

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0849-01
Bill No.: SB 140
Subject: Crimes and Punishment; Courts; Children and Minors
Type: Original
Date: January 26, 2009

Bill Summary: The proposal modifies provisions relating to criminal nonsupport.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|---|------------------------|------------------------|------------------------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| General Revenue | Up to \$847,609 | Up to \$784,010 | Up to \$807,531 |
| | | | |
| Total Estimated Net Effect on General Revenue Fund | Up to \$847,609 | Up to \$784,010 | Up to \$807,531 |

| 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 10 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------------|----------------------|----------------------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| Federal | (\$1,169,515) | (\$1,377,417) | (\$1,418,740) |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | (\$1,169,515) | (\$1,377,417) | (\$1,418,740) |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|-----------|-----------|-----------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| General Revenue | 9.18 | 9.18 | 9.18 |
| Federal | 17.82 | 17.82 | 17.82 |
| Total Estimated Net Effect on FTE | 27 | 27 | 27 |

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 Mental Health, Department of Labor and Industrial Relations, Department of Revenue, Department of Public Safety – Director’s Office,** and the **State Treasurer’s Office** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would allow circuit courts to create criminal nonsupport divisions to handle nonviolent criminal nonsupport cases and create a “Criminal Nonsupport Division Coordinating Commission” and a Resources Fund.

The Coordinating Commission and the Resources Fund appear to be set up similarly to the Drug Court Coordinating Commission and Drug Court Resources Fund. These activities are very labor intensive for the courts. Since the legislation is permissive, CTS has no way of knowing how many courts would create the programs. Any significant increase in workload will be reflected in future budget requests.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume the language is permissive allowing criminal nonsupport divisions to be established by any circuit court to provide an alternative for the criminal justice system to dispose of cases which stem from criminal nonsupport. DESE has no means to determine any potential impact on fine revenues collected by local governments or the DOR to distribute to schools.

Oversight assumes any increase or decrease in fine or penalty revenues generated cannot be determined. Therefore, the fiscal note does not reflect any fine or penalty revenues for the local school districts.

Officials from the **Department of Corrections (DOC)** assume the proposal makes modifications to the criminal nonsupport statute by decreasing both the crime criteria and the penalty provisions.

In FY08, DOC had 1,201 admissions for criminal nonsupport as follows: 70.3% received probation, 22.7% received a term-sentence, and 84 received a 120-day sentence. None of these offenders were violent and 7 had a nonsupport prior offense. Taking into consideration the reduction of time served if this bill passed, 254 offenders per each year would not be incarcerated for a potential savings of up to \$1,450,086 per year (254 X \$5,709).

ASSUMPTION (continued)

DOC cannot currently predict the number of new non-commitments which may result from the modifications of the offense(s) outlined in this proposal. An increase in non-commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are not sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will save the corresponding increase in direct offender cost through deferred incarceration (FY08 average of \$15.64 per offender, per day or an annual cost of \$5,709 per inmate). This savings could be offset by the cost for supervision provided by the Board of Probation and Parole (FY08 average of \$2.47 per offender, per day or an annual cost of \$902 per offender) but the exact time periods of supervision are unknown.

In summary, supervision by the DOC through probation instead of incarceration would result in savings to the department and the exact fiscal impact is unknown up to the estimated potential of \$1,450,086 positive impact per year with 3% cumulative annual increase after the first year.

Officials from the **Department of Social Services (DOS) – Family Services Division (FSD)** assume this bill proposes to allow circuit courts, within the family courts, to establish “criminal nonsupport divisions” to provide an alternative for disposition of criminal nonsupport cases. Prosecuting attorneys, under cooperative agreements with FSD, may bring criminal nonsupport charges in Title IV-D cases referred from FSD to their office for enforcement. Therefore, in circuits that choose to establish criminal nonsupport divisions, FSD would expect some of its criminal nonsupport cases to be handled by the proposed criminal nonsupport division.

The proposed legislation provides that the criminal nonsupport division shall combine judicial supervision, substance abuse treatment, education including general education development certificate (GED) programs, vocational or employment training, work programs, and support payment plans for criminal nonsupport division participants. Such services, if effective in increasing the earnings of delinquent obligor, may lead to increased child support payments. FSD is unable to determine the impact to child support collections associated with these activities.

