

Fiscal Estimate Narratives

CTS 9/29/2009

LRB Number	09-3345/1	Introduction Number	AB-0421	Estimate Type	Original
Description Indian child welfare					

Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill 421 is a codification into the Wisconsin statutes of the federal Indian Child Welfare Act of 1978 (ICWA). See 25 U.S.C. sec. 1901 et seq.

This bill may result in changes in court practices, even though ICWA currently supersedes state law in cases involving Indian children, because codification may result in greater clarity of the ICWA requirements. There are also areas of procedure on which ICWA is silent, and, to the extent this bill mandates procedures in those areas, there may be changes in current court practices.

Examples of changes in current court practices that are made by AB 421 include the following:

(1) A new requirement in s. 48.028 (4)(a) and s. 938.028 (4)(a) for written notice of subsequent hearings to parents, Indian custodian and the tribes. The required notice for the first hearing is identical to current law. The issue of required notice for subsequent hearings is an area on which ICWA is silent. This new requirement may, in some instances, result in changed court practices.

(2) The bill provides a definition and an order of preference for qualified expert witnesses. There is potential for adjournments of hearings in order to obtain qualified expert witnesses that meet the criteria set forth in the bill. At the same time, there is potential for less litigation and shorter hearings as a result of this clarification.

(3) There is greater clarity in what constitutes active efforts to prevent the breakup of the Indian family. We anticipate that certain court hearings, such as permanency plan hearings and CHIPS dispositional hearings, may be lengthier as a result of having more detailed discussions or testimony regarding active efforts.

(4) In the area of termination of parental rights (TPR) cases, the bill may result in fewer jury trials, and thus save court time and costs. Section 127 of the bill (on page 83) directs that the judge, not a jury, make the determinations related to active efforts and damage to the child, if partial summary judgment was granted.

Changes in court practices are likely to result in more court proceedings in some circuit court cases but may also result in less litigation and fewer court proceedings in other circuit court cases. An accurate estimate of the increased or decreased costs is impossible given the available data and differences in local court practices.

Because the number of cases impacted by this bill is relatively small and because the impact could include increased or decreased costs, it is expected that existing court staff would be able to absorb the fiscal impact of this bill.

Long-Range Fiscal Implications