

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3533-01  
Bill No.: SB 652  
Subject: Children and Minors; Domestic Relations; Juvenile Courts; Family Law; Juries  
Type: # Corrected  
Date: February 23, 2010

# To Correct Estimated Net Effect on Local Funds.

Bill Summary: The proposal allows jury trials in termination of parental rights actions.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(Less than \$640,622)	(Less than \$1,158,213)	(Less than \$1,165,117)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Less than \$640,622)</b>	<b>(Less than \$1,158,213)</b>	<b>(Less than \$1,165,117)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
Federal*			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds*</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\* Income and costs of approximately \$204,036 in FY11, \$399,380 in FY12 and \$401,986 in FY13 would net to \$0.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
General Revenue	3.63	3.63	3.63
Federal	1.37	1.37	1.37
<b>Total Estimated Net Effect on FTE</b>	<b>5</b>	<b>5</b>	<b>5</b>

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).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
<b>Local Government#</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>

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## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the Attorney General** and the **Department of Health and Senior Services** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator (CTS)** state, beginning January 1, 2011, a parent may request in writing a trial of the issues of fact by a jury for all issues in termination of parental rights actions under chapter 211, RSMo.

While it is unknown how many jury trials will result from this legislative change, section 494.455, RSMo, requires a county to pay jurors six dollars per day, for every day he or she may actually serve as such, and seven cents for every mile he or she may necessarily travel going from his or her place of residence to the courthouse and returning, to be paid from funds of the county or a city not within a county. In addition, if a county or city pays a juror at least \$12 a day, a “person shall receive an additional six dollars per day to be reimbursed by the state of Missouri so that the total compensation payable shall be at least eighteen dollars, plus mileage for each day that the person actually serves as a petit juror in a particular case; or for each day that a person actually serves as a grand juror during a term of a grand jury. The state shall reimburse the county for six dollars of the additional juror compensation provided by this subsection.” There may be an increase in the amount of state reimbursement for jurors; however, CTS would not anticipate a fiscal impact in excess of \$100,000.

Officials from the **Department of Social Services – Children’s Division (DSS/CD)** state these 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 were 256 Termination of Parental Rights cases completed for children in alternative care in Fiscal Year 2009. In FY 09, the Children’s Division spent \$2,281,164 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 128 cases 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 \$1,140,582 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.

ASSUMPTION (continued)

**Oversight** has adjusted the Department of Social Services – Children’s Division’s increased legal fees for FY 2011 to 6 months to reflect the January 1, 2011, date when a parent may request a trial by a jury.

Officials from the **Department of Social Services – Division of Legal Services (DSS/DLS)** assume the proposal would make it significantly more expensive for the Department of Social Services, Children’s Division (DSS/CD) and the Circuit Juvenile Officers to achieve permanency for children in care. A jury trial is more time consuming and labor intensive than a bench trial. Under federal and state law DSS/CD is required to file termination of parental rights (TPR) petitions (with a few exceptions) in cases where children are in care if the child has been in care for 15 of the most recent 22 months. See §211.447 RSMo. 42 C.F.R. §1356.21(I). Failure to comply with this time frame jeopardizes federal financial participation in Missouri’s foster care system under Title IV-E of the Social Security Act, and may subject Missouri to significant financial disallowances imposed by the Federal Government. In 2004 a Federal Audit of Missouri’s Title IV-E program identified the lack of sufficient attorneys to handle TPR cases as one of the deficiencies of Missouri’s ability to comply with the federal legal requirement to file timely TPR cases. Jury trials require more trial preparation to ensure that the witnesses and evidence are ready for a jury comprised of individuals who are not familiar with the rules of evidence. Additional funding for more attorneys and support staff, as well as additional training in handling jury trials in TPR cases, will be required if TPRs were tried by a jury.

Authorizing jury trials in termination of parental rights cases will substantially delay the processing of TPR cases. This will increase the time that children remain in foster care and will increase expenses to the Children’s Division. This will make it difficult for the state to achieve timely placement and possibly jeopardize the receipt of federal funds. A jury trial normally takes longer to try than a bench trial. A realistic estimate is two times longer, once you factor in jury selection, sequestration and deliberation. The typical TPR case involves at least five attorneys (attorney for Juvenile Officer, Attorney for Children’s Division, Attorney for Natural Mother, Attorney for Natural Father, and Attorney for Guardian ad litem); thus, the jury selection process could conceivably take multiple days. It is anticipated that attorneys’ fees for GAL services and court appointed attorneys would escalate dramatically as a result of the increased costs associated with additional trial preparation, jury selection, discovery, and use of expert witnesses. Additional time and expense would be expended on those cases that ended in a hung jury and, thus, had to be retried.

