

Department of Legislative Services
 Maryland General Assembly
 1999 Session

FISCAL NOTE
 Revised

House Bill 148 (Chairman, Judiciary Committee)
 (Departmental - Human Resources)

Judiciary

Child Abuse and Neglect - Administrative Appeal Procedures and Maintenance of Data

This departmental bill alters the administrative appeals process for individuals suspected of child abuse or neglect by eliminating the record review process and replacing it with a two-tiered appeal process. Those for whom a finding of abuse or neglect has been “indicated” are authorized to request a contested case hearing; those for whom a finding has been “unsubstantiated” are authorized to request a conference with a supervisor in the local department of social services (LDSS). A conference allows the individual an opportunity to review the record and request corrections or supplement the record. An individual who is not satisfied with the results of the conference is authorized to request a contested case hearing. The bill takes effect June 1, 1999.

Fiscal Summary

State Effect: Expenditures increase by \$1.2 million (\$0.5 million general funds and \$0.7 million federal funds) in FY 2000. However, the proposed FY 2000 budget includes an increase of \$1.7 million (\$0.8 million general funds and \$0.9 million federal funds) in direct costs for this bill. Future year expenditures decrease initially due to one-time costs in FY 2000 and subsequently increase with inflation. General fund revenues increase by \$3,000 in FY 2000. Future year revenues increase with the number of hearings.

(in dollars)	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
GF Rev.	\$3,000	\$3,100	\$3,200	\$3,300	\$3,400
GF Exp.	507,500	505,500	523,000	541,100	559,900
FF Exp.	672,700	673,900	697,200	721,500	746,600
Net Effect	(\$1,177,200)	(\$1,176,300)	(\$1,217,000)	(\$1,259,300)	(\$1,303,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The criminal penalty provision of this bill is not expected to significantly

affect local finances or operations.

Small Business Effect: The Department of Human Resources (DHR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Fiscal Analysis

Bill Summary: The bill requires local departments of social services to provide appeal procedures for child abuse and neglect findings made prior to the bill's effective date. The bill broadens the scope of persons to whom child abuse or neglect records can be disclosed to include State and local foster care and adoption officials and indicates circumstances under which records are required vs. authorized to be disclosed. It specifies the circumstances under which (1) a "central registry" may contain "identifying information" related to a child abuse or neglect investigation; (2) DHR must remove the name of an individual identified as responsible for abuse or neglect from a central registry; and (3) information in a central registry is prohibited from being used as a sole basis for background information for employment purposes. DHR or local department employees who violate the bill's provisions regarding release of information from a central registry are guilty of a misdemeanor and subject to a fine not exceeding \$500 or imprisonment not exceeding 90 days or both.

Background: This bill addresses recent Court of Appeals decisions regarding the protection of the rights of individuals wrongly accused of child abuse or neglect. The Court of Appeals made the following findings: (1) State law provides individuals a right to a contested case hearing before the individual's name can be entered into a central registry (*C.S. v. Prince George's County Department of Social Services*, 343 Md. 14, 1996); and (2) DHR's Automated Master File (AMF) and Client Information System (CIS) are considered to be a "central registry" (*Montgomery Co. Dept. of Social Services v. L.D.*, 349 Md. 239, 1998).

At the time of the court findings, Department of Human Resources (DHR) regulations allowed only for record reviews (more limited in scope than contested case hearings) to challenge local department findings of indicated or unsubstantiated abuse or neglect. Record reviews were established by Chapter 318 of 1993 and provide for a review of a local department's records but do not allow for the presentation of evidence or testimony by the accused. In a record review, the Office of Administrative Hearings (OAH) determines the accuracy of the record and whether DHR followed procedure according to the law. In a contested case, the person suspected of child abuse or neglect is allowed to testify, to call witnesses, and to cross-examine department staff.

To comply with the court rulings, emergency regulations went into effect on June 16, 1998

to allow individuals suspected of child abuse or neglect to request a contested case hearing in addition to a record review. The emergency regulations expire on April 12, 1999. The department has proposed an extension of the emergency regulations to September 1999. The bill is intended to streamline the hearing procedures by providing for one procedure (contested case hearing) for a finding of indicated and another procedure (conference with a local department of social services) for a finding of unsubstantiated and by eliminating the record review process.

State Revenues: OAH charges a fee of \$15 for a record review and a contested case hearing. Therefore, general fund revenues would increase by \$3,015, which reflects 201 more contested case hearings (851) than the number of record reviews that OAH advises now take place (650). Future year revenues reflect a 3% annual increase in the number of hearings. The criminal penalty provision of this bill is not expected to significantly affect State revenues.

