

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

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Lord/Harper</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>02/24/2023</u>
<b>SHORT TITLE</b> <u>CYFD Adult Family Services</u>	<b>BILL NUMBER</b> <u>House Bill 284</u>
	<b>ANALYST</b> <u>Chilton</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD expenses		\$600.0-\$1,200.0	\$600.0-\$1,200.0	\$1,200.0-\$2,400.0	Recurring	General Fund
HSD expenses, state share		\$251.9		\$251.9	Nonrecurring	General Fund
HSD expenses, federal share		\$511.5		\$511.5	Non-recurring	Federal Funds
State Total impact		\$851.9-\$1,451.9	\$600.0-\$1,200.0	\$1,451.9-\$2,051.9	Recurring	General Funds

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Department of Public Safety (DPS)  
Human Services Department (HSD)  
Corrections Department (NMCD)  
Children, Youth and Families Department (CYFD)

## SUMMARY

### Synopsis of House Bill 284

House Bill 284 provides procedures to be followed by CYFD in searching for relatives or fictive kin who may be able and willing to provide homes for children taken into custody by that agency.

The bill repeals Section 32A-4-17.1 NMSA 1978 (entitled Notice to Grandparents and Relatives and is part of article 4 [Child Abuse and Neglect] and part of the Children’s Code.), currently in statute. It replaces that subsection with the language of this bill.

Within 30 days of taking a child into custody, CYFD must search diligently for relatives or fictive kin [in section 32A-4-2 NMSA 1978, “fictive kin” is defined as a person not related by

birth, adoption or marriage with whom a child has an emotionally significant relationship) by taking the following prescribed steps:

- 1) Interviewing the child’s parent;
- 2) Interviewing the child;
- 3) Interviewing relatives residing in New Mexico;
- 4) Interviewing anyone else who might information about relatives or fictive kin;
- 5) Searching available databases at DOH, HSD, the Motor Vehicles Department, the Corrections Department or other agencies that may have related information;
- 6) Taking notice of New Mexico hearings held relative to the child; and
- 7) Using other available methods relative to a given case.

CYFD is to establish a “family finding team” to help with identifying relative and fictive kin, and to make information and help to grandparents and others offering homes to children diverted from foster care.

Information gleaned from the Family Finding Team’s work is to be filed with the relevant children’s court. Unless a prospective relative or fictive kin placement is prevented due to that relative or fictive kin having a record of intrafamilial violence, the team should provide them with the following:

- 1) Information specifying that the child is in custody;
- 2) Explanation that the persons notified may help with placement;
- 3) Description of how to become a foster licensed family home, and services available to those homes; and
- 4) Description of financial assistance available to those homes.

CYFD must continue to search in this manner for at least six months, after which the children’s court may absolve CYFD from further searching.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

There is no appropriation in House Bill 284.

CYFD indicates that it cannot use existing resources to satisfy all of the processes mandated by the bill: “An additional 12 FTE will be the minimum necessary to establish a family-finding team as mandated by this bill (\$50.0/year x 12 FTE = \$600.0/year). Navigator programs already exist to support kinship resource families, but if this bill requires additional programs dedicated solely to kinship resource families, that will require an additional 12 FTE (\$50.0/year x 12 FTE = \$600.0/year). CYFD cannot absorb this fiscal impact with existing resources.”

In its turn, HSD indicates a one-time cost to state government of \$251,900 (matched by federal funds) to construct systems that communicate effectively with CYFD’s family finding team.

## **SIGNIFICANT ISSUES**

CYFD, while assuring the reader of its commitment to and preference for relative and fictive kin

placements, makes the following comments:

CYFD places a high priority on relative placements and connections, and this is reflected in policy and procedure. For example, when a child first comes into care, those efforts must be reviewed by the County Office Manager (COM) and the COM must approve any placement that is not with relatives or fictive kin. The efforts to identify and communicate with relatives, for placement but also to maintain connections for the child, are reviewed in court hearings. CYFD staff work to identify relatives and fictive kin, provide them notice (including information on the process of becoming a foster home), and to provide services and support to relatives serving and fictive kin as resource parents.

There are several issues with codifying this essential work in this way. The language adds standards such as *diligent* search and *exhaustive* efforts without definition or relation to the current standards of reasonable efforts or active efforts. The bill requires a list of efforts that may be unnecessary in many cases (some families are able to provide detailed information about relatives; others require intensive search efforts). The bill requires a reorganization of duties that may not be the most effective way for CYFD to accomplish the critical goals of identifying, notifying, communicating with, and supporting placement and