ASSUMPTION (continued)

Under current law in governing TPR cases, the Department of Social Services, Children's Division, is usually ordered to pay the attorney fees for the natural parents and the guardian ad litem. Historically, the typical attorneys' fee award against the Children's Division at the conclusion of a TPR case is approximately \$10,000 per lawyer case. However, if a TPR case went to jury, it is expected that the attorneys fees would double to approximately \$20,000 – \$40,000 per case, excluding any appellate issues that need to be resolved. Finally, given the additional time it takes to prepare for and try a jury trial, in all likelihood this bill would increase the amount of time children spend in foster care and increase the maintenance costs of a child in foster care proportionately.

In 2009, DLS had an additional 109 cases which were not closed and carried forward into the new year. On average, DLS invests approximately 60 hours in preparing for and trying a TPR. Thus, with an average of 256 cases closed per year, DLS estimates that its attorneys currently spend approximately 15,360 hours per year on termination of parental rights cases. As previously mentioned, a jury trial is expected to require twice as much preparation and trial time. If 128 TPR cases resulted in demands for jury trials, DLS attorneys are estimated to spend an additional 7,680 hours on an annual basis on TPR cases. Given current DLS caseloads, the present staff of DLS is insufficient to handle the additional hours. Assuming the typical DLS attorney's available work hours are 1,846 hours per year (40 hrs per week times 52 weeks per year, minus 120 hours for authorized annual leave, minus 10 hours per year for sick time, minus 104 hours for paid state holidays), DLS anticipates that DLS will need a minimum of 4 FTE attorneys (at \$37,560 per year) with support staff (at \$26,004 per year) to comply with the statute. If the bill passes and the additional FTE are not provided DLS anticipates that the State of Missouri and DSS/CD will not be able to comply with the requirements of 211.447 RSMo and 42 C.F.R. §1356.21(I), thereby jeopardizing federal financial participation in DSS adoption and foster care programs.

Juvenile courts are well versed in topics that commonly arise during a termination proceeding (bonding assessments, play therapy, drug abuse, psychological problems, and the various disorders that frequently plague abused and neglected children). In a typical TPR case, the trial judge in the underlying juvenile case is the same judge who handles the TPR trial. That judge is already familiar with the evidence, which was adduced in the original hearing. In contrast, juries will not have any prior information in the case. They will not have any information regarding the reasons that the child(ren) were brought into care. In order to remedy this deficiency, TPR trials will have to be longer so that evidence which was already adduced will have to be adduced again to the jury. Children who are the victim of significant childhood trauma, including serious child physical and sexual abuse at the hands of their parents, will have to testify again in many cases as to the abuse/neglect to explain to the jury what happened to them. This will be very traumatic to

ASSUMPTION (continued)

many children and may traumatize them again. This will result in a significant increase in the time it will take to try TPR cases. In addition, juries will have to be educated about the details of the permanency planning process. These issues will require additional time and evidence. A jury trial frequently produces more grounds for appeal than a bench trial, causing further delay in a permanent placement for the children in Division custody and further increasing the costs of litigation.

**Oversight** has adjusted the Department of Social Services – Division of Legal Services costs for FY 2011 to 6 months to reflect the January 1, 2011, date when a parent may request a trial by a jury.

Officials from **Jackson County** assume the proposal will dramatically increase costs to the counties. Jackson County's juvenile court facility is located several miles away from the two courthouses where jurors report for service. There will be transportation costs. Even if jurors were to report directly to the juvenile court facility, there are no jury deliberation rooms in that facility. Thus, the trials will probably have to be set in courthouses already strained with caseloads. Juveniles who may be in custody or in safe havens may have to be brought to the trials at county expense and increase the burden on courthouse security. Officials estimate the cost to Jackson County to be \$3,000,000.

