



## JUDICIAL COUNCIL OF CALIFORNIA

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*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
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*Director, Governmental Affairs*

April 30, 2015

Hon. Ricardo Lara, Chair  
Senate Appropriations Committee  
State Capitol, Room 2206  
Sacramento, California 95814

Subject: SB 253 (Monning), as amended April 22, 2015 – Fiscal Impact Statement

Dear Senator Lara:

SB 253, if enacted, would impose a series of additional duties on the courts having jurisdiction over the administration of psychotropic medications to children adjudged dependents of the court to ensure that the prescriptions are appropriate, and that all entities responsible for the care of the children are aware of the means by which the medications were prescribed, the length of time they have been prescribed, the amounts of medications prescribed, and other information relative to the care of foster youth who receive psychotropic medication.

SB 253, if enacted into law, will result in costs to the trial courts and the judicial branch by adding new responsibilities as described. The four specific new duties to the courts and the judicial branch contained in SB 253 are as follows:

- Updating and creating rules of court and forms to update provisions related to the prescription of psychotropic medications;
- Document management related to informed consent by caregivers (as well as children 14 and older), confirmations required by prescribing physicians, plans for the regular monitoring of children and their medications, and all appropriate lab results,

measurements and tests as required by the bill. In some instances, a written second opinion will also be required, and the documents associated with that will also be part of the document management considerations of SB 253;

- Additional hearings, at least one of which is required in every instance that a new psychotropic medication is authorized, as well as two additional hearings that will be required under certain specified circumstances (one in the possible case of contradictory expert opinions, and the other at the request of the child's parent, legal guardian or attorney in conjunction with the court's determination to approve or deny authorization for psychotropic medication); and
- A written approval or denial for the authorization of psychotropic medication, which will be required in all cases.

#### Fiscal Impacts

SB 253, if signed into law, would require the Judicial Council, on or before July 1, 2016, to adopt rules of court and develop forms to implement the elements contained in SB 253 for the authorization of psychotropic medication to dependent children. Taking into consideration the time of the staff attorneys, court services analysts, administrative support and editor required for the preparation of Rules of Court and Judicial Council forms, we estimate a total of 1,158 hours totaling \$76,616 would be required for these efforts.

The bill also requires a significant amount of information to be prepared and provided to the court for the determination regarding authorization of psychotropic medication. Specifically, any order authorizing the administration of psychotropic medication must include the following:

- 1) Documentation confirming the informed consent of the child's caregiver and the child;
- 2) A comprehensive confirmation by the prescribing physician consistent with the Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care issued by the state;
- 3) A plan for regularly monitoring the child's medication and treatment; and
- 4) All appropriate lab screenings, measurements, or tests that have been completed with accepted medical guidelines no more than 30 days prior to submitting the data to the courts.
- 5) In specified instances, a second independent medical opinion will also be required from a child psychiatrist or a psychopharmacologist. Presumably, among the forms to be created by the Judicial Council will be documents that can be used to satisfy many of the requirements listed here as a reliable means of capturing and recording the information. Based on the assumption that standardized forms would be a practical and reliable means of providing some of the information required by the terms of SB 253 with the court, we estimate approximately 30 minutes of a court clerk's time for receiving and verifying the compliance of the information and ensuring that it is included in the child's court file. At

an average wage of \$56 per hour including benefits, 30 minute of a court clerk's time is \$28.00.

The workload for this anticipated document management is estimated to be required for 23%<sup>1</sup> of the total 63,000<sup>2</sup> children in the foster system in California. That works out to 14,156 youth for whom information must be shared with the courts. At 30 minutes per file, the court cost per month is \$396,368. Over the course of a year, the time required for staff to manage the required information for over 14,000 children is \$4,756,416. This represents revenues that courts currently spend on access to justice, for example self-help centers, counter clerks, clerks to answer telephones, filing clerks, research staff, and other court operations. Diverting this funding from court operations for document management regarding psychotropic medications in juvenile dependency cases would have significant impacts on court operations throughout the state.

