

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0242-07
Bill No.: SB 336
Subject: Children and Minors; Civil Procedure; Civil Penalties; Courts; Crimes and Punishment; Health and Senior Services Department
Type: Original
Date: March 1, 2019

Bill Summary: This proposal modifies provisions relating to child care facilities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on General Revenue	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Family Child Care Provider*	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

* Appropriations and expenses assumed to net to \$0.

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on FTE	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

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 2020	FY 2021	FY 2022
Local Government	\$0 or Under \$100,000	\$0 or Under \$100,000	\$0 or Under \$100,000

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services (DHSS)** state:

§208.044.2 is amended to require any provider of child day care services to become licensed if they are caring for more than six children. Currently, the law requires licensure if no more than four unrelated children are being cared for.

§210.211 changes the threshold for child care licensure by increasing the overall number a provider could care for, including a maximum of three children under the age of two. Currently, there is no requirement for licensure based on the age of children at the facility. It requires the provider's related children be counted in that number unless the children are school-aged children who live in the home.

§210.245.7 provides that any person who operates an unlicensed, nonexempt child-care facility in violation of the provisions of sections 210.201 to 210.245 shall be liable for a civil penalty of not less than seven hundred fifty dollars and not more than two thousand dollars. The department shall serve upon such person written notice of the department's findings as to the child-care facility's unlicensed, nonexempt status, along with educational materials about Missouri's child-care facility laws and regulations, how a facility may become exempt or licensed, and penalties for operating an unlicensed, nonexempt child-care facility. The notice shall contain a statement that the person shall have thirty days to become compliant with sections 210.201 to 210.245, including attaining exempt status or becoming licensed. The person's failure to do so shall result in a civil action in the circuit court of Cole County or criminal charges under this section. If, following the receipt of the written notice, the person operating the child-care facility fails to become compliant with sections 210.201 to 210.245, the department may bring a civil action in the circuit court of Cole County against such person. The department may, but shall not be required to, request that the attorney general bring the action in place of the department.

Oversight notes that the penalties collected will be distributed to schools according to the location of the facility that is fined. It is unknown whether fines will be imposed or the potential amount collected for distribution to school districts. In 2018, Office of the State Courts Administrator noted only one infraction from Section 210.245 - so Oversight will present penalties collected and distributed to school districts as \$0 to Under \$100,000.

ASSUMPTION (continued)

DHSS states §210.245.8 establishes the "Family Child Care Provider Fund" in the state treasury, which shall consist of such funds as appropriated by the general assembly. The fund shall be a dedicated fund and moneys in the fund shall be used solely by the department for the dissemination of information concerning compliance with child-care facility laws and regulations. The legislation does not designate a funding source so revenues to the fund are unknown.

Oversight assumes funds appropriated to the Family Child Care Provider Fund to be Unknown. In addition, Oversight assumes costs incurred by the DHSS for the dissemination of information will be limited to the funds appropriated. Therefore, the estimated net effect on the Family Child Care Provider Fund will be \$0 for fiscal note purposes.

DHSS Impact

It is unknown if the legislation will lead to an increase or decrease in the number of child care providers that must be licensed. The department does not currently track how many children under the age of two are currently being cared for in unlicensed facilities. Therefore, it would be impossible to know how many new child care facilities would fall under the amended requirements for licensure.

Oversight does not have any information to the contrary. DHSS notes it does not have information available to determine whether an increase/decrease in the number of Child Care Facility Specialist FTE will be required to perform inspections of licensed child care facilities and will reflect Unknown savings to Unknown costs to the General Revenue (GR) Fund for DHSS for fiscal note purposes.

The Division of Community and Public Health (DCPH)

DHSS, DCPH provides sanitation inspections in regulated child care facilities. Based on the change in how many facilities must be licensed under the proposed legislation, the number of sanitation inspections may either increase or decrease by an unknown amount. This may create either a need for additional staff or reduce the need for staff, resulting in either a cost savings or the need for an increase in FTE.

Oversight does not have any information to the contrary. Oversight assumes the DHSS does not have information available to determine whether an increase/decrease in the number of Environmental Public Health Specialist V FTE will be required to perform inspections of licensed child care facilities and will reflect Unknown savings to Unknown costs to the General

ASSUMPTION (continued)

Revenue (GR) Fund for DHSS for fiscal note purposes.

