

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0781-02
Bill No.: SB 218
Subject: Children and Minors; Domestic Relations; Courts, Juvenile; Family Law; Juries
Type: Original
Date: March 2, 2009

Bill Summary: This legislation allows jury trials in termination of parental rights actions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(\$1,153,241)	(\$1,186,178)	(\$1,194,539)
Total Estimated Net Effect on General Revenue Fund	(\$1,153,241)	(\$1,186,178)	(\$1,194,539)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Income and costs of approximately \$535,583 in FY10, \$561,461 in FY11 and \$568,031 in FY12 would net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	4.48 FTE	4.48 FTE	4.48 FTE
Federal	3.52 FTE	3.52 FTE	3.52 FTE
Total Estimated Net Effect on FTE	8 FTE	8 FTE	8 FTE

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services** and the **Office of the State Courts Administrator** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Social Services - Children's Division** state the following assumptions are based on the Division of Legal Services estimation that jury trials would result in the Children's Division spending approximately twice the legal fees currently spent on termination of parental rights cases.

There was an average of 413 Termination of Parental Rights cases completed per year for children in alternative care during FY 2005, 2006 and 2007. In FY 08 the Children's Division spent \$2,506,080.37 in legal fees for Termination for Parental Rights cases. Assuming that half of those cases would involve demands for jury trials that would mean that approximately 206 (approximately \$1,250,000) of our annual termination of parental rights cases would involve demands for jury trial and the costs of those trials would double. This would result in an increase of \$1,250,000 in legal fees for termination of parental rights cases. The Division would also anticipate an increase in staff time spent in court and initially would require a revision in policy and training. Ultimately this would also result in an increase in the time taken for some children to achieve permanency.

Officials from the **Department of Social Services - Division of Legal Services** state the proposal would make it much more expensive for the Department to achieve permanency for children in care and would serve to delay achieving that permanency. Specifically, it is anticipated that additional funding, lawyers and staff would be necessary if all TPRs were done by jury. Jury trials would require more trial preparation to ensure witnesses and evidence are ready for jury, and not just a judge. Additionally, considering several DLS attorneys have never tried a case before a jury, DLS would need to train those attorneys on handling themselves in front of a jury, voir dire, opening and closing statements, evidentiary issues, and various other issues unique to jury trial practice.

ASSUMPTION (continued)

Further, cases will take longer to try if they were to be tried in front of juries. A safe estimate would be approximately two times longer thereby causing delays due to the already crowded calendars of courts and attorneys alike. It is also anticipated that attorney fees for GAL's and court-appointed attorneys would skyrocket due to the increased amount of preparation time jury trials require as well as the anticipated increase in depositions and the use of expert witnesses by both sides to the respective cases. Finally, additional time and expense would be extended on those cases that ended with a hung jury and thus had to be retried. As more thoroughly discussed below, termination of parental rights cases tend to be time-intensive cases and therefore the increase in attorney's fees awards against the Children's Division would be significant. Based on experience, the typical attorney's fees award against the Children's Division in a termination of parental rights case is approximately \$10,000.00. However, if those cases were jury trials, a conservative estimate would be that attorney's fees charged to the State would at least double to approximately \$20,000.00 per case, not including any appellate issues that may need to be resolved.

Over the past three fiscal years, there has been an average of 413 termination of parental rights cases completed involving children in the Department's care. Assuming that half of those cases would involve demands for jury trials that would mean that approximately 206 of our annual termination of parental rights cases would involve demands for jury trial. A good estimate is that our current termination of parental rights cases require DLS attorneys to invest approximately 60 hours of preparation time and time spent actually in court arguing the case. Thus, given the average of 413 cases per year, DLS attorneys currently spend approximately 24,780 hours per year on termination of parental rights cases. However, as previously mentioned, jury trial would require about twice as much time, or approximately 120 hours, of preparation and trial time. Thus, if about 206 of DLS's termination of parental rights cases were jury trials, that would mean an additional 12,360 hours spent on termination of parental rights cases. Given current DLS case loads, the current staff for DLS would be insufficient to handle this additional burden. Therefore, the addition of additional FTE would be necessary to address this need. 6 Attorneys FTE and 2 Administrative Office Support Assistant FTE.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs - Department Social Services- Children's Division</u>			
Program Costs	(\$907,500)	(\$907,500)	(\$907,500)
<u>Costs - Department of Social Services- Division of Legal Services</u>			
Personal Service	(\$133,268)	(\$164,785)	(\$169,729)
Fringe Benefits	(\$64,808)	(\$80,135)	(\$82,539)
Equipment and Expense	(\$47,665)	(\$33,758)	(\$34,771)
<u>Total Costs - DSS DLS</u>	<u>(\$245,741)</u>	<u>(\$278,678)</u>	<u>(\$287,039)</u>
FTE Change - DSS DLS	4.48 FTE	4.48 FTE	4.48 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
	<u>(\$1,153,241)</u>	<u>(\$1,186,178)</u>	<u>(\$1,194,539)</u>
Estimated Net FTE Change for General Revenue Fund	4.48 FTE	4.48 FTE	4.48 FTE

FEDERAL FUNDS

<u>Income</u> - Department of Social Services			
Federal Assistance	\$535,583	\$561,461	\$568,031
<u>Costs</u> - Department of Social Services- Children's Division			
Program Costs	(\$342,500)	(\$342,500)	(\$342,500)
<u>Costs</u> - Department of Social Services- Division of Legal Services			
Personal Service	(\$104,711)	(\$129,474)	(\$133,359)
Fringe Benefits	(\$50,921)	(\$62,963)	(\$64,852)
Equipment and Expense	(\$37,451)	(\$26,524)	(\$27,320)
<u>Total Costs - DSS DLS</u>	<u>(\$193,083)</u>	<u>(\$218,961)</u>	<u>(\$225,531)</u>
FTE Change - DSS DLS	3.52 FTE	3.52 FTE	3.52 FTE

**ESTIMATED NET EFFECT ON
FEDERAL FUNDS**

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
 Estimated Net FTE Change for Federal Funds	 3.52 FTE	 3.52 FTE	 3.52 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

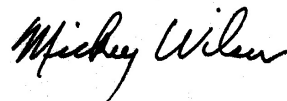
FISCAL DESCRIPTION

The proposed legislation provides that as of January 1, 2010, a parent may request by written demand to the juvenile court a jury trial for proceedings regarding involuntary termination of parental rights. By November 1, 2009, the Missouri Supreme Court shall develop appropriate jury instructions for termination of parental rights cases heard by a jury. At least one of the instructions shall direct the jury to find whether the termination of parental rights will or will not be in the best interests of the child.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Office of the State Courts Administrator
Department of Health and Senior Services
Department of Social Services



Mickey Wilson, CPA
Director
March 2, 2009