

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5457-03
Bill No.: HCS for SB 806
Subject: Estate, Wills, and Trusts; Guardians; Courts
Type: Original
Date: April 16, 2018

Bill Summary: This proposal modifies provisions relating to guardianship and conservator proceedings.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	(\$160,853 to \$404,311)	(\$193,259 to \$482,219)	(\$195,000 to \$483,510)
Total Estimated Net Effect on General Revenue	(\$160,853 to \$404,311)	(\$193,259 to \$482,219)	(\$195,000 to \$483,510)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Federal Funds*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

*Distribution increases (decreases) net to zero.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	.4 FTE	.4 FTE	.4 FTE
Federal Funds	.6 FTE	.6 FTE	.6 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§§473.730, 473.770, 473.771, 475.010, 475.016, 475.060, 475.061, 475.062, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.322, 475.341, 475.342, 475.343, 475.344, 475.355, 475.357, 475.359, 475.361, 630.005

In response to similar legislation from this year, HCS for HB 1553, officials at **St. Louis County** assumed a cost of \$200,000 annually from this proposal.

Oversight inquired St. Louis County further regarding their response; however, St. Louis County has not elaborated on the potential costs. Therefore, Oversight will assume there could be some impact on county public administrators and will reflect a potential cost as \$0 or (Unknown).

Officials at the **Office of the State Courts Administrator** assume there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials at the **Office of the Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

Officials at the **Department of Social Services** assume the Family Services Division (FSD) currently has policies and processes in place regarding guardianship and conservators. This legislation does not alter any provisions related to the treatment of guardians and conservators in the determination of eligibility for any public assistance programs FSD administers. Therefore, there is no fiscal impact to FSD.

Officials at the **Department of Public Safety's Veterans' Commission**, the **Department of Revenue**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Health and Senior Services**, the **Department of Mental Health** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

Officials at the **Office of the State Public Defender** assume no fiscal impact from this proposal.

In response to similar legislation from this year, HCS for HB 1553, officials at **Boone County** assumed no fiscal impact from this proposal.

ASSUMPTION (continued)

§§475.050, 475.070, 475.290, 475.320

Officials at the **Department of Social Services (DSS)** assume the following:

Children's Division (CD)

No fiscal impact to CD.

Family Services Division (FSD)

FSD will provide the disqualification letter received by the individual at the time FSD made the eligibility determination. If there has been no benefit disqualification for the individual, no letter will be provided by the FSD. FSD defers to Division of Legal Services (DLS) for documentation of disqualifications determined by DLS. Therefore there is no fiscal impact to FSD.

Division of Legal Services (DLS)

Most children in CD care who are entering adult guardianships have no appropriate relatives to care for them, and so are appointed a public administrator. However, under this language, DLS would have to prove relatives are inappropriate. DLS would have increased costs due to the need to produce evidence, including experts, to show parents are inappropriate guardians. DLS anticipates this will increase costs by approximately \$1,500 - \$6,000 in most cases. In 2016, DLS handled 206 guardianships. Therefore, the anticipated additional expenses could increase by \$309,000 (\$1,500 x 206 cases) to \$1,236,000 (\$6,000 x 206 cases). In 2017, DLS handled 82 guardianships. Therefore, the anticipated additional expenses could increase by \$123,000 (\$1,500 x 82 cases) to \$492,000 (\$6,000 x 82 cases). The Department estimates an increase of 144 cases (Average of 2016 cases + 2017 cases) per year, with a cost of \$1,500 to \$6,000 per case.

In addition, DLS also anticipates that each case will require approximately 4-8 additional hours per case. This is a total of 824 to 1,648 hours, or the equivalent of 1 additional FTE attorney.

In summary, costs for 1 additional FTE attorney for DSS are as follows:

	<u>GR</u>	<u>Federal</u>
FY19	(\$33,820 to \$48,878)	(\$50,732 to \$69,332)
FY20	(\$39,414 to \$54,294)	(\$59,121 to \$81,441)
FY21	(\$39,715 to \$54,145)	(\$59,572 to \$81,892)

ASSUMPTION (continued)

The additional expenditures from the DLS for litigation expenses would be as follows:

	<u>GR</u>	<u>Federal</u>
FY19	(\$ 72,000 to \$288,000)	(\$108,000 to \$432,000)
FY20	(\$ 86,400 to \$345,600)	(\$129,600 to \$518,400)
FY21	(\$ 86,400 to \$345,600)	(\$129,600 to \$518,400)

Officials at the **Office of the State Courts Administrator** assume there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials at the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Health and Senior Services** and the **Department of Mental Health** each assume no fiscal impact to their respective agencies from this proposal.