Division of Regulation and Licensure (DRL)

DHSS, DRL states it is responsible for regulating child care facilities. Currently, there is no statutory limit on the number of children under the age of two that a provider cares for so DRL does not collect this information; therefore, the number of providers that are currently exempt from licensure who would be required to become licensed under this legislation is unknown. DRL assumes that a number of these providers would require at least one inspection and some would choose to become licensed in order to remain operating; however, this number is unknown.

Written notice of the department's findings are currently provided to a child care facility; however, the number of providers who would be found operating in violation of this legislation is unknown.

Development of educational materials are within the normal ebb and flow for the DRL so minimal time and expense will be required to conduct the requirements of this legislation. It is assumed the educational materials will be available online.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the unknown costs/savings provided by DHSS for fiscal note purposes. In addition, Oversight assumes the DHSS has sufficient staff and resources to perform the additional duties required to develop educational materials for child care facilities.

DHSS, Office of General Counsel (OGC)

DHSS, OGC officials state this legislation will require the department to serve written notice of the department's findings as to a child care facility's unlicensed, nonexempt status, along with educational materials about Missouri's child care facility laws and regulations. This change of including unlicensed, nonexempt child care facilities in violation of provisions of sections 210.201 to 210.245 will increase the workload of General Counsel. Adding these entities into the current workload would result in the need for .60 FTE. In addition, if, following the receipt of the written notice, the person operating the child care facility fails to become compliant with sections 210.201 to 210.245, the department may bring a civil action in the circuit court of Cole County against such person. The department may, but shall not be required to, request that the attorney general bring the action in place of the department.

ASSUMPTION (continued)

Based upon the number of cases that DHSS would have had to file in 2018 (if this legislation had been in place) the following costs have been identified:

Hearing shall be conducted by the Department of Health and Senior Services within ten days from the date the appeal is filed. The department may bring civil action in the circuit court of Cole County against such person. DHSS assumes that staff will travel to the county of the offense; therefore additional travel expenses are needed.

- 80 Cases X 1.5 actions = 120 actions
- 120 cases X 10.28 hours per action = 1,234 total hours
- 1,234 (hours) / 2080 hours = .60 FTE

§210.245.7 of the proposed legislation could require the promulgation of rules and regulations, which include the following duties (but not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. DHSS, OGC will need an additional 0.1 FTE for an attorney to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed.

Oversight assumes 0.1 FTE and 0.6 would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent. In addition, Oversight assumes the DHSS would not need additional rental space for 0.1 FTE. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

Oversight assumes since DHSS states their responsibility to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65% and rental space costs for 0.1 FTE.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any indigent clients faced with the enhanced penalties. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient

ASSUMPTION (continued)

appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Officials from the **Department of Social Services (DSS)** state the department does not anticipate a fiscal impact as a result of this legislation. Approximately 60 child care providers serving 148 children could be negatively impact by this legislation. The economic impact could be as much as \$2,900 annually per child by reducing the number of related children that a child care provider is able to serve. However, if the 148 children move to a different child care provider, those providers would have a positive impact.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect no fiscal impact for DSS but will indicate this proposal will have a fiscal impact on small business child care providers.

Oversight notes that the **Missouri Office of Prosecution Services** have stated the proposal would not have a measurable fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Oversight notes that the **Office of Attorney General**, the **Department of Public Safety**, **Division of Fire Safety**, the **Office of State Courts Administrator** and the **Office of State Treasurer** have stated the proposal would not have a direct fiscal impact on their organizations.

