

Department of Planning and Budget 2008 Fiscal Impact Statement

1. Bill Number HB750

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron Toscano

3. Committee House Courts of Justice

4. Title Parental rights; appeal when terminated

5. Summary/Purpose: This bill provides that a person whose parental rights have been terminated by a juvenile and domestic relations district court would appeal the matter directly to the Court of Appeals, as opposed to appealing the matter to the circuit court. The appeal would still be an appeal of right, but it would be an appeal on the record, with assignments of error, rather than an appeal *de novo*, which is essentially a retrial in circuit court.

6. Fiscal Impact Estimates: Tentative – Projected range of expenditures.

Expenditure Impact: See Item 8

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2008-09	(\$83,000) to \$286,000	N/A	General Fund
2009-10	(\$83,000) to \$286,000	N/A	General Fund
2010-11	(\$83,000) to \$286,000	N/A	General Fund
2011-12	(\$83,000) to \$286,000	N/A	General Fund
2012-13	(\$83,000) to \$286,000	N/A	General Fund
2013-14	(\$83,000) to \$286,000	N/A	General Fund

7. Budget amendment necessary: No.

8. Fiscal implications: According to the Supreme Court of Virginia, there are 1,800 termination cases brought in juvenile and domestic relations district court annually and approximately 20 percent of those cases are appealed to circuit court. While it is not known what percentage of juvenile and domestic relations district court cases would be appealed to the Court of Appeals under this legislation, it is expected that the appellate rate will decline, perhaps precipitously. Given that the predicates for appealing from the trial court of record to the Court of Appeals are quite different from the predicates for appealing from juvenile and domestic relations district court to the circuit court *de novo*, a decrease in the number of cases appealed could occur. Among other tasks, an appeal to the Court of Appeals requires the creation of a record, the identification of alleged error by the trial court, and briefing, while the current *de novo* appeal essentially only requires the noting of the appeal.

Since it is unknown what the new appellate rate will be, the estimates of increased costs are offered as a range.¹ The high point of this range assumes that the appellate rate will decrease by one-quarter (15 percent of the cases in juvenile and domestic relations district court being appealed) and the low point of this range assumes that the appellate rate decreases by three-quarters (5 percent of the cases in juvenile and domestic relations district court being appealed).

There are five notable changes to the manner in which these cases are currently tried which have the potential for some fiscal impact. However, while some of these changes may result in an increased draw upon the resources of the judicial system to adjudicate these cases, other aspects of this legislation will result in decreased costs to the court system or will have no fiscal impact. Any additional fiscal impact to the court system would be met through the Criminal Fund, a \$100 million fund used for a range of expenses associated with court proceedings.

(i) Use of court reporters in juvenile and domestic relations district court. Since the appeal of the termination of parental rights would lie directly from the juvenile and domestic relations district court to the Court of Appeals of Virginia, a court which conducts its deliberations based on a written record, each termination case in juvenile and domestic relations district court will need to be tried in a manner so that a written record could be produced if the case is appealed.

Under this legislation, the expectation is that all hearings for the termination of parental rights in juvenile and domestic relations district court would be recorded, either by a court reporter typically secured through the local Department of Social Services, by the court itself or by other arrangement, though a transcript would only be obtained for cases appealed to the Court of Appeals.

The one aspect of the use of court reporters in juvenile and domestic relations district court which will have an impact on the fiscal responsibility of the court system will be the cost of transcripts for indigent parents who appeal the termination of their parental rights. Since a record of the proceeding is a prerequisite for an appeal to the Court of Appeals, a transcript is the most feasible method to secure that record, and the parental right at stake on appeal has constitutional dimensions, the courts are obligated to provide that transcript for indigent appellants.

As noted above, currently approximately 20 percent of the 1,800 termination cases are appealed from juvenile and domestic relations district court to circuit court. Should the bill become law, it appears extraordinarily unlikely that a higher percentage of cases will be appealed from juvenile and domestic relations district court to the Court of Appeals than are currently appealed from juvenile and domestic relations district court. Rather, the courts believe that a smaller percentage of cases will be appealed from juvenile and domestic relations district court than is currently the case. Therefore, the following estimated fiscal impact assumes an appellate rate ranging from 5 percent to 15 percent.

¹ The court system incurs these costs only for indigent parents and not all respondents in these proceedings are indigent. This is another reason to conclude that these cost projections represent conservative estimates.

Taking into account the various methods by which a transcript would be produced and assuming a typical hearing last three hours, the courts estimate the production of a transcript will average \$750. Therefore, depending upon the appellate rate, one could estimate the range of the fiscal impact to the court system of \$68,000² to \$203,000³ as a result of the increased number of transcripts required.

