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[FY 2014 Appropriations - Budget Charts](#)

Both the House and Senate Appropriations Committees have approved their versions of the FY 2014 Commerce, Justice, Science (CJS) bill. It is a status quo budget with the Senate being more generous than the House but not in all cases ([see attached funding chart](#)). Juvenile justice programs continue to feel the budgetary pain as they have faced dramatic funding cuts over the past several years. For example, total funding for Juvenile Justice Programs has been cut almost 50% since 2002. Drug Courts will see an increase as both the House and the Senate award it \$41 and \$40 million respectively. The Bryne JAG program appears to receive an increase in the House at \$465 million, but they actually direct \$75 million of this amount for a school safety earmark. Programs that are due to receive an increase are the Criminal Records Upgrade (NCHIP) and NICS (National Instant Criminal Background System) Improvement Act. NCHIP gets \$50 million (vs. \$6 million in FY 2013) in the Senate. NICS gets \$55 million (vs. \$12 million in FY 2013) in the House. Both NCHIP and NICS focus on improving the national background screening system for gun purchases, which have received attention recently. The State Justice Institute (SJI) looks maintain its recent funding amounts. For SJI, the House recommends \$4.79 million and the Senate recommends \$5.121 million. A next step for both House and Senate CJS bills is floor action. It is worth noting that final FY 2014 appropriated amounts may be subject to an across the board cut due to sequestration. Last year's sequestration cut was around 5% of final appropriated amounts. With the Congress not yet finished with the 2014 appropriations process, the possibility of a government shutdown does exist. The House recently passed a Continuing Resolution (CR) to keep the government running past the September 30, 2013 deadline; however, they added a provision to defund the Affordable Care Act. The Senate is not prepared to go along with this provision in their CR. (José Dimas, jdimas@ncsc.org)

[ICE Moves Ahead and Issues a Parental Interest Directive](#)

Not waiting for Congress to enact the immigration reform legislation, the U.S. Immigration and Customs Enforcement (ICE) has moved ahead and issued a directive that implements some of the policies included in the Senate's immigration reform legislation, [Border Security, Economic Opportunity and Immigration Modernization Act of 2013 \(S. 744\)](#).

The Directive, *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities*, was issued on August 23, 2013 and became effective the same date.

The Directive has implications for family court and child welfare proceedings, which are defined in the Directive as a "proceeding in which a family or dependency court or child welfare agency adjudicates or enforces the rights of parents or minor children through the determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or other legal obligations in the context of parental rights."

The Directive is applicable to alien parents or legal guardians who: (1) are the primary caretakers of minor children regardless of the children's citizenship, (2) who have a direct interest in a family court or child welfare proceeding, and (3) whose minor children are U.S. citizens or lawful permanent residents.

The stated policy is that "ICE personnel should ensure that the agency's immigration enforcement activities do not unnecessarily disrupt the parental rights of both alien parents and legal guardians of minor children."

The Directive includes requirements for ICE to:

- Designate a person in each field office to serve as the point of contact on all issues related to parental rights in that given area;
- Hold detained parents or legal guardians in detention facilities that are reasonably close to where their children are living and to the location of the family court or child welfare proceedings whenever possible;
- Facilitate the ability of detained parents or legal guardians to participate in family court and child welfare proceedings that affect their parental rights, if a parent provides evidence of a hearing and facilitation of their participation does not pose an undue logistical burden to ICE or raise safety or security concerns;
- Facilitate the ability of detained parents or legal guardians to participate in family court and child welfare proceedings through video or teleconferencing when in-person participation is not possible;
- Facilitate visits between detained parents or legal guardians and their children when a parent or guardian can demonstrate that such visits are required as a precondition for family reunification;
- Accommodate, to the extent practicable, the efforts of detained parents or legal guardians with final orders of removal to make arrangements for their children, such as, joining them in their country of removal or arranging for a guardian so their children may remain in the U.S.;
- Provide detained parents or legal guardians, or their legal counsel or other representatives with sufficient notice of deportation, when such notice does not raise a security concern, so that travel arrangements may be made for the children of the detained parents or legal guardians;
- Coordinate, to the extent practicable, the access of detained parents or legal guardians to legal counsel, consulates and consular officials, courts, and family members in the weeks prior to deportation, in order to execute signed documents, including powers of attorney, guardianship agreements, passport applications, and the purchase airline tickets; and
- Consider, on a case-by-case basis, facilitating the temporary return of detained parents or legal guardians to participate in a hearing related to termination of their parental rights or legal guardianship rights if the family court has determined that their physical presence at the hearing is required. (*Kay Farley*, kfarley@ncsc.org)