If enacted, SB 253 will require hearings in certain circumstances to ensure the proper safeguards have been followed in the administration of psychotropic medication to dependent children. At least one hearing will be required on behalf of each child for whom a medication is authorized, between 45 and 60 days of the authorization as specified. Based on the specific determinations that are required, we estimate a minimum of 20 minutes per review hearing under this section. At an average court cost of \$600 per hour, taking into consideration the time of the judicial officer, court clerks and other staff required for the administration of the dependency caseload, as well as benefits and appropriate OE&E, the cost per hearing would be \$200. Using the calculations above, there would be a minimum of one hearing for each of the 14,156 youth prescribed psychotropic medications at an estimated cost of \$2,831,200. According to the terms of SB 253, such hearing would be required every time authorization was granted for a new psychotropic medication, which means the costs estimated here might increase if additional medications are authorized for any of the dependent children covered by the terms of SB 253. These, too, represent revenues that courts currently spend on access to justice, for example self-help centers, counter clerks, clerks to answer telephones, filing clerks, research staff, and other court operations. Diverting this funding from court operations for document management

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<sup>1</sup> There appear to be four broad categories of children in the foster system. The first three are represented in the Aid to Families with Dependent Children – Foster Care caseload numbers reported by CDSS. These include foster families (FF), foster family agencies (FFA), and group homes (GH). The fourth category includes the remainder of the children in the foster system, presumably receiving CalWorks support rather than AFDC-FC support (also as reported by CDSS). Based on a variety of investigative reports and other information, and in the absence of readily available numbers from CDSS, we have calculated different rates of administration of psychotropic medication to the children in each of the four groups as follows: 16% of FF (3,985 out of 24,919), 25% of FFA (3,342 out of 13,368), 75% of GH (4,141 out of 5,521) and 14% of CalWorks (2,688 out of 19,202) of youth are on one or more psychotropic medications.

<sup>2</sup> According to the California Department of Social Services as of January 2015.

regarding psychotropic medications in juvenile dependency cases would have significant impacts on court operations throughout the state.

There are other hearings that would not be required in the case of every dependent child, but that still present possible costs to the courts. In case the required second independent medical opinion is at odds with the request of the prescribing physician, the court may require an evidentiary hearing to determine whether or not it can authorize the prescription of the psychotropic medication. The Judicial Council cannot anticipate the number of such hearings that might occur, but recognizing that medical testimony, particularly in the arena of psychotropic medication for children, is highly technical, it is probable that such hearings will occur and may require a significant amount of time.

Additional hearings may be required in some portion of the cases as provided for in SB 253 upon the approval or denial by the judicial officer of the administration of psychotropic medication to the child. As in the case of the evidentiary hearing for competing expert testimony, the Judicial Council cannot anticipate the number of such hearings that will be requested by the dependent's parent, legal guardian, or attorney, or upon the court's own motion, but presumably such hearings will be requested and require court resources.

Finally, the court must prepare in writing its approval or denial for the authorization of psychotropic medication for the dependent in every case in which medication is requested. Even if a modest five minutes of time for the judicial officer is required, the costs could be substantial. The time of the judicial officer is \$107 per hour, taking into consideration wages, benefits and appropriate OE&E. At five minutes to prepare the written approval or denial authorization of psychotropic medication for 14,156 dependent children, the cost to the courts would be \$75,735. If the judicial officer requires more time to prepare the written statement of approval or denial, and/or if any of the dependent youth are the subject of more than one request for psychotropic medication, those costs will increase.

For the reasons stated here, the Judicial Council believes that the costs to the judicial branch, and to the trial courts most especially, associated with SB 253 should it be enacted, must be considered in analyzing this legislation. Please note that the information contained in this request does not constitute a position in favor or against the proposed legislation by the Judicial Council of California, and sets forth only the considerations related to the fiscal burdens that would be faced by the branch and branch entities should the bill be enacted into law.

Please contact me if you have questions about the information contained in this letter.

Hon. Ricardo Lara

April 30, 2015

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Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

AL/yc-s

cc: Members, Senate Appropriations Committee  
Hon. William Monning, Member of the Senate  
Ms. Jolie Onodera, Chief Consultant, Senate Appropriations Committee  
Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office  
Ms. Nichole Rapiere, Counsel, Senate Judiciary Committee  
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy  
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor  
Ms. Tiffany Garcia, Budget Analyst, Department of Finance  
Mr. Martin Hoshino, Administrative Director, Judicial Council



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*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

August 14, 2015

Hon. William W. Monning  
Majority Leader  
Member of the Senate  
State Capitol, Room 313  
Sacramento, California 95814

Hon. David S. Chiu  
Member of the Assembly  
State Capitol, Room 2196  
Sacramento, California 95814

Subject: SB 253 (Monning), as amended July 8, 2015 – Support  
Hearing: Assembly Appropriations Committee – August 19, 2015

Dear Senator Monning and Assembly Member Chiu:

The Judicial Council is pleased to support SB 253, which, along with SB 238, updates and alters the way that the use of psychotropic medications in foster children is authorized and monitored by the juvenile court. By improving the quality of information that flows to the courts prior to a judge authorizing the use of psychotropic medications in foster children, SB 253 will help courts and state agencies respond to the problems that have faced the current authorization and oversight system.