In response to a previous version, officials at the **Callaway County Commission** and the **Franklin County Public Administrator's Office** each assumed no fiscal impact to their respective entities from this proposal.

§475.075

Officials at the **Department of Social Services (DSS)** assumes the following:

DLS

DLS provides legal counsel and representation of the Children's Division. In cases in which a child is ageing out of care and is incapacitated or disabled, DLS handles court proceedings to ensure the child is given a guardianship and a conservatorship, if needed.

In 2016, DLS handled 206 guardianships. The cost of publication for each case would be approximately \$300. This means the total cost of publication would be approximately \$61,800. In 2017, DLS handled 82 guardianships; the total cost of publication would be approximately \$24,600.

This legislation would not create any new cases for DLS. DLS doesn't currently pay publication costs in every guardianship case, so those would be additional costs if the statute is enacted.

ASSUMPTION (continued)

In summary, the DSS would have the following cost range, split between GR and Federal:

FY19 - \$20,500 to \$51,500 (10 months)

FY20 - \$24,600 to \$61,800

FY21 - \$24,600 to \$61,800

Oversight inquired of the DSS. The DSS does not budget for publication costs currently because it was not required. This proposal would require the DSS to publish each case.

Officials at the **Department of Mental Health (DMH)** estimate that approximately 100 guardianship petitions will be initiated annually beginning in 2018. It is estimated that a guardianship petition, on average, involves five or more individuals who are required to be notified. Notices for guardianship is currently provided by regular mail with prepaid postage - estimated current cost is \$250 (100 cases X \$.50 stamp X 5 notifications).

Requirements contained in this bill would necessitate that a notice be published in a newspaper having general circulation within the county in which the court is held. The eastern region of Missouri covers the bulk of total guardianships, so a fair estimate may be based upon publication in the St. Louis Post Dispatch. Basic publishing of a notice cost \$562. Notices for 100 cases at \$562 totals \$56,200.

Fiscal Impact to the DMH resulting from this legislation is estimated at \$56,200. In summary, the DMH estimates the following - \$46,833 in FY19, \$57,605 in FY20 and \$59,045 in FY21. This estimate also assumes postage rates will increase each fiscal year.

Oversight inquired of the DMH on the number of petitions that were done in FY2015 through FY2017. The following is their response:

FY15 - 95 petitions

FY16 - 83 petitions

FY17 - 95 petitions

Officials at the **Office of the Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

