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FISCAL IMPACT STATEMENT

LS 6440
BILL NUMBER: SB 180

NOTE PREPARED: Jan 12, 2022
BILL AMENDED: Jan 11, 2022

SUBJECT: Juvenile Court Appointed Attorney for Child.

FIRST AUTHOR: Sen. Ford Jon
FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Juvenile Cases:* This bill requires an appointed attorney in certain types of juvenile court cases.
- B. *Juvenile Court:* It requires the juvenile court to appoint the attorney before the first hearing.
- C. *Order to Pay:* It allows the juvenile court to order a parent or guardian to pay for an appointed attorney's fees to the extent that the amount the parent or guardian is ordered to pay will not cause a substantial hardship to the child's family.
- D. *Guardian ad Litem :* It provides that a guardian ad litem (GAL) may not be the child's attorney if the petition for child in need of services (CHINS) alleges abuse or neglect.
- E. *Commission for Court Appointed Attorneys for Children:* It establishes the Commission for Court Appointed Attorneys for Children (CCAAC). It requires the CCAAC to report annually to the Governor, General Assembly, and Supreme Court regarding topics related to provision of counsel for children in juvenile court proceedings.
- F. *Fund:* It establishes the Juvenile Court Appointed Attorneys Fund.
- G. *Sibling Groups:* It provides that a juvenile court shall appoint one attorney for siblings who are the subject of a child in need of services (CHINS) proceeding, juvenile delinquency (JD) proceeding, or proceeding to terminate the parent-child relationship (TPR).

H. *Child's Attorney*: It provides that a child's attorney may sign a petition to terminate the parent-child relationship with regard to the child.

I. *User Fees*: It adds users fees for the appointment of a juvenile court appointed attorney.

Effective Date: July 1, 2022.

Explanation of State Expenditures: (Revised) *Summary* - This estimate will depend on the fund requested, county participation in either commissions, the approved reimbursement amount, and total juvenile caseloads. This bill is estimated to increase state expenditures between \$9.8 M and \$13.3 M annually, beginning in FY 2023.

Cost for Juvenile Court Appointed Attorneys in CHINS, TPR, and Juvenile Delinquency Cases				
Fund:	% of Reimbursement	State Cost:	*County Cost:	**Total Cost:
Public Defense Fund	40%	\$9.8 M	\$14.7 M	\$24.5 M
Juvenile Court Appointed Attorney Fund	50%	\$13.3 M	\$13.3 M	\$26.6 M
*This represents the remaining cost to counties after reimbursement.				
**This represents the total cost to counties without receiving state reimbursement.				

(Revised) *Public Defense Fund*: The bill could increase the number of claims for reimbursement from the Public Defense Fund. The bill could potentially increase state expenditures from the Public Defense Fund by \$9.8 M annually, beginning in FY 2023. The estimate includes reimbursements at 40% for public defenders in commission counties in CHINS and termination of parental rights (TPR) cases. Under current statute (IC 33-40-6-6), if the balance in the Public Defense Fund is not adequate to fully reimburse all certified claims in noncapital cases, the Public Defender Commission shall prorate reimbursement of certified claims in noncapital cases.

(Revised) *Juvenile Court Appointed Attorney Fund*: The bill provides that the CCAAC shall administer the fund. Money in the fund at the end of a fiscal year does not revert back to the state General Fund. Counties may submit a request for reimbursement from the CCAAC on a quarterly basis. The bill provides that counties may request reimbursement for an amount equal to 50% of the county's expenditures for attorney services. To the extent there is money to the fund and requests are made to receive reimbursement from the fund, the bill could increase state expenditures from the Juvenile Court Appointed Attorney Fund. This bill is estimated to increase state expenditures by \$13.3 M annually, beginning in FY 2023.

(Revised) *Juvenile Delinquency*: This bill provides that a child in a juvenile delinquency proceeding, who does not have an attorney and has not waived their right to counsel, the juvenile court shall appoint counsel for the child. If juvenile delinquency cases are reimbursed from the Juvenile Court Appointed Attorney Fund instead of the Public Defense Fund, the bill could increase state expenditures to reimburse for juvenile delinquency cases at a higher rate of reimbursement. However, it could also reduce expenditures from the Public Defense Fund to the extent there are less claims for reimbursement in Public Defense Fund cases.

Under current law, a child charged with a delinquent act is entitled to be represented by legal council. Currently, public defenders represent about 76% of children involved in juvenile delinquency cases in commission counties. Counties may request reimbursement from the Public Defender Commission at 40% in CHINS, TPR, and juvenile delinquency cases. In 2019, according to the Public Defender Commission, counties spent \$7.2 M for public defense services in juvenile delinquency cases.

