

Fiscal Estimate - 2013 Session

Original Updated Corrected Supplemental

LRB Number 13-1629/1		Introduction Number AB-0151			
Description Right of a parent to have counsel in a proceeding for a child alleged to be in need of protection or services; the power of the juvenile court to appoint counsel in such a proceeding; and elimination of the right to a jury trial in such a proceeding or in a proceeding for termination of parental rights; granting rule-making authority; and making appropriations					
Fiscal Effect					
State:					
<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Increase Existing Appropriations	<input type="checkbox"/> Increase Existing Revenues		
<input type="checkbox"/> Decrease Existing Appropriations	<input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget		
			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
			<input type="checkbox"/> Decrease Costs		
Local:					
<input type="checkbox"/> No Local Government Costs	<input checked="" type="checkbox"/> Indeterminate	5. Types of Local Government Units Affected			
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	<input type="checkbox"/> Towns	<input type="checkbox"/> Village	<input type="checkbox"/> Cities	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input checked="" type="checkbox"/> Counties	<input type="checkbox"/> Others		
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	<input type="checkbox"/> School Districts	<input type="checkbox"/> WTCS Districts		
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory				
Fund Sources Affected		Affected Ch. 20 Appropriations			
<input checked="" type="checkbox"/> GPR	<input type="checkbox"/> FED	<input type="checkbox"/> PRO	<input type="checkbox"/> PRS	<input type="checkbox"/> SEG	<input type="checkbox"/> SEGS 20.550(1)
Agency/Prepared By		Authorized Signature		Date	
SPD/ Adam Plotkin (608) 264-8572		Adam Plotkin (608) 264-8572		4/26/2013	

Fiscal Estimate Narratives

SPD 4/26/2013

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Description Right of a parent to have counsel in a proceeding for a child alleged to be in need of protection or services; the power of the juvenile court to appoint counsel in such a proceeding; and elimination of the right to a jury trial in such a proceeding or in a proceeding for termination of parental rights; granting rule-making authority; and making appropriations					

Assumptions Used in Arriving at Fiscal Estimate

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal and certain commitment proceedings. The SPD plays a significant role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation has the potential to increase SPD costs if it creates a new criminal offense, expands the definition of an existing criminal offense, increases the penalties for an existing offense, or modifies a type of case in which the SPD is authorized to provide representation.

This bill grants a parent of any age the right to counsel in a Child in Need of Protective Services (CHIPS) proceeding, if the child has been taken into custody, thereby permitting such a parent to be represented by the SPD. The bill eliminates the right to request a jury trial in both CHIPS and Termination of Parental Rights (TPR) cases, a provision which will have an adverse impact on the administration of justice in TPR cases but may not have a significant fiscal impact.

The statutory authorization provides for representation of the adult in all stages of a CHIPS proceeding in which the child has been placed in custody (i.e., out of the home). Based on calendar year 2011 data provided by the Director of State Courts, 4,468 CHIPS petitions were filed statewide. The SPD assumes, if authorized to represent both adults and children in CHIPS proceedings, an average of 1.5 appointments per petition. This assumption is based on both limitations to representation in the bill related to placement of the child and that not all parents in each CHIPS proceeding will utilize SPD representation. Based on the State Courts data, an estimated total of 6,702 appointments for both parents and children in CHIPS proceedings could be expected. The SPD provided representation for 1,942 children in calendar year 2011. This results in an estimated annual increase of 4,760 CHIPS appointments. Because of the inherent conflict of interest in providing representation for both the child and the parent in a CHIPS proceeding, half of the appointments would be handled by staff attorneys, half by assigned counsel.

To provide staff attorney representation and adequate funding to pay for transcripts, discovery material and experts in 2,380 CHIPS cases, the SPD estimates an annual cost of \$1,060,822 for 10 staff attorneys in the trial division and 2 staff attorneys in the appellate division based on caseload requirements for budgetary purposes contained in §977.08(5), Stats. and the salary and fringe benefits cost of an attorney. The SPD also estimates costs of \$125,000 per year for transcripts, discovery, and experts requested by staff attorneys related to these cases.

To provide funding to pay for cases assigned to the private bar and adequate funding to pay for transcripts, discovery material and experts in the other 2,380 CHIPS cases, the SPD estimates an annual cost of \$1,904,000 based on the average number of hours, 20, to provide representation in a CHIPS proceeding in select counties which currently provide representation for adults multiplied by the current SPD hourly reimbursement rate to private bar attorneys of \$40. The SPD also estimates costs of \$125,000 per year for transcripts, discovery, and experts requested by private bar attorneys related to these cases.

It is possible, though difficult to quantify, that providing representation for adults in CHIPS proceedings will result in a decrease in the total number of termination of parental rights (TPR) proceedings. As TPR proceedings, on average, cost more to provide representation than CHIPS proceedings, this could result in a savings to the SPD.

Long-Range Fiscal Implications