



## Fiscal Estimate Narratives

SPD 2/2/2016

LRB Number	<b>15-3238/1</b>	Introduction Number	<b>SB-499</b>	Estimate Type	<b>Original</b>
<b>Description</b> Use, possession, manufacture, distribution, and advertisement of a masking agent and providing a criminal 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.

This bill criminalizes the use, possession, manufacture, distribution, and advertisement of any substance or device that is intended to defraud, circumvent, interfere with, or provide a substitute for a bodily fluid in conjunction with a lawfully administered drug test (masking agent). Under the bill, a person who uses or possesses with the intent to use a masking agent is subject to a fine up to \$500, imprisonment for 30 days, or both. A person who delivers or manufactures with the intent to deliver a masking agent is subject to a fine up to \$1,000, imprisonment for up to 90 days, or both. A person who advertises a masking agent for sale may be fined up to \$500, imprisoned for up to 30 days, or both.

It is possible that given the new criminal charges, the SPD will see an increase in the number of cases in which it provides representation. We are unable, however, to quantify the number of cases that might increase due to the provisions in the bill and how many people would meet the eligibility requirements for SPD services. The SPD's average cost to provide representation with a private bar attorney in a misdemeanor case was \$255.54 in fiscal year 2014.

This bill could also have a fiscal impact on counties though both an increase and decrease in specific 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. The counties could also incur additional costs associated with incarceration of defendants, both pending trial and after sentencing.

### Long-Range Fiscal Implications