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Transfer-out</u> - Appropriations to the Family Child Care Provider Fund	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Savings/Costs</u> - DHSS (§§208.44 and 210.211)			
Personal service and related expenditures (increase or decrease in the number of Child Care Facility Specialists and/or Environmental Public Health Specialists)	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>
FTE Change - DHSS	Unknown to (Unknown) FTE	Unknown to (Unknown) FTE	Unknown to (Unknown) FTE
<u>Costs</u> - DHSS (§§210.201 to 210.245)			
Personal service (0.6 FTE for hearings and 0.1 FTE for promulgation of rules)	\$0 to... (\$37,625)	\$0 to... (\$39,087)	\$0 to... (\$39,478)
Fringe benefits	(\$2,878)	(\$2,990)	(\$3,020)
Equipment and expense	<u>(\$16,169)</u>	<u>(\$11,168)</u>	<u>(\$11,449)</u>
Total <u>Costs</u> - DHSS	<u>\$0 to (\$56,672)</u>	<u>\$0 to (\$53,245)</u>	<u>\$0 to (\$53,947)</u>
FTE Change - DHSS	0 to 0.7 FTE	0 to 0.6 FTE	0 to 0.6 FTE
<u>Costs</u> - SPD (§210.245)			
Salaries, fringe benefits, and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>
Estimated Net FTE Change on the General Revenue Fund	Unknown to (Unknown) FTE	Unknown to (Unknown) FTE	Unknown to (Unknown) FTE

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
FAMILY CHILD CARE PROVIDER FUND			
<u>Transfer-in - Appropriations from the General Revenue Fund (§210.245)</u>	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs - DHSS</u> Expenses associated with dissemination of information regarding child-care laws and regulations	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON THE FAMILY CHILD CARE PROVIDER FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
LOCAL GOVERNMENTS - SCHOOL DISTRICTS			
<u>Income - School Districts (§210.245)</u> Distribution of fine income	<u>\$0 or Under \$100,000</u>	<u>\$0 or Under \$100,000</u>	<u>\$0 or Under \$100,000</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - SCHOOL DISTRICTS	<u>\$0 to Under \$100,000</u>	<u>\$0 to Under \$100,000</u>	<u>\$0 to Under \$100,000</u>

FISCAL IMPACT - Small Business

This proposal will have a direct fiscal impact on unlicensed child care providers who will be required to become licensed. Although there is no cost for a license, the provider will need to comply with applicable child care licensing rules and regulations and there may be a cost to the provider in order to come into compliance. In addition, changes in the number of children that can be cared for by a provider may impact small business child care providers.

FISCAL DESCRIPTION

This act modifies the laws regarding licensing child care facilities in several ways. First, the requirement to have a child care facility license shall not apply to any person caring for six or fewer related or unrelated children, including a maximum of three children under age two, at the same physical address. Children who live in the caregiver's home and who are eligible for enrollment in a public kindergarten, elementary, or high school shall not be included in the total.

Additionally, this act increases the criminal penalties for persons who violate the child care licensure statutes from an infraction with fine not to exceed two hundred dollars for the first offense to a Class C misdemeanor and a fine not to exceed seven hundred fifty dollars and from a Class A misdemeanor and a fine of up to two hundred dollars per day for subsequent offenses to a Class A misdemeanor and a fine of up to two thousand dollars per day.

The Department of Health and Senior Services may file suit for injunctive relief for cases of imminent bodily harm to a child in the care of an unlicensed, nonexempt child care facility. The Department shall not be subject to liability for failing to file suit under this provision.

This act creates a civil penalty, enforceable by the Department, for any person who operates an unlicensed, nonexempt child care facility. The Department shall send a written notice to such person of the Department's findings, along with educational materials about child care facility laws and the ways to become compliant with such laws, including attaining exempt status or becoming licensed. The person shall have 30 days to become compliant and if such person fails to do so, he or she shall be liable for a civil penalty of not less than \$750 and not more than \$2,000. The Department, or the Attorney General on the Department's behalf, may bring a civil action in Cole County against such person. The Department shall not be subject to liability for failing to file suit under this provision.

Finally, this act creates the "Family Child Care Provider Fund", which shall consist of appropriated funds. The Fund shall be used by the Department for the dissemination of information concerning compliance with child care facility laws, educational initiatives, and the provision of financial assistance, based on need as determined by the Department and available funds, for family child care homes to become licensed.

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

SOURCES OF INFORMATION

Office of Attorney General
Department of Health and Senior Services
Department of Public Safety -
 Division of Fire Safety; Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of State Public Defender
Office of State Treasurer



Kyle Rieman
Director
March 1, 2019

Ross Strobe
Assistant Director
March 1, 2019