ASSUMPTION (continued)

This bill proposes to change the conditions under which nonsupport is considered a class D felony. Under the current law, criminal nonsupport is a class D felony if the person obligated to pay support commits the crime of nonsupport in each of six individual months within any twelve-month period or if the total arrearage is in excess of five thousand dollars. Under the proposed legislation, criminal nonsupport would be a class D felony if the total arrearage is in excess of an aggregate of twelve monthly payments due under any order of support issued by any court of competent jurisdiction. The proposed legislation would, therefore, limit felony criminal nonsupport charges to cases in which support is due under a court order. FSD enforces orders entered by courts and administrative agencies of competent jurisdiction. The proposed legislation would eliminate the FSD's ability to bring felony criminal nonsupport charges, through the office of a prosecuting attorney, against support obligors having obligations under administrative orders. This may lead to a decrease in child support collections. FSD is unable to determine the impact to child support collections associated with this change.

The proposed legislation in subdivisions 4 and 5 of subsection 5 provides no authority to the court to allow a defendant to pay less than current support during a period of probation and parole or work release. Today, the court may determine that a defendant does not have the ability to pay the full current support amount and may allow support to be paid in a lesser amount. This proposed change may result in an increase in probation and parole violations, work release revocations, and incarcerations, which may lead to a decrease in child support collections from individuals who have the ability to pay some, but not all of their current support obligation. The division is unable to determine the impact to child support collections associated with this change.

The mandatory sentencing provided for in subsection 5 of the proposed legislation provides for a suspended imposition of sentence for a first offense, a suspended execution of sentence for a second offense, and for the full range of punishment for the class of offense for a third or subsequent offense. These mandatory sentencing provisions may result in more court trials as more defendants may choose to go to trial rather than plead their cases if they know they will receive a suspended imposition of sentence for a first offense. Prosecuting attorneys enforcing support obligations on behalf of FSD may, therefore, spend more time on criminal nonsupport cases. Currently, FSD reimburses counties that have entered into a cooperative agreement with FSD to perform IV-D work. FSD expects this proposed legislation would increase the staffing need for prosecuting attorney's offices and, therefore, increase the amount of reimbursement to the counties.

ASSUMPTION (continued)

FSD expects that those prosecuting attorney's offices filing over 100 criminal nonsupport charges each year would need additional attorney resources to manage the increase in court trials. There are at least 27 prosecuting attorney's offices that file over 100 criminal nonsupport charges annually. FSD believes that these 27 prosecuting attorney's offices would need one (1) additional assistant prosecuting attorney and corresponding expenses to manage the increase in court trials. Therefore, the fiscal impact for this bill would be the additional Assistant Prosecuting Attorney in each of the 27 Prosecuting Attorney offices and their corresponding expenses.

DOS officials state they reimburse Prosecuting Attorney offices for child support activities. This is funded with General Revenue (34%) and Federal (66%) funds. DOS estimates the total fiscal impact of the proposal to be approximately \$1,772,000 in FY 10 and approximately \$2,100,000 in subsequent years. These costs would impact the General Revenue (34%) and Federal (66%) funds.

Officials from the **Office of the State Public Defender (SPD)** assume they could incur a savings due to a small reduction in the number of cases where indigent persons may be offered an Suspended Imposition of Sentence (SIS) or Suspended Execution of Sentence (SES).

Oversight assumes any savings to the Office of the State Public Defender would be small and would have a negligible fiscal impact.

Officials from the Office of Prosecution Services did not respond to Oversight's request for fiscal impact.

| <u>FISCAL IMPACT - State Government</u> | FY 2010 (10 Mo.) | FY 2011 | FY 2012 |
|---|-------------------------------|-------------------------------|-------------------------------|
| GENERAL REVENUE FUND | | | |
| <u>Savings</u> – Department of Corrections | | | |
| Decreased incarcerations | \$1,450,086 | \$1,493,589 | \$1,538,396 |
| <u>Costs</u> – Department of Corrections | | | |
| Increased probation costs* | (Unknown) | (Unknown) | (Unknown) |
| <u>Costs</u> – Department of Social Services | | | |
| Personal Services | (\$354,640) | (\$438,511) | (\$451,666) |
| Fringe Benefits | (\$172,462) | (\$213,248) | (\$219,645) |
| Equipment and Expense | (\$75,375) | (\$57,820) | (\$59,554) |
| <u>Total Costs</u> – DOS | <u>(\$602,477)</u> | <u>(\$709,579)</u> | <u>(\$730,865)</u> |
| FTE Change – DOS | 9.18 FTE | 9.18 FTE | 9.18 FTE |
| ESTIMATED NET EFFECT ON | | | |
| GENERAL REVENUE FUND | <u>Up to \$847,609</u> | <u>Up to \$784,010</u> | <u>Up to \$807,531</u> |
| Estimated Net FTE Change for General Revenue Fund | 9.18 FTE | 9.18 FTE | 9.18 FTE |

