$322.46.

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 increased 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