

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 2911-01
BILL NO.: SB 602
SUBJECT: Modifies Family Services Reporting and Waives Sovereign Immunity
TYPE: Original
DATE: January 20, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	(\$799,485) to (\$4,585,916)	(\$853,733) to (\$5,533,761)	(\$876,434) to (\$5,696,863)
Total Estimated Net Effect on <u>All</u> State Funds*	(\$799,485) to (\$4,585,916)	(\$853,733) to (\$5,533,761)	(\$876,434) to (\$5,696,863)

* Estimate, costs to the Legal Expense Fund could significantly exceed these amounts.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Federal	(\$223,002)	(\$251,963)	(\$258,357)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$223,002)	(\$251,963)	(\$258,357)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health** and **Office of State Courts Administrator** assume that this proposal will not fiscally affect their agencies.

Officials from the **Office of Attorney General (AGO)** stated that based upon the large number of hotline calls received by the Division of Family Services, the AGO assumes that the waiver of sovereign immunity contained in this proposal will result in significant increase in cases handled by the Litigation Division. Therefore, the AGO projects a need for one additional Assistant Attorney General III (AAG III) at \$45,000 each, five additional AAGs I (\$31,500), two Legal Secretaries (\$18,000) and two Paralegals (\$19,500). The new FTE would require the accompanying expense and equipment items including building rental costs (\$35,400 annually).

Oversight notes that for a proposal that waives the sovereign immunity of state employees in the Division of Family Services and Division of Aging, the AGO required the same amount of staff that they require for this proposal. This proposal waives the sovereign immunity of the Division of Family Services only and only those employees handling child abuse and neglect cases. Therefore, Oversight has adjusted the FTE required for this proposal to one additional AAGIII, three AAGI's, two Legal Secretaries, and two Paralegals. Costs were charged to the General Revenue Fund.

Officials from the **Office of Administration - Risk Management Section (RMS)** stated that they contacted officials in the insurance industry and risk management consultants and these officials suggested the cost impact could be determined by taking 1 to 2% of the division's operating budget for services minus any pass through funds. RMS contacted the Department of Social Services - Division of Family Services and was told that the budget costs less pass through funds for the Division was \$454,371,688. The RMS is using a conservative approach and has used a 1% risk factor for a total fiscal impact to the Legal Expense Fund paid from the General Revenue Fund of \$3,786,431, \$4,680,028, and \$4,820,429 for Fiscal Years 2001, 2002, and 2003, respectively.

Oversight will range the costs to the Legal Expense Fund from \$0 to the amounts indicated above. However, Oversight also notes that the estimate for court costs and damages paid from the Legal Expense Fund are only estimates. Oversight cannot predict what a court of law may award in damages from abuse and neglect cases. Oversight's fiscal estimate should not be considered the maximum amount of costs related to this proposal.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DOSS)** stated this proposal will affect the Division of Family Services and the Division of Legal Services.

Officials from the **DOSS - Division of Family Services (DFS)** stated this proposal will fiscally impact their division in two areas; access to investigation records and sovereign immunity exceptions.

Access to Investigation Records Contained in the Central Registry

The Child Abuse and Neglect Background /Investigation Screening Unit (BSIU) stated that during FY 99, there were 129,053 screenings requested to the BSIU which has 4 employees. The proposal incorporates the media, as well as any person having temporary custody over a child, to have access to the registry. Based on 1997 data from KIDS COUNT, there are 1,404,424 children in Missouri. If only 10 % of these children are inquired about through the registry, that would amount to 140,000 screenings. If the public begins to submit children's names to the BSIU, the Division will need one Clerk Typist II for every 32,000 additional requests. For every three clerical staff, the Division would request one additional supervisor position to be allocated. The BSIU is estimating a need for four total new FTE if this proposal is enacted. They would require three Clerk Typists II (\$19,452) and one Social Service Supervisor I (\$32,256) and the necessary expense and equipment items. **Oversight** has removed the building rent from the estimate assuming new staff could locate in existing space.

Expansion of the Sovereign Immunity Exceptions

The Childrens Services Section stated this proposal would make the state liable, because they are investigating and providing services for child abuse and neglect, for injuries that resulted at the hands of the parent/caretaker. During FY 99, 71,675 children were named in 45,919 completed Child Abuse/Neglect (CA/N) reports.

Of those 45,919 reports, 3,357 reports were concluded with the level of abuse/neglect severity to be serious/severe, permanent damage, or fatal. Thirty-nine percent (39.7%) were victims with no prior CA/N reports. Of those 3,357 reports, 60.3% (or 2,024) of the reports involved "child abuse cases which have been reported "... on at least two separate occasions." If only 10 % of these cases resulted in lawsuits against the state, that would involve 202 cases.

DFS works in conjunction with the DOSS - Division of Legal Services and the Office of Attorney General in response to lawsuits that are filed against the Division and state.

ASSUMPTION (continued)

It is estimated that the Division staff spend 48 hours in preparing for court, in court, participating in depositions and interrogatories, working with Division of Legal Services and the Office of Attorney General, and all other aspects of responding to lawsuits against the state. Based on 202 cases and 48 hours per case, these cases would consume 9,696 hours. The DFS is estimating a need for overtime for the Division's workers at an average cost of \$21.89 per hour for 9,696 hours which totals \$212,245. **Oversight** notes that the DFS included a one-time cost for equipment and on-going costs for expenses for the overtime work. Oversight has deleted these costs from the fiscal estimate. The costs for DFS were split between state and federal funds at a rate of 67% state and 33% federal.