(Revised) *Commission for Court Appointed Attorneys for Children*: The bill establish the Commission for Court Appointed Attorneys for Children (CCAAC) and the Juvenile Court Appointed Attorney Program. The CCAAC is comprised of 11 members, none of whom may be a law enforcement officer or a court employee. Each member of the CCAAC who is a state employee is entitled to reimbursement for traveling expenses. Each member who is not a state employee is entitled to per diem and reimbursement for travel expenses. These expenses would be paid in accordance with the Indiana Department of Administration procedures and approved by the State Budget Agency. The CCAAC shall hire staff and may enter into contracts for any additional staff support that the CCAAC determines is necessary to implementation. The bill's provisions will increase state expenditures to hire staff to support the CCAAC.

(Revised) *Additional Information - Sibling Groups*: The bill provides that the court shall appoint only one attorney to represent the siblings in a CHINS, TPR, and juvenile delinquency proceedings where siblings are involved. Counties could incur additional travel expenses to the extent siblings are placed in different counties or states.

This estimate does not take into account the following scenarios: number of children who are siblings and in different placements, if there is a conflict of interest between one or more children; or if one of the children are the alleged defendant. It's also important to note that this estimate does not include sibling groups for the purposes of expenditures in juvenile delinquency cases.

(Revised) *Commission for Court Appointed Attorneys for Children*: The bill provides that the CCAAC shall make recommendations to the Indiana Supreme Court concerning standards for juvenile court appointed attorney programs. The CCAAC is required to adopt guidelines and standards juvenile court appointed attorney programs under which the counties will be eligible for reimbursement. It also requires the CCAAC to make an annual report to the Governor, the General Assembly, and the Supreme Court regarding the operation of programs.

Public Defense Fund: Counties are eligible for reimbursement from the Public Defense Fund when they establish a public defender board and adopt a comprehensive plan for indigent defense services. This plan includes applicable rules and procedures for determining eligibility for services; policies and procedures for ordering indigent persons in criminal cases to pay some or all of the costs of defense service; and appointment and compensation, appropriate caseloads, training, and professional development for attorneys.

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) *Summary* - The bill's requirements will significantly increase county costs and caseloads for juvenile court appointed attorney services. It is estimated to increase local expenditures by approximately \$13.3 M to \$26.6 M.

For commission counties, if the new caseload will exceed the current caseload standards, OFMA estimates that counties will potentially need to hire at least 81 to 95 additional public defenders to handle the caseload.

This bill creates a new group of persons who are entitled to legal counsel and potentially eligible for legal counsel services. It provides that the court shall appoint an attorney for every children in a CHINS, TPR, and juvenile delinquency cases. As a result, this will increase the caseload of county public defenders to represent children in CHINS, TPR, and juvenile delinquency cases.

Under current law, a public defender must be appointed to an indigent person at the trial and appellate level for a criminal case, a child charged with a delinquent act case, a parent in a TPR case, and a parent in a juvenile CHINS case.

(Revised) *Additional Information - County Public Defenders:* If a child in a CHINS, juvenile delinquency, or TPR proceeding does not have an attorney and the child has not waived their right to counsel, the juvenile court shall appoint counsel for the child. If a juvenile court appoints a public defender, the bill is estimated to increase local expenditures between \$13.3 M to \$26.6 M annually, beginning in FY 2023. This estimate depends on the amount of reimbursement, the availability of funds, and the remaining cost paid by the county. It will also increase the caseload of county public defenders to represent children in CHINS, TPR, and juvenile delinquency cases.

(Revised) *Caseload Standards:* The bill's requirements will significantly increase the caseload of public defenders. To the extent the new caseload exceeds the current caseload standards, local expenditures will increase to hire additional public defenders.

OFMA assumes the CCAAC will follow the same caseload standards as the Public Defender Commission. Based on the caseload standards for the Commission, the counties will need to hire at least 81 to 95 additional public defenders to remain adequately staffed. If a commission county remain out of compliance with the caseload standards, the county could be ineligible to receive reimbursement for the cost incurred for indigent counsel services.

Explanation of Local Revenues: The court could collect additional attorney fees from a parent or guardian to the extent that the amount the parent or guardian is ordered to pay will not cause a substantial hardship to the child's family. The bill adds a \$100 user fee for the appointment of a court attorney. [In CY 2020, the courts collected \$86,288 from the guardian ad litem user fee. The guardian ad litem user fee is \$100.]

State Agencies Affected: Public Defender Commission, Indiana Department of Administration, State Budget Agency.

Local Agencies Affected: County Public Defenders; Juvenile courts.

Information Sources: Public Defender Commission; Indiana Supreme Court, Trial Court Statistics by County, <https://publicaccess.courts.in.gov/ICOR/>; Children's Bureau, Adoption and Foster Care Analysis and Reporting System (AFCARS), Indiana, <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/indiana.html>; National AFCARS Report, Preliminary FFY 2020 Estimates as of October 4, 2021, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf>; Department of Child Services, Practice Indicator Sibling Placement Report, <https://www.in.gov/dcs/reports-and-statistics/practice-indicator-reports/>.

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