[Child Welfare Provisions in the Immigration Reform Legislation](#)

The bipartisan [Border Security, Economic Opportunity and Immigration Modernization Act of 2013 \(S. 744\)](#), approved by the Senate in June, legislation includes several provisions that will allow for new protections for children and families. The measure would require the Immigration and Customs Enforcement (ICE) to have policies in place to ensure that detained or removed parents can make decisions about their child's care, including: (1) allowing parents to make calls to arrange for the care of their children and ensure that detained parents can call or visit with their children, (2) ensuring that parents are able to participate in family court proceedings affecting their children, and (3) ensuring that parents are able to make arrangements for their children prior to a parent's removal. ICE would also be required to consider the best interest of children in decisions regarding a parent's detention, release, or

transfer and to provide training for ICE and detention facility personnel on best practices to minimize the detrimental impact of immigration enforcement on children. Additionally, the measure would provide states with the authority to consider a parent's detention or removal as a compelling reason to delay filing for termination of parental rights (TPR) and require state child welfare agencies to meet certain conditions before filing for TPR in such cases. Further, the bill includes provisions to ensure that children are placed with relatives whenever appropriate, regardless of immigration status and that parents are provided assistance in making arrangements for their child prior to a parent's removal.

Attention is now on the House of Representatives. The speculation is that the House will consider immigration bills in October. Several immigration reform bills have been introduced in the House, but none include similar provisions to-date. (*Kay Farley, kfarley@ncsc.org*)

[Resource for Processing Income Withholding Orders](#)

Some courts are experiencing the return of Income Withholding Orders (IWOs) by employers as the orders are not on the OMB-approved IWO form, or the support payments are not directed to the State Distribution Unit. The Office of Child Support Enforcement (OCSE) has developed a bench card, [Income Withholding for Support and the State Disbursement Unit](#), that provides an overview of the federal requirements and may be a good resource for training.

As previously reported in the Washington Update, the revised Income Withholding for Support order/notice and instructions clarified the requirements and established a new process for employers implementing child support income withholding orders. There were two requirements concerning child support orders that have a significant impact on state courts.

The first requirement is the mandatory use of the [Office of Management and Budget \(OMB\) approved Income Withholding for Support \(IWO\) order/notice](#) when issuing an income withholding order. Effective May 31, 2012, employers are to return IWOs that are not on the OMB-approved IWO form to the court or administrative agency that issued the order. The second requirement affecting state courts is that all income withholding orders must direct payment to the State Disbursement Unit, including orders for private Non-IV-D cases. (*Kay Farley, kfarley@ncsc.org*)

[House Judiciary Committee Creates Bipartisan Task Force on Over-Criminalization](#)

The House Judiciary committee voted unanimously on May 7, 2013 to create a bipartisan task force on over-criminalization to assess current federal criminal statutes and make recommendations for improvements. The task force which has been authorized for six-months (which may be extended), will conduct hearings and investigations and may issue a report on over-criminalization in the federal code. The task force is led by Crime, Terrorism, Homeland Security, and Investigations Subcommittee Chairman Jim Sensenbrenner (R-WI) and Ranking Member Bobby Scott (D-VA). Members of the task force include Reps. Spencer Bachus (R-AL), Louie Gohmert (R-TX), Raul Labrador (R-ID), George Holding (R-NC), Jerrold Nadler (D-NY), Steve Cohen (D-TN), Karen Bass (D-CA), and Hakeem Jeffries (D-NY). Ex-officio members of the task force include House Judiciary Committee Chairman Bob Goodlatte (R-VA) and Ranking Member John Conyers (D-MI).