Officials from the **DOSS - Division of Legal Services (DLS)** stated that the DFS receives 45,000 hotline calls each year. Of those calls (in FY99), 3,357 were considered to be "serious/severe, permanent damage or fatal." The proposal purports to waive sovereign immunity only for "cases involving death or serious physical injury." Lawsuits may, of course, be filed in which the injuries do not result in death or serious physical injury. Such lawsuits would, nevertheless, need to be defended. Still, as a conservative measure, only those hotline calls involving serious/severe, permanent damage or fatal injuries are included in the potential universe of cases for this proposal. Of those 3,357 cases, 39.7% are regarding persons with no prior reports. Therefore, only 60.3% of the 3,357 cases or 2,024 cases involve "child abuse cases which have been reported . . . on at least two separate occasions" and which involve death or serious physical injury. If only 10% of these cases resulted in lawsuits against the state, that would amount to 202 cases.

The Office of Attorney General, as the gatekeeper of the Legal Expense Fund, has the lead in cases involving money damages against the state or its agencies. At the same time, DLS provides coordinating counsel with the assigned attorney general and is involved in case and witness preparation, and in developing strategy and tactics for the cases. It is estimated that the assigned coordinating counsel with DLS would spend forty (40) hours working with witnesses, assembling materials for discovery and/or trial, and coordinating with the assigned attorney general. Based on 202 cases and 40 hours/case, these cases would consume 8,080 hours (202 cases x 40 hours/case = 8,080 hours). At 2,080 hours/attorney-year, this would require four new Attorneys (\$34,992) and two new Clerk Typists III (\$17,000). The new Attorney requirements were calculated by dividing the additional hours (8,080) by 2,080 hours per Attorney per year which equated to 3.8 Attorneys. The new employees would work with Attorney General's office in preparing discovery and trial preparation including the preparation of Division of Family Services' employees for testimony at depositions and at trial. The costs for DLS were split between state and federal funds at a rate of 60% state and 40% federal.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
GENERAL REVENUE FUND			
<u>Costs - Legal Expense Fund</u>			
Court Costs and Damage Awards from Sovereign Immunity Court Cases*	\$0 to (\$3,786,431)	\$0 to (\$4,680,028)	\$0 to (\$4,820,429)
<u>Costs - Office of Attorney General</u>			
Personal Service (8 FTE)	(\$178,750)	(\$220,335)	(\$226,330)
Fringe Benefits	(\$54,966)	(\$67,753)	(\$69,596)
Expense and Equipment	<u>(\$160,599)</u>	<u>(\$113,217)</u>	<u>(\$116,614)</u>
Total <u>Costs</u> - Office of Attorney General	<u>(\$394,315)</u>	<u>(\$401,305)</u>	<u>(\$412,540)</u>
<u>Costs - Department of Social Services - Division of Family Services</u>			
Personal Service (4 FTE at 67%)	(\$173,253)	(\$213,167)	(\$218,517)
Fringe Benefits	(\$53,275)	(\$65,572)	(\$67,194)
Expense and Equipment	<u>(\$27,592)</u>	<u>(\$4,034)</u>	<u>(\$4,156)</u>
Total <u>Costs</u> - Division of Family Services	<u>(\$254,120)</u>	<u>(\$282,773)</u>	<u>(\$289,867)</u>
<u>Costs - Department of Social Services - Division of Legal Services</u>			
Personal Service (6 FTE at 60%)	(\$89,123)	(\$109,665)	(\$112,407)
Fringe Benefits	(\$27,405)	(\$33,722)	(\$34,565)
Expense and Equipment	<u>(\$34,521)</u>	<u>(\$26,267)</u>	<u>(\$27,055)</u>
Total <u>Costs</u> - Division of Legal Services	<u>(\$151,050)</u>	<u>(\$169,655)</u>	<u>(\$174,027)</u>
ESTIMATED EFFECT ON GENERAL REVENUE FUNDS *	(\$799,485) to <u>(\$4,585,916)</u>	(\$853,733) to <u>(\$5,533,761)</u>	(\$876,434) to <u>(\$5,696,863)</u>

* Estimate, costs to the Legal Expense Fund could significantly exceed these amounts.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
FEDERAL FUNDS			
<u>Costs - Department of Social Services -</u>			
<u>Division of Family Services</u>			
Personal Service (4 FTE at 33%)	(\$85,334)	(\$105,003)	(\$107,628)
Fringe Benefits	(\$26,240)	(\$32,288)	(\$33,095)
Expense and Equipment	(\$10,729)	(\$1,569)	(\$1,616)
Total <u>Costs</u> - Division of Family Services	<u>(\$122,303)</u>	<u>(\$138,860)</u>	<u>(\$142,339)</u>
<u>Costs - Department of Social Services -</u>			
<u>Division of Legal Services</u>			
Personal Service (6 FTE at 40%)	(\$59,415)	(\$73,110)	(\$74,938)
Fringe Benefits	(\$18,270)	(\$22,481)	(\$23,043)
Expense and Equipment	(\$23,014)	(\$17,512)	(\$18,037)
Total <u>Costs</u> - Division of Legal Services	<u>(\$100,699)</u>	<u>(\$113,103)</u>	<u>(\$116,018)</u>
ESTIMATED EFFECT ON FEDERAL FUNDS	<u>(\$223,002)</u>	<u>(\$251,963)</u>	<u>(\$258,357)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposal requires the Division of Family Services to make child abuse investigation records available to any member of the press and any person exercising temporary supervision over a specific child if the press or the person produces the name of the specific child. The proposal also adds Section 210.151 which waives the sovereign immunity of the Division of Family Services from liability and suit for compensable damages for negligent acts or omissions which result in death or serious injury of a child subject to child abuse or neglect which the Division

DESCRIPTION(continued)

was aware.

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

SOURCES OF INFORMATION

Department of Social Services
Office of State Courts Administrator
Office of Attorney General
Office of Administration
Department of Health



Jeanne Jarrett, CPA
Director
January 20, 2000