

Fiscal Estimate Narratives

SPD 8/11/2011

LRB Number	11-2044/1	Introduction Number	SB-152	Estimate Type	Original
Description Penalties for driving a 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 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 reclassify first offense OWI with an alcohol concentration of 0.15 or greater from usually being a civil violation to a misdemeanor. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case was \$225.41, calculated on the basis of the SPD's average cost per case in fiscal year 2011.

The Department of Transportation (DOT) reported 23,056 convictions for first offense OWIs committed in fiscal year 2009, and that approximately half had an alcohol concentration of at least 0.15. Assuming a 95% conviction rate, as most prosecutions would be successfully supported by blood alcohol evidence, and that 50% of the defendants would meet the SPD's financial eligibility criteria, the SPD could appoint counsel in as many as 6,067 new misdemeanor cases under this bill, at an additional annual cost of \$1,367,600

This bill would also increase the penalty for a second OWI offense \$350 to \$1,100 and between five days and six months imprisonment to \$500 to \$1,500 and between ten days and six months. The potential for longer periods of imprisonment and larger fines could increase the complexity, and resulting cost, of providing representation; however that incremental cost cannot be quantified. The DOT reported 6,235 second offense OWI convictions in 2009. Using the same methodology as above, the SPD estimates that 1,640 misdemeanor OWI cases would be affected.

Because probation could be ordered upon conviction of these crimes, and longer terms of probation could be ordered upon conviction for a second offense than under current law, this change would indirectly lead to additional cases in which the Department of Corrections (DOC) would seek to revoke 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 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 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