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March 13, 2001

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative entitled the "Child and Family Protection Act" (File No. SA2001RF0004). This initiative makes several changes to the juvenile dependency court process. The main provisions of the measure are described below.

Background. Under current law, any minor who meets the definitions of abuse or neglect contained in the Welfare and Institutions Code Section 300 may be declared a dependent of the juvenile court and removed from his or her family. In order to remove a child from his or her family and place the child in foster care, existing law requires that a jurisdictional hearing be held within 15 judicial business days of when the dependency petition is filed. The jurisdictional hearing, used to determine whether abuse or neglect has occurred as stated in the dependency petition, is usually heard by a judge in a session closed to the public.

Changes to Juvenile Dependency Court Process. This measure would make several changes to the juvenile court dependency process. This measure requires that (1) parents be provided with the option of a *jury trial* in place of the jurisdictional *hearing* when a court is determining whether abuse or neglect occurred; (2) dependency jurisdictional hearings/jury trials be opened to the public unless involved parties request otherwise;

(3) higher thresholds for the granting of continuances of jurisdictional hearings/trials be met; and (4) relatives be given preferential consideration in foster care placement decisions. We note that the provisions related to the granting of continuances and relative care givers are largely reflected in current law.

FISCAL EFFECTS

This measure would have fiscal impacts on both courts and foster care.

Courts

Facility Costs. Juries are not currently used in juvenile dependency hearings, and most hearings are closed to the public. Consequently most juvenile court facilities are not designed to accommodate jurors or provide public seating. To the extent that courts must modify or add space for jury waiting and deliberation rooms, parking, and additional seating within the court room, this measure could result in potential unknown costs to the state.

Jury Costs. The cost to the state for juror pay would be based on a rate of \$15 per day for the second and subsequent days of service in most courts and \$15 per each day in others. The total potential cost for juror pay is unknown, and would depend on the number of jury trials that are requested, the number of jurors who are empaneled, and the length of each trial.

Other potential state costs include the preparation and mailing of jury summonses, an administrator to coordinate jury service for dependency hearings, and increases in the number of jurors called in a court system. The cost for these various functions is unknown.

Attorney Costs. Currently, each parent and each child in dependency hearings has the right to an attorney. In most cases these attorneys are court appointed, and any increase in the cost is a responsibility of the state. The time spent on a jury trial could lead to additional attorney costs to the courts. The scope of this potential cost is unknown and would depend on the complexity of the cases and the length of the trials.

Foster Care

Foster Care Costs/Savings. In 1998-99, more than 90 percent of dependency court dispositions resulted in the minor child being removed from the family and placed in foster care. Although the impact of jury trials is unknown, the existing high rate of foster care placement suggests that the introduction of jury trials is more likely to reduce, rather than increase, the number of children entering foster care. To the extent that the

jury trial option reduces the number of children entering foster care, there are potentially significant savings to federal, state, and local governments. However, we note that such savings could be partially offset by costs associated with children remaining in temporary foster care longer pending the outcome of a jury trial, as such trials tend to be lengthier in comparison to judicial hearings, present more evidence, and often result in more motions for continuance.

Potential Loss of Federal Funding. With regard to confidentiality, California could temporarily lose significant federal funding of the Foster Care and Child Welfare Programs, if juvenile jurisdictional hearings/trials are opened to the public in a manner inconsistent with federal law. We note that this measure allows for a legislative amendment to avoid this potential loss of funding.

SUMMARY OF FISCAL EFFECTS

We estimate that the measure would have the following fiscal effects:

- Potential unknown state costs related to court activities for juvenile dependency jury trials.
- Potential unknown foster care costs or savings, depending on how the change to a jury trial system alters foster care placement outcomes. Given the current high rate of decisions resulting in foster care placement, significant savings are somewhat more likely to occur than costs.
- The net fiscal impact of these changes is unknown.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance