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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/15

SPONSOR Espinoza **LAST UPDATED** _____ **HB** 51

SHORT TITLE Child Removal & Placement Preferences **SB** _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$76.4	\$917.1	\$917.1	\$1,910.6	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 51 establishes a definition of “relative”; requires the Children, Youth and Families Department (CYFD) to notify a relative when the agency will be filing for custody of a child under Families in need of court ordered services (FINCOS) or the Abuse and Neglect Act; and requires CYFD to give placement preference to relatives that meet all child protection standards.

FISCAL IMPLICATIONS

There is no appropriation contained within this bill.

The CYFD reported that if the agency is required to place children in non-licensed homes, CYFD will not be able to request Title IV-E reimbursement for those children resulting in a loss of federal funds for foster care. Additionally, the agency stated that even a minor number of non-licensed placements may result in a significant decrease of federal dollars and require that CYFD reimburse non-licensed relatives out of the CYFD general fund.

Currently, CYFD has \$45 million budgeted in FY15 for care and support including \$19.5 million in general fund, \$23.6 million in federal funds and \$1.8 million is other revenues.

The maintenance rates for foster families are paid on levels based on the child's needs. These rates vary by level and age. For example, CYFD pays on three levels broken down by the age of the child. Levels 1, 2, and 3 with age distribution of 0 to 5, 6 to 12 and 13 or older. Level 1 payments range from \$331.00/month to \$617.00/month; level 2 payments range from \$737.00/month to \$795.00/month; level 3 ranges from \$331.00/month to \$621.00/month. This bill proposes to pay a relative that is not a license foster care provider 75 percent of the current rate of a licensed foster care provider. The estimated cost range for level 1 is \$248.00/month to \$463.00/month; level 2 estimated cost range is \$553.00/month to \$596.00/month; and the estimated cost range for level 3 is \$248.00/month to \$466.00/month. Based on 181 children in care per month and assuming these children have relatives in the state, the level 1 payments to relatives range from \$44,933.00/month to \$83,758.00/month; level 2 payments to relatives range from \$100,048.00/month to \$107,921.00/month; and level 3 payment to relatives range from \$44,933.00/month to \$84,301.00/month. This estimation takes the monthly average of children in custody multiplied by the levels of care.

The Administrative Office of the Courts (AOC) states the bill does not seem to account for the possible fiscal ramifications to federal funding for CYFD from placement into a home that may not be licensed. Federal funding could be jeopardized by placement of children without compliance with federal standards.

SIGNIFICANT ISSUES

CYFD analysis indicated this bill may be problematic in that it attempts to alter CYFD's discretion in making placement of children who come into state custody. In New Mexico, "legal custody" includes the "right to determine where and with whom a child shall live." (32A-1-4(O) NMSA 1978. Along with this discretion, comes the responsibility to make sound decisions, and the liability. Under state law, the court can intervene when the department abuses its discretion. According to CYFD, by proposing that "may" be changed to "shall," intrudes into this sensitive area, and seeks to take placement out of the hands of the department. This would be in conflict with the concept of "legal custody," and would often lead to efforts to micromanage this issue in the courtroom according to the agency. In addition, these initial decisions are often made immediately after a law enforcement hold, when no court is yet involved, and the proposed change may not realistically address the exigencies of these situations; for instance, there would be no court to which the "relative" could submit a statement that "the relative will not return the child to dangerous surroundings." Similarly, there would not necessarily be a way of knowing at the inception of a case exactly what the best interest of a child would be, the child having just emerged from a complex and difficult situation. CYFD stated that the agency already gives preference to relatives whenever feasible.

However, this bill does recognize the centrality of foster home licensing standards, but goes on to articulate standards that are not fully in accord with both federal and current CYFD licensing standards. Thus, this bill has the potential of mandating a placement that would conflict with these aforementioned standards, and would possibly jeopardize federal support for the placement.

The AOC reported, under the directive of the Children's Court Improvement Commission, a group of stakeholders have been collaborating on drafting and recommending proposed language and changes to the Children's Code. The workgroup is comprised of representatives from CYFD,

the AOC, Children’s Court judges, Tribal judges, contract attorneys, and other community stakeholders. The committee came to consensus on a slate of amendments to the Code that will be filed this legislative session. This bill is not a product of this collaborative process.

However, the group did reach consensus on two Articles, Article 1 and Article 4. Article 3B was not reviewed by the committee. Additionally, the AOC reported Article 3B in its current iteration is so rarely filed in the courts that it is not even an available case type in the Odyssey case management system.

The group reached consensus on amendments to only two Articles, Article 1 and Article 4. Article 3B was not reviewed by the committee. As a practical matter, Article 3B in its current iteration is rarely filed in the courts.

According to the AOC, Section 1 is an area where there is agreement with the consensus bill. However, the consensus bill contains 12 additional changes to definitions within Section 32A-1-4. Additionally, Section 2 and the consensus bill both address improved notice to relatives. However, this bill does not define or limit the “adult relatives” that require notice, while the consensus bill focuses on grandparents and adult relatives that are identified by the parents. Finally, Section 3 has several issues according to the AOC. Under Subsection B(2) there is no definition for “child protection standards.” Also under subsection B(2), the only automatic disqualifiers are domestic violence and a “true finding of maltreatment.” The licensing standards to qualify as a foster care provider have far more requirements and far more in-depth inquiries. If the bill is meant to allow non-licensed relative foster care, that intent is not clear from the language of this subsection. There is also no definition for a “true finding of maltreatment.” That is only limited to substantiated cases. There are individuals that have numerous unsubstantiated cases that are not appropriate placements.

PERFORMANCE IMPLICATIONS

CYFD has performance measures concerning the care and well-being of children, and the minimization of placements, which may be affected by this bill.

CONFLICTS

CYFD reported this bill impacts and conflicts with CYFD’s placement discretion pursuant to NMSA 32A-1-4(O) which states that when CYFD has legal custody of the child CYFD will determine where and with whom the child shall live. *See also* NMSA 32A-4-25(H)(6) which authorizes the court to make certain orders *if* CYFD has abused its discretion in placement of the child. *See also In the Matter of Jacinta M.* 107. NM 769, 771 which states that the Court exceeded authority by prohibiting CYFD from placing with a particular person.

Additionally, the CYFD states this bill may conflict with the Indian Child Welfare Act (ICWA), section 1902, which states that one of the primary purposes of the ICWA is to ensure the placement of Indian children “*in foster and adoptive homes which will reflect the unique values of Indian culture.*” Legislative history to section 1915, states that the section seeks “*to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society.*” The ICWA defines “*extended family member*” as “*defined by the law or custom of an Indian child’s tribe.*” The term extended family member applies primarily to the selection of appropriate placements for Indian children pursuant to the placement

preferences of the ICWA in section 1915. The ICWA definition of extended family member includes both Indian and non-Indian relatives. Some tribal laws express a preference for extended family members who are members of the tribe. However, CYFD has proposed an amendment to allow the State of New Mexico to comply with the spirit and intent of the ICWA of 1978 as stated in sections 1902, 1915 and 1919 (see amendments).

RELATIONSHIP

This bill is related to Senate Bill 23 in regards to prioritizing relative placement. SB 23 is more direct in its language thus somewhat eliminating CYFD's placement discretion and requiring placement prior to assessment. This bill, HB 51, codifies already existing federal law while still allowing for necessary assessment prior to placement of children.

TECHNICAL ISSUES

Section B(2) has listed only two of the many child protection standards.

Section B(2)(b) has two terms which may need further clarification. The term "true finding of child maltreatment" is unclear to CYFD. Additionally, the agency state, the child maltreatment central registry is not language used in NM and it would be clearer to use a term such as the state's child maltreatment tracking system.

NMAC 8.26.4.7(Y) defines relative as mothers, fathers, brothers, sisters, grandparents, aunts, uncles, nieces, nephews, first cousins, mother-in-laws, father-in-laws, sister-in-laws, and brother-in-laws, as well as fictive kin. NMAC 8.10.8.7(II) defines relative as someone connected to another person by blood or marriage within the fifth degree of consanguinity. NMAC 8.10.8.7(Q) defines fifth degree of consanguinity" as brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, sister-in-law, and brother-in-law, as well as documented godparents.

AMENDMENTS

CYFD proposes these alternative definitions:

- "relative" means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity
- "fictive kin" means a person not related by birth, adoption or marriage with whom the child has an emotionally significant relationship;
- "sibling" means a brother or sister having one or both parents in common by birth or adoption;
- Section 4, (B), Line 10, on page 9 amended to allow a tribe to change placement preferences in accordance with ICWA section 1915(c) by either a state-tribal agreement that defines a specific tribal placement preference, a tribal resolution or a tribe may cite tribal law that specifies a different tribal placement preference.