Officials from the **St. Louis County Circuit Court** assume the proposal would result in increased costs:

- \$160,230 (jury trial costs for 30 trials per year averaging 4 days of trial @ \$1,335 per average day of trial)
- \$190,000 (annual salary and benefits for two court attorneys necessary to prosecute cases)
- \$90,000 (annual contractual cost for five additional guardians ad litem)
- \$48,000 (annual salary and benefits for termination of parental rights case coordinator)
- \$48,000 (annual salary and benefits for one additional Child Protective Services deputy juvenile officer)
- + (additional personnel costs for local Children's Division)

Officials estimate the Total Annual Costs to be in excess of \$536,230.

**Oversight** assumes counties would incur increased expenses as a result of the proposal. For fiscal note purposes, Oversight has reflected this cost to be More than \$100,000 per year.

ASSUMPTION (continued)

**Officials from Various Missouri Counties did not respond to Oversight’s request for fiscal impact.**

<u>FISCAL IMPACT - State Government</u>	FY 2011 (6 Mo.)	FY 2012	FY 2013
<b>GENERAL REVENUE FUND</b>			
<u>Costs – Office of State Courts Administrator</u>			
County reimbursement for jury compensation	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs – Department Social Services – Children’s Division</u>			
Program Costs	(\$414,032)	(\$828,063)	(\$828,063)
<u>Costs – Department of Social Services – Division of Legal Services (DSS/DLS)</u>			
Personal Service	(\$65,896)	(\$135,745)	(\$139,818)
Fringe Benefits	(\$32,045)	(\$66,013)	(\$67,993)
Equipment and Expense	<u>(\$28,649)</u>	<u>(\$28,392)</u>	<u>(\$29,243)</u>
<u>Total Costs – DSS/DLS</u>	<u>(\$126,590)</u>	<u>(\$230,150)</u>	<u>(\$237,054)</u>
FTE Change - DSS/DLS	3.63 FTE	3.63 FTE	3.63 FTE
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
	<b><u>(Less than \$640,622)</u></b>	<b><u>(Less than \$1,158,213)</u></b>	<b><u>(Less than \$1,165,117)</u></b>
Estimated Net FTE Change for General Revenue Fund	3.63 FTE	3.63 FTE	3.63 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2011 (6 Mo.)	FY 2012	FY 2013
<b>FEDERAL FUNDS</b>			
<u>Income</u> – Department of Social Services			
Federal Assistance	\$204,036	\$399,380	\$401,986
<u>Costs</u> – Department Social Services – Children’s Division			
Program Costs	(\$156,260)	(\$312,519)	(\$312,519)
<u>Costs</u> – Department of Social Services – Division of Legal Services (DSS/DLS)			
Personal Service	(\$24,870)	(\$51,232)	(\$52,769)
Fringe Benefits	(\$12,094)	(\$24,914)	(\$25,661)
Equipment and Expense	<u>(\$10,812)</u>	<u>(\$10,715)</u>	<u>(\$11,037)</u>
<u>Total Costs</u> – DSS/DLS	<u>(\$47,776)</u>	<u>(\$86,861)</u>	<u>(\$89,467)</u>
FTE Change – DSS/DLS	1.37 FTE	1.37 FTE	1.37 FTE
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimated Net FTE Change for Federal Funds	1.37 FTE	1.37 FTE	1.37 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2011 (6 Mo.)	FY 2012	FY 2013
<b>LOCAL GOVERNMENT</b>			
<u>Revenues</u> – Counties			
State reimbursement for jury compensation	Less than \$100,000	Less than \$100,000	Less than \$100,000
<u>Costs</u> – Counties			
Jury trial costs	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENT</b>	<b><u>(More than \$100,000)</u></b>	<b><u>(More than \$100,000)</u></b>	<b><u>(More than \$100,000)</u></b>

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, 2011, a parent may request by written demand to the juvenile court a jury trial for proceedings regarding involuntary termination of parental rights. A request for a jury trial shall be no later than 45 days following service of summons on the parent or guardian subject to the termination hearing. Failure to file the jury trial request within the 45-day period shall constitute a waiver of such right, unless a subsequent request is joined in by all parties.

By November 1, 2010, 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 State Courts Administrator  
Department of Health and Senior Services  
Department of Social Services  
Jackson County  
St. Louis County Circuit Court

**NOT RESPONDING**

**Various Missouri Counties**



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