(ii) Lengthened hearings in juvenile and domestic relations district court. Since the elimination of a de novo appeal to the circuit court in proceedings to terminate parental rights renders the proceedings in juvenile and domestic relations district court as the only trial in these cases, there has been some question whether the proceedings in juvenile and domestic relations district court will become longer and more complex, with a concomitant fiscal impact to judge-time and clerk-time. However, counsel representing Departments of Social Services, judges and guardians ad litem all describe current proceedings in the juvenile and domestic relations district court as full, detailed and not attenuated. Therefore, it is believed that the prospect of lengthier trials in juvenile and domestic relations district court will not represent a likely, significant fiscal impact.

(iii) Preparation of the record on appeal. Currently, the juvenile and domestic relations district court clerk transmits the case papers of an appealed case to the circuit court, but, under the bill, that district clerk would transmit the case to the Court of Appeals, as a prepared record, in a case to be tried on that record. The data the courts have developed to assess necessary staffing levels in district and circuit courts demonstrates that assembling and transmitting these cases to circuit court for a de novo appeal takes virtually the same amount of time as preparing the record for the Court of Appeals. There will be no fiscal impact on juvenile and domestic relations district court clerks for the preparation of the record for appeal.

(iv) Court-appointed attorney/guardian ad litem costs in circuit court saved. Each parent-respondent is entitled to counsel throughout these proceedings and the child is entitled to a guardian ad litem. Since any appeal of termination cases will proceed from the juvenile and domestic relations district court directly to the Court of Appeals, the elimination of these “intermediate” appeals to circuit court saves the cost of the counsel appointed for parents and of the guardians ad litem appointed for the child who is the subject of the case. Counsel for the parent is permitted by statute a maximum of \$120 for the representation in the matter. The courts experience leads them to conclude that guardian ad litem compensation for representation in these cases averages approximately \$445.⁴ For this component the courts do not utilize a range, since they can rely on the historical data and the appellate rate of approximately 20 percent. Therefore, they estimate that elimination of the appeals to circuit court will save \$203,000.⁵

(v) Increased number of cases in the Court of Appeals. Currently, the Court of Appeals hears termination cases as an appeal from circuit court. Historically, there have been approximately 50

² (1800 cases x 5% new appellate rate) x \$750 = \$68,000 (rounded).

³ (1800 cases x 15% new appellate rate) x \$750 = \$203,000 (rounded).

⁴ (3 hours in court @ \$75/hour) + (4 hours out of court @ \$55/hour) = \$445.

⁵ (1,800 cases x 20% prior appellate rate) x (\$120 + \$445).

appeals of this type per year. If the appellate rate declines from 20 percent to 15 percent, the Court of Appeals will receive 220 additional appeals per year from juvenile and domestic relations district court,⁶ whereas if the appellate rate declines from 20 percent to 5 percent, the Court of Appeals will receive 40 additional appeals per year.⁷ The Court of Appeals believes that it can absorb any fiscal impact on judicial workload and clerical workload with current resources. However, there will be a fiscal impact for representation of parents and children before the Court of Appeals for these appeals. The average compensation for representation in the Court of Appeals is \$650, including costs. Since both the child and the parent receive representation, total cost for counsel per appeal would be \$1,300. The courts estimate that this additional representation will result in an additional fiscal impact in the range of \$52,000⁸ to \$286,000.⁹

Summary. Adding the increased cost of transcripts (part (i) above), adding the increased cost of representation at the Court of Appeals (part (v) above), and subtracting the savings realized from the elimination of guardian *ad litem* and counsel costs in circuit court (part (iv) above), the potential fiscal impact to the court system ranges from a savings of \$83,000¹⁰ to an additional fiscal impact to the court system of \$286,000.¹¹

9. Specific agency or political subdivisions affected: Courts. Courts

10. Technical amendment necessary: No.

11. Other comments: Identical to SB394

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Document: G:\FIS 2008\HB750.Doc Reginald Thompson

⁶ (1,800 cases tried below x 15% appellate rate) – 50 current cases = 220 additional appeals.

⁷ (1,800 cases tried below x 5% appellate rate) – 50 current cases = 40 additional appeals.

⁸ 40 additional appeals x \$1,300 = \$52,000.

⁹ 220 additional appeals x \$1,300 = \$286,000.

¹⁰ \$68,000 – 203,000 + \$52,000 = – \$83,000 (savings).

¹¹ \$203,000 – 203,000 + \$ 286,000 = \$286,000.