

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/17

SPONSOR Padilla LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Child Out-of-Home Care Activities and Planning SB 20

ANALYST Klundt

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			Unknown but likely minimal		Recurring	Court Appointed Attorney Fee Fund

(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

Senate bill 20 amends the Children’s Code to establish definitions for caregiver and prudent parent standard, and to define council as the substitute care advisory council; to make provisions for approval of age appropriate activities by caregivers; to detail transition services to be provided to children fourteen and older; to establish requirements for the child’s participation in the development of the child’s transition plan; and to create requirements for CYFD to identify, locate, and conduct homes studies on all grandparents and relatives interested in providing care.

### FISCAL IMPLICATIONS

There is no appropriation contained in this bill and no fiscal impact has been identified for the Children, Youth and Families Department at this time.

The Administrative Office of the Courts (AOC) reported any fiscal implications for the Judiciary will likely be minimal as related to the printing and distribution of the amended statute. There will be likely be a slight increase in court time for permanency hearings for a short period of time

as judges and all stakeholders familiarizing themselves with the new law, but this is not expected to create a measurable fiscal implication. SB 20 will create additional out of court time needed for the child's court-appointed attorney, affecting the Court Appointed Attorney Fee Fund.

## **SIGNIFICANT ISSUES**

The Children, Youth and Families Department (CYFD) reports this bill reflects current agency policy contained in the New Mexico Administrative Code (NMAC) requiring the Protective Services Division (PSD) to make efforts to normalize the lives of children in PSD's custody and to empower caregivers to approve a child's participation in activities, based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of PSD. Foster care providers are not required to obtain advance permission from PSD to apply the reasonable and prudent parent standard to decisions about the care of a child.

The bill also reflects current CYFD policy contained in NMAC for Youth Services: the life skills plan is required for each youth age 14 or older. This written document identifies the activities necessary to support the youth in acquiring the knowledge, skills and abilities to successfully promote self-sufficiency, and prioritizes those life domains in which the youth requires the most assistance and training. The life skills plan is a component within the youth's case plan and presented to the court at each permanency hearing.

The provisions of this bill reflect the Every Student Succeeds Act (ESSA), which became effective December 10, 2016, and requires states to include assurances that foster youth be enrolled or remain in their school of origin, unless there is a determination that it is not in their best interests to do so; and the requirements of the Preventing Sex Trafficking and Strengthening Families Act, updated by the Administration for Children and Families November 2015, and requiring States to meet most of the requirements by September 2016. Finally, amendments previously made to the Children's Code (HB 28, 2016) already require CYFD to identify all relatives within 30 days of the child coming in to custody.

Currently, CYFD reported the agency in collaboration with the Public Education Department (PED) is finalizing procedures to complete the implementation of ESSA. Implementation of the Preventing Sex Trafficking and Strengthening Families Act was accomplished through the amendment of the New Mexico Administrative Code following extensive committee work involving CYFD, NM Child Advocacy Network (NMCAN) and, most importantly, many youth partners.

CYFD also reported, the committee established to ensure that the youth were fully heard with regard to the reasonable and prudent parent standard, among other issues, met several times over the course of many months. Every section of NMAC which related to reasonable and prudent parenting, transition services, and sex trafficking was reviewed; and the youth input was heard, discussed, and, in most cases, incorporated directly into the revised policies. This partnership resulted in amendments to NMAC §§ 8.10.8, 8.10.9, and 8.26.2 which address the issues contained in this bill, and, following discussion among the partners that there could be the need for changes to the law to better suit the needs of youth in foster care, it was ultimately agreed that the NMAC was the most appropriate place to implement the Act because it allows for more flexibility if changes are necessary or requested by the youth to better suit their needs in the implementation of the Act. It is CYFD's understanding that the youth preferred addressing the Act in the NMAC rather than codified in statute. The NMAC amendments made by the youth-

adult partnership thus render this bill unnecessary, particularly as the amendments, based on youth input, go beyond what is included in this bill: the NMAC, for example, includes, at the youths' request, considerations such as the youth bill of rights, spiritual identity, and sexual orientation. The "Application of the Reasonable and Prudent Parent Standard" that resulted from this the youth-adult partnership can be found at NMAC 8.26.2.13

Contrary to CYFD, the Administrative Office of the Courts (AOC) reported in New Mexico young people in the state's custody cannot go to a friend's home or engage in extracurricular activities without requesting special consent from the Department because of extensive state requirements. AOC believes SB 20 gives the caregiver the discretion to make "reasonable and prudent" decisions without requiring prior approval from the Department. By encouraging "thoughtful decision-making," SB 20 provides caregivers with the ability to "promote the healthy development, create safe and affirming homes, and approve participation in critical opportunities such as cultural, social and enrichment activities for those in their care."

### **ADMINISTRATIVE IMPLICATIONS**

CYFD reported the agency is working with PED to implement Every Student Succeeds Act, which requires the local educational and child welfare agencies make efforts to maintain children in their school of origin by providing transportation if necessary. A best interest determination is required by ESSA to ensure the child and the child's team have input in to decisions about school changes. As CYFD is already engaged in this process, the agency reported no additional implications for CYFD.

### **RELATIONSHIP**

This bill reflects current federal and state law, and CYFD policy and procedure. Specifically, this bill conflicts with or is duplicative of many provisions of the NMAC including, but not limited to, the following:

- NMAC 8.26.2.7(MM) defines reasonable and prudent parent standard.
- NMAC 8.26.2.13 addresses application of the reasonable and prudent parent standard.
- NMAC 8.10.8.13 and 8.10.9.16 address the child's case plan including transition planning services.
- NMAC 8.10.8.18 addresses the child's education plans and post-secondary goals.

### **OTHER SUBSTANTIVE ISSUES**

AOC reports this bill requires the CYFD to implement and train caregivers on the use of a "reasonable and prudent parent standard" for the participation of the child in age-appropriate activities in the interest of supporting normalcy for children in foster care. Several states have already enacted statutes that contain a "reasonable and prudent parent" standard and clause addressing liability. The most analogous statutes are California SB 358, 2005; Ohio SB 152, 2013; Florida SB 215, 2013.

AOC also reported, unlike previously introduced legislation, however, (*i.e.* 2015's SB 198), SB 20 does not contain language providing liability immunity for caregivers acting within the scope of the reasonable and prudent parent standard. Without this language, the current liability issues regarding out-of-home activities for children in foster care may remain. All of the states that

have implemented the “reasonable and prudent parent” standard have also implemented accompanying liability language for caregivers.

In New Mexico, approximately 100 youth age out of foster care without permanent families to return to every year. Research shows that involving young people in their own transitions to adulthood “improves their sense of mastery and better prepares them for adulthood.” The AOC believes the amendments proposed by SB 20 would strengthen young people’s rights to participate in their transition and post-secondary educational planning.

SB 20 requires the CYFD to provide additional services to children likely to remain in the foster care system until the age of 18 at earlier periods. SB 20 would require the development of post-secondary educational planning starting at age 14. SB 20 also increases the CYFD’s responsibility to provide educational advocacy and work with schools to identify educational resources. SB 20 also requires the CYFD to provide a transition plan (also known as a discharge plan) a year earlier than currently required. SB 20 strengthens the language that requires the CYFD to develop this plan and provides the child with the ability to select advocates “who are not a foster parent of, or a caseworker for, the child.” SB 20 also requires the CYFD to provide a list of rights and obtain a signed acknowledgment from the child that these rights were provided and explained to the child. All of the amendments to NMSA 1978, Section 32A-4-25.2 and the new Section 5 mirror language found in the SFA.

KK/al