

Fiscal Estimate Narratives

SPD 3/20/2013

LRB Number	13-0728/2	Introduction Number	AB-0068	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 proceedings. The SPD plays a significant 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.

The bill would increase the criminal penalties for first and second Operating While Intoxicated (OWI) offenses. For first OWI offense with a blood alcohol concentration of 0.15 or greater, the proposed penalty is imprisonment of between five days and six months. For second OWI offense, the period of incarceration is increased from a minimum of five days to a minimum of ten days.

This bill would reclassify first OWI with an alcohol concentration 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 \$237.02, calculated on the basis of the SPD's average cost per case in fiscal year 2012.

The Department of Transportation (DOT) reported 17,335 convictions for first offense OWIs committed in fiscal year 2011, 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 also assuming that 60% of the defendants would meet the SPD's financial eligibility criteria, the SPD could appoint counsel in as many as 4,940 new misdemeanor cases under this bill, at an additional annual cost of \$1,171,000 for first offenses.

It is likely that charging first offense OWI as a misdemeanor will also result in a significant increase in cases in which the SPD provides representation such as operating after revocation. We are unable to estimate the number or cost of these additional proceedings.

It is unlikely that the increased penalty for second offense OWI will result in a significant cost increase for the SPD as these offenses are already subject to criminal penalties in which the SPD provides representation.

Because of the increased minimum penalty in these cases, the counties are also subject to increased costs. 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 penalties for these 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