*Increased Department of Corrections probation costs are not expected to exceed the savings incurred due to decreased incarcerations.

FISCAL IMPACT - State Government FY 2010 FY 2011 FY 2012
 (continued) (10 Mo.)

FEDERAL FUNDS

| | | | |
|--|----------------------|----------------------|----------------------|
| <u>Costs – Department of Social Services</u> | | | |
| Personal Services | (\$688,420) | (\$851,227) | (\$876,764) |
| Fringe Benefits | (\$334,779) | (\$413,952) | (\$426,370) |
| Equipment and Expense | <u>(\$146,316)</u> | <u>(\$112,238)</u> | <u>(\$115,606)</u> |
| <u>Total Costs – DOS</u> | <u>(\$1,169,515)</u> | <u>(\$1,377,417)</u> | <u>(\$1,418,740)</u> |
| FTE Change – DOS | 17.82 FTE | 17.82 FTE | 17.82 FTE |

**ESTIMATED NET EFFECT ON
 FEDERAL FUNDS** **(\$1,169,515)** **(\$1,377,417)** **(\$1,418,740)**

| | | | |
|---|-----------|-----------|-----------|
| Estimated Net FTE Change for Federal Fund | 17.82 FTE | 17.82 FTE | 17.82 FTE |
|---|-----------|-----------|-----------|

FISCAL IMPACT - Local Government FY 2010 FY 2011 FY 2012
 (10 Mo.)

\$0 **\$0** **\$0**

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

The proposal allows any circuit court to establish a division, within the family courts, for disposition of criminal nonsupport cases. Such division shall have the authority to refer defendants to education, vocational or employment training, substance abuse treatment, or work programs. After successful completion of a court-ordered treatment or training program or commencement of support payments, the defendant may have the charges, petition, or penalty against him or her dismissed, reduced, or modified.

An eight-member Criminal Nonsupport Divisions Coordinating Commission shall be established to coordinate and allocate resources made available through the newly created Criminal Nonsupport Division Resources Fund.

Under this proposal, criminal nonsupport shall be a class A misdemeanor unless the total arrearage is in excess of an aggregate of twelve monthly payments, in which case, it is a class D felony. Currently, the crime is a class D felony if the person owes more than \$5,000 or has failed to pay six months of payments within the last twelve-month period.

The proposal also modifies the penalties for any person convicted of criminal nonsupport as follows:

1. A first offense shall result in a suspended imposition of sentence and an appropriate period of probation;
2. A second offense shall result in a suspended execution of sentence and an appropriate period of probation; and
3. A third or subsequent offense shall be punished within the range for the class of offense that the defendant was convicted of as provided by law.

If the defendant is placed on probation or parole, he or she must begin payment of current support as well as satisfying the arrearages. If he or she fails to pay, probation or parole shall be revoked and an appropriate sentence shall be imposed.

During any period that a nonviolent defendant is incarcerated for criminal nonsupport, the court shall, if the defendant is ready, willing, and able to be gainfully employed and except for good cause shown, place the defendant on work release in order to satisfy the defendant's obligation to pay support. The work release shall be revoked if the defendant fails to pay.

DESCRIPTION (continued)

Beginning August 28, 2009, every nonviolent first and second-time offender currently incarcerated for criminal nonsupport, who has not previously been placed on probation or parole, may be considered for parole or work release.

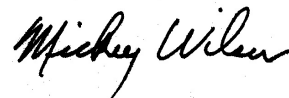
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Elementary and Secondary Education
Department of Mental Health
Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue
Department of Public Safety
 – Director's Office
Office of the State Public Defender
State Treasurer's Office

NOT RESPONDING

Office of Prosecution Services



Mickey Wilson, CPA
Director
January 26, 2009