The Judicial Council thanks you for the open, active discussions that you, your staff, and the bill's sponsors have held throughout the year, and believes that the amendments taken have

Hon. William W. Monning  
Hon. David S. Chiu  
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improved the bill, and allow the bill to be implemented should it be enacted. The council supports SB 253 because it will improve the quality of information that juvenile court officers will receive, both prior to the use of psychotropic medications and during the follow-up oversight, thereby aiding those judges and subordinate judicial officers in making decisions that are in the best interests of children in foster care.

Note that, as required by the Trial Court Funding Act of 1997, the Judicial Council has prepared a fiscal impact statement based on the current version of the bill; it will come to your office under separate cover. As a result of significant amendments to the bill in the past two months, and utilizing current data pertaining to foster youth, the fiscal impacts, should SB 253 be signed into law, are significantly reduced from the previous fiscal impact statement.

In the end, Judicial Council believes that SB 253 is an appropriate and effective response to the questions raised by the series on the use of psychotropic medications published in the *San Jose Mercury News*. The children that use these medications will benefit from increased judicial oversight, and this oversight is predicated on improving both the means and the quality of the information flowing to judicial officers.

For these reasons, the Judicial Council supports SB 253.

Sincerely,



Alan Herzfeld  
Associate Attorney

ANH/yc-s

cc: Hon. Jim Beall, Member of the Senate, Coauthor  
Hon. Mark Leno, Member of the Senate, Coauthor  
Hon. Mike Gatto, Member of the Assembly, Coauthor  
Mr. Bill Grimm, Senior Attorney, National Center for Youth Law  
Ms. Anna Johnson, Policy Analyst, National Center for Youth Law  
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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August 17, 2015

Hon. Jimmy Gomez, Chair  
Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, California 95814

Subject: SB 253 (Monning), as amended July 8, 2015 – Fiscal Impact Statement  
(Revised from April 30, 2015)  
Hearing: Assembly Appropriations Committee – August 19, 2015

Dear Assembly Member Gomez:

We respectfully present this fiscal analysis for SB 253. While the Judicial Council cannot predict the number of hearings that will be required under the authority of the bill should it be enacted, we believe it is probable that the courts will experience an increase in hearings related to the requests for authorization to prescribe psychotropic medication to foster youth.

The range of costs presented here, representing an increase in hearings for just a single year anticipated by the enactment of SB 253, is \$1.38 million to \$2.44 million in costs to California's trial courts. Due to substantial amendments of the bill since the April fiscal impact analysis as well as updated data from the California Department of Social Services, Children and Family Services Division, the fiscal impacts presented here are substantially reduced.

SB 253, if enacted, adds to the duties of the courts having jurisdiction over the administration of psychotropic medications to children adjudged dependents of the court to ensure that the prescriptions are appropriate, and that all entities responsible for the care of the children are aware of the means by which the medications were prescribed, the length of time they have been



prescribed, the amounts of medications prescribed, and other information relative to the care of foster youth who receive psychotropic medication.

If enacted, SB 253 will increase the workload of, and by extension costs to, the trial courts by adding new responsibilities as described. Specifically, the bill requires a hearing for each dependent youth for whom one or more psychotropic medications are authorized in which the court must determine if there is clear and convincing evidence that administration of the medication is in the best interest of the child based on a determination that the anticipated benefits of the psychotropic medication outweigh the short- and long-term risks associated with the medication, and so long as the court finds that the medication is not being used as punishment, for the convenience of staff, as a substitute for other less invasive treatments, or in quantities that interfere with the child's treatment program. For youth who receive subsequent prescriptions, additional hearings that satisfy the same requirements as those listed here would be required.

For each dependent child, the bill would allow the next scheduled review hearing to serve as the hearing required by the terms of SB 253 so long as that next scheduled review hearing falls within 45 to 60 days after the authorization of a qualifying medication.

The bill also requires a significant amount of information to be prepared, provided to the court, properly and timely filed, and reviewed by the judge for the determination regarding authorization of psychotropic medication. Specifically, any order authorizing the administration of psychotropic medication must include the following:

- 1) Documentation confirming the informed consent of the child's caregiver and the child;
- 2) A comprehensive confirmation by the prescribing physician consistent with the Guidelines for the Use of Psychotropic Medication with Children and Youth in Foster Care issued by the state;
- 3) A plan for regularly monitoring the child's medication and treatment; and
- 4) All appropriate lab screenings, measurements, or tests that have been completed with accepted medical guidelines no more than 30 days prior to submitting the data to the courts.
- 5) In specified instances, a second independent medical opinion will also be required from a child psychiatrist or a psychopharmacologist.