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

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE			
<u>Cost - DSS</u>			
Personal Service	(\$13,988)	(\$16,953)	(\$17,123)
Fringe Benefits	(\$7,750)	(\$9,350)	(\$9,401)
Equipment and Expense	(\$12,082 to \$27,140)	(\$13,111 to \$27,991)	(\$13,191 to \$27,621)
Litigation Expenses	<u>\$288,000</u>	<u>\$345,600</u>	<u>\$345,600</u>
<u>Total Costs - DSS</u> (§§475.050, 475.070, 475.290, 475.320)	(\$105,820 to <u>\$336,878</u>)	(\$125,814 to <u>\$399,894</u>)	(\$126,115 to <u>\$399,745</u>)
FTE Change - DSS	.4 FTE	.4 FTE	.4 FTE
<u>Cost - DSS - Publication of each guardianship case</u> (§475.075)	(8,200 to \$20,600)	(\$9,840 to \$24,720)	(\$9,840 to \$24,720)
<u>Cost - DMH - Publication of guardianship petitions in local newspapers</u> (§475.075)	<u>(Up to \$46,833)</u>	<u>(Up to \$57,605)</u>	<u>(Up to \$59,045)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	(\$160,853 to \$404,311)	(\$193,259 to \$482,219)	(\$195,000 to \$483,510)
Estimated Net FTE Change for General Revenue Fund	.4 FTE	.4 FTE	.4 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
FEDERAL FUNDS			
<u>Income - DSS</u> (§§475.050, 475.070, 475.290, 475.320)			
Increase in program reimbursements	\$158,732 to \$501,332	\$188,721 to \$599,841	\$189,172 to \$600,292
<u>Income - DSS - program reimbursements</u> (§475.075)	\$12,300 to \$30,900	\$14,760 to \$37,080	\$14,760 to \$37,080
<u>Cost - DSS</u>			
Personal Service	(\$20,982)	(\$25,430)	(\$25,684)
Fringe Benefits	(\$11,626)	(\$14,026)	(\$14,101)
Equipment and Expense	(\$18,124 to \$36,724)	(\$19,665 to \$41,985)	(\$19,787 to \$42,107)
Litigation Expenses	(\$108,000 to <u>\$432,000</u>)	(\$129,600 to <u>\$518,400</u>)	(\$129,600 to <u>\$518,400</u>)
Total Cost - DSS (§§475.050, 475.070, 475.290, 475.320)	(\$158,732 to <u>\$501,332</u>)	(\$188,721 to <u>\$599,841</u>)	(\$189,172 to <u>\$600,292</u>)
FTE Change - DSS	.6 FTE	.6 FTE	.6 FTE
<u>Cost - DSS - Publication of each guardianship case</u> (§475.075)	(\$12,300 to <u>\$30,900</u>)	(\$14,760 to <u>\$37,080</u>)	(\$14,760 to <u>\$37,080</u>)
ESTIMATED NET EFFECT ON FEDERAL FUNDS			
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimated Net FTE Change for Federal Funds	.6 FTE	.6 FTE	.6 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2019	FY 2020	FY 2021
	(10 Mo.)		
COUNTIES			
<u>Cost</u> - potential additional costs for public administrators (§§473.730, 473.770, 473.771, 475.010, 475.016, 475.060, 475.061, 475.062, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.322, 475.341, 475.342, 475.343, 475.344, 475.355, 475.357, 475.359, 475.361, 630.005)	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO COUNTIES	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

§§473.730, 473.770, 473.771, 475.010, 475.016, 475.060, 475.061, 475.062, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.322, 475.341, 475.342, 475.343, 475.344, 475.355, 475.357, 475.359, 475.361, 630.005

This bill changes and adds certain duties and reporting requirements for guardians and conservators. It also specifies that existing guardians and conservators have one year from August 28, 2018, to meet any reporting requirements that change as of August 28, 2018. The bill also gives the court authority to, as part of its review and in its discretion, contact the Department of Health and Senior Services or other appropriate agencies to investigate the conduct of the guardian.

§§475.050, 475.070, 475.290, 475.320

This act modifies various provisions regarding guardianship and conservator proceedings. Under current law in guardianship and conservator proceedings the court is to consider the suitability of a list of persons for appointment. This act provides that such persons are listed in the order of priority. The court may not appoint an unrelated third party unless there is no relative suitable and willing to serve, or if the appointment of a relative or a nominee is not in the best interest of the incapacitated or disabled person.

Notice of a petition to appoint a guardian or conservator for a minor must be served to the person or entity nominated to serve.

When the petition for the appointment of a guardian or conservator is filed based on grounds other than minority and a public administrator is nominated, the public administrator shall receive certain documents such as the petition and medical opinions and shall have an opportunity to be heard at the hearing.

Currently, a conservator has sixty days to make final settlement of the conservatorship. The act makes an exception to the sixty day requirement for when the protectoree has died and the court has ordered that no letters of administration are to be granted.

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

§475.075

This act provides that in guardianship and conservator proceedings, a court must determine that the incapacitated or disabled person's choice, spouse, or family member is deficient in his or her ability to serve prior to selecting a third person as a guardian of the incapacitated person or conservator of a disabled person. If there is a claim that a person is deficient because of the living conditions, then the court shall require an investigation by the Department of Health and Senior

FISCAL DESCRIPTION (continued)

Services of the living conditions. A court must also make a determination that the living conditions are dangerous or unsanitary prior to making the finding that a person is deficient for the purposes of guardianship.


The act also states that, prior to a hearing on a petition for the appointment of a guardian or conservator, notice must be provided to certain parties by certified mail and published in a newspaper of general circulation in the county in which the hearing is held.

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

Department of Social Services
Office of the State Courts Administrator
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Callaway County Commission
Franklin County Public Administrator's Office

Ross Strope



Acting Director
April 16, 2018