State Expenditures: The proposed fiscal 2000 budget includes an increase of 28 positions and \$1.7 million (\$0.8 million general funds and \$0.9 million federal funds) in direct costs for contested case hearings. Of that amount, \$0.6 million and 17 positions are in DHR and \$1.1 million and 11 positions are in OAH.

However, the Department of Legislative Services (DLS) advises that total expenditures for DHR would increase by an estimated \$0.6 million in fiscal 2000 (\$0.3 million general funds and \$0.3 million federal funds), which accounts for a 90-day start-up delay and includes 14 positions (8 caseworkers, 4 attorneys, 1 supervisor, 1 secretary) for contested case hearings and LDSS conferences. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. DLS' estimate is different than the budgeted amount because it includes certain costs not incorporated in the fiscal 2000 budgeted amount: (1) additional person-hours required for LDSS conferences; and (2) operational costs associated with new positions (\$117,100). The DLS estimate includes three fewer positions because it (1) backs out the current cost of record reviews, which the bill eliminates; and (2) backs out from the estimated number of contested case hearing requests a certain proportion of LDSS conferences which will not result in contested case hearings.

Funding for OAH comes from agencies that have cases appearing before an administrative law judge. The agencies are charged to reimburse the OAH based on the amount of time the agency uses in administrative hearings. The fiscal 2000 OAH budget for these contested case hearings assumes 950 new cases, 24 hours of court and administrative time per case, and a billing rate of \$112 per hour (includes direct and indirect costs). These funds include 11 new positions (10 administrative law judges, 1 docket specialist) to conduct contested case hearings.

However, DLS advises that total expenditures for OAH would be \$0.5 million less than that included in OAH's budget in fiscal 2000 for direct costs because (1) DLS backs out from the estimated number of contested case hearing requests a certain proportion of LDSS conferences which will not result in contested case hearings; and (2) 22 hours of court and administrative time per case rather than 24 hours because, based on recent experience, the actual court time needed for a contested case hearing is four to six hours, rather than eight hours. Thus, the DLS estimate assumes 850 new cases, 22 hours of court and administrative time per case, and a billing rate of \$112 per hour. Further, the proposed fiscal 2000 budget for OAH includes an additional increase of \$0.4 million (on top of the \$1.1 million increase in direct costs) that appears to represent indirect costs that result from the way in which OAH allocates the charges for State agency use of its time in administrative hearings.

In summary, DLS estimates that the bill would result in increased expenditures in fiscal 2000 of \$1.2 million and 23 new positions: 14 positions in DHR (8 caseworkers, 4 attorneys, 1 supervisor, 1 secretary) and 9 positions in OAH (8 administrative law judges, 1 administrator) to conduct contested case hearings and LDSS conferences. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are summarized below:

- 946 findings of indicated or unsubstantiated will be challenged in fiscal 2000;
- 80% (756) are indicated and 20% (190) are unsubstantiated;
- 100% (756) of the indicated will request a contested case hearing;
- 50% (95) of the unsubstantiated will be satisfied with an LDSS conference and 50% (95) will go on to request a contested case hearing;
- 14 hours additional workload per contested case hearing for a caseworker;
- 4 additional caseworkers required to ensure statewide coverage;
- each 6 new caseworkers requires 1 new supervisor and 1 new secretary;
- 16 hours additional workload per contested case hearing for a DHR attorney;
- 22 hours additional workload per contested case hearing for an administrative law judge (ALJ), based on current experience;
- each 6 new ALJs requires 1 new docket specialist and 1 new secretary;
- 6 fewer hours workload per record review for a caseworker;

- 7 fewer hours workload per record review for a DHR attorney;
- 10 fewer hours workload per record review for an ALJ; and
- 6 hours additional workload per LDSS conference.

Salaries and Fringe Benefits	\$985,063
One-Time Equipment Expenses	114,820
Other Operating Expenses	<u>80,283</u>
Total FY 2000 State Expenditures	\$1,180,166

Expenditures could increase by an additional amount to the extent that a substantial number of contested case hearings are requested from inactive cases, i.e., individuals whose names are already listed in a central registry. To date that number has not been significant; of approximately 100 requests, only 40 have been found to be eligible for a hearing.

The criminal penalty provision of this bill is not expected to significantly affect State expenditures.

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) 3% annual increases in the number of hearings/conferences.

Local Expenditures: The criminal penalty provision of this bill is not expected to significantly affect local expenditures.

Information Source(s): Department of Human Resources (Social Services Administration), Office of Administrative Hearings, Department of Legislative Services

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