#### Fiscal Impacts

SB 253, if signed into law, would require the Judicial Council, on or before July 1, 2016, to adopt rules of court and develop forms to implement the elements contained in SB 253 for the authorization of psychotropic medication to dependent children. Taking into consideration the time of the staff attorneys, court services analysts, administrative support and editor required for the preparation of Rules of Court and Judicial Council forms, we estimate a total of 1,158 hours totaling \$76,616 would be required for these efforts.

With regard to the document management in preparation for the required hearings, a calculation of the number of youth and an estimated frequency of prescription/administration of psychotropic medications is provided.

*Estimated number of youth receiving psychotropic medication.* The number of youth in California's foster system who are prescribed psychotropic medication is unknown. Statistics provided by the National Center for Youth Law<sup>1</sup> suggest that approximately 8,000 out of the state's nearly 58,000 foster youth (13.8%) are prescribed psychotropic medication at any given time. According to a 2014 investigative journalism series "Drugging Our Kids" by the San Jose Mercury News<sup>2</sup>, the number is closer to 14,500 (25%).

*Estimated time per hearing.* Subsection (e), which would be added to section 369.5 of the Welfare & Institutions Code should SB 253 be enacted, requires a hearing "not later than 60 days after the authorization of a new psychotropic medication is granted or at the next review hearing scheduled for the child, if scheduled no earlier than 45 days after the authorization..." In order for that hearing to take place, a significant amount of court time is required, followed by a review of the required documentation by the judicial officer. One hour of a clerk's time, to verify the required documents are in place, track them down if they are not, and prepare the file, is approximately \$56 including wages, benefits, and appropriate OE&E. One hour of a judge's time to review the documentation and preside over the hearing, also including wages, benefits and OE&E, is estimated at \$107. If we assume that court time to prepare the file, both before and after the hearing, totals one hour, and the time of the judge, which includes reading the file in advance of the hearing as well as the hearing time itself, is one hour, the cost per hearing is at least \$163.

<b>Estimated number of youth</b>	<b>1 hour each clerk and judge</b>	<b>Total per year</b>
8,000	\$163	\$1,304,000
11,250	\$163	\$1,833,750
14,500	\$163	\$2,363,500

The calculations here do not take into consideration those hearings that can be joined with the "next review hearing" that already is scheduled and that meets the requirements of occurring not earlier than 45 days and not later than 60 days after the authorization for a new psychotropic medication. Nor do these calculations include increased time required for psychotropic medication authorizations requiring a second expert opinion as required by the bill when the request for psychotropic medication is for a child five years old or younger, or the request would result in the child being administered three or more psychotropic medications concurrently, or the request is for the concurrent administration of any two drugs from the same class as

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<sup>1</sup> National Center for Youth Law (NCYL) presented figures attributed to the California Department of Health Services of numbers of actual prescriptions filled and paid for by the State of California.

<sup>2</sup> The five-part investigative report can be found here: <http://webspecial.mercurynews.com/druggedkids/?page=pt1>

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specified, or the request is for a dosage that exceeds the amount recommended for children. In such cases, the introduction of expert testimony from a second expert would add significantly to the court's and the judge's time. Nor do the calculations above take into consideration the 12%<sup>3</sup> to 34%<sup>4</sup> of dependent children who are prescribed multiple psychotropic medications, either to be taken concurrently or sequentially, and for whom multiple hearings would be required by the terms of the bill.

For the reasons stated here, the Judicial Council believes that the costs to the trial courts associated with SB 253 should it be enacted must be considered in analyzing this legislation.

Please note that the information contained in this request does not constitute a position in favor or against the proposed legislation by the Judicial Council of California, and sets forth only the considerations related to the fiscal burdens that would be faced by the branch and branch entities should the bill be enacted into law.

Please contact me if you have questions about the information contained in this letter.

Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

AL/yc-s

cc: Members, Assembly Appropriations Committee  
Hon. William Monning, Member of the Senate  
Ms. Jennifer Swenson, Principal Consultant, Assembly Appropriations Committee  
Mr. Allan Cooper, Senior Consultant, Assembly Republican Fiscal Office  
Ms. Daphne Hunt, Consultant, Assembly Human Services Committee  
Ms. Mary Bellamy, Consultant, Assembly Republican Office of Policy  
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor  
Ms. Tiffany Garcia, Budget Analyst, Department of Finance  
Mr. Martin Hoshino, Administrative Director, Judicial Council

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<sup>3</sup> Provided by NCYL.

<sup>4</sup> Estimated by Karen de Sa in the "Drugging Our Kids" series. See <http://webspecial.mercurynews.com/druggedkids/?page=pt1>