Upon the creation of the task force, Chairman Goodlatte released a statement expressing concern about "the number of Americans who have found themselves breaking the law with no intent on doing so. We need to take a closer look at our laws and regulations to make sure that they protect freedom, work efficiently and fairly as possible, and do not duplicate state laws."

The initial Task Force hearing on June 14, 2013 focused on "Defining the Problem and Scope of Over-Criminalization and Over-Federalization" and included witnesses from the American Bar Association, the National Association of Criminal Defense Lawyers, the Heritage Foundation, and Morgan, Lewis and Bockius. Some recurring themes voiced by the witnesses included:

- The erosion of the mens rea (or criminal intent) requirement in federal criminal law,
- The often unnecessary duplication of state law in the federal code,
- The growth in the number of federal crimes which is approximately 4,500 in

- regulatory offenses, and
- The resulting over-incarceration.

Some reforms suggested to address these issues presented by the witnesses were: enacting legislation that would apply a meaningful criminal intent requirement by default to laws lacking such a requirement, examining the funding inequities between prosecutorial budgets and indigent defense funding, and assessing the impact of criminalization systematically.

Other hearings will be held by the Task Force including one later in July, 2013 on Mens Rea: The Need for a Meaningful Intent Requirement in Federal Criminal Law. (*Sheryl Washington*, swashington@ncsc.org)

[Commission to Eliminate Child Abuse and Neglect Fatalities](#)

Final appointments to the Commission to Eliminate Child Abuse and Neglect Fatalities were announced on September 6, 2013. The Commission was authorized by the 112th Congress to study child fatalities as a result of child abuse and neglect. The Act, [Protect Our Kids Act of 2012 \(P.L. 112-275\)](#), called for the appointment of a 12 member commission with 6 members to be appointed by Congress and 6 members to be appointed by the President. The 12 appointees are as follows:

- Ms. Amy Ayoub, President of Moving People to Action;
- Dr. Cassie Statuto Bevan, lecturer at the Graduate School of Social Policy and Practice at the University of Pennsylvania;
- Ms. Theresa Martha Covington, Director of the National Center for the Review and Prevention of Child Deaths;
- Hon. Bud Cramer, former U. S. Representative from Alabama and founder of the National Children's Advocacy Center;
- Dr. Wade Horn, Director with Deloitte Consulting and former commissioner for Children, Youth and Families within the U.S. Department of Health and Human Services;
- Hon. Patricia M. Martin, Presiding Judge of the Child Protection Division, Circuit Court of Cook County, Illinois;
- Mr. Michael R. Petit, President and Founder of Every Child Matters Education Fund,
- Ms. Jennifer Rodriguez, Executive Director of the Youth Law Center (YLC);
- Ms. Susan N. Dreyfus, President and CEO of the Alliance for Children and Families;
- Dr. David Rubin, Attending Pediatrician at the Perelman School of Medicine at the University of Pennsylvania;
- Dr. David Sanders, Executive Vice President of Casey Family Programs; and
- Ms. Marilyn Bruguier Zimmerman, Director of the National Native Children's Trauma Center.

Under the Act, the first meeting of the commission is to take place scheduled within 60 days after the appointment of the commission members.

The commission is charged with issuing a report within two years after establishment. The report is to include:

1. recommendations to reduce child fatalities resulting from abuse and neglect for federal, state, and local agencies, the private sector and nonprofit organizations;
2. recommendations to implement a comprehensive national strategy; and
3. guidelines for the type of information that should be tracked to improve interventions to prevent fatalities from child abuse and neglect. (*Kay Farley*, kfarley@ncsc.org)

Your Feedback Is Welcome

The Government Relations Office staff would be pleased to receive our readers' feedback, questions, or commentary regarding the content of articles appearing each month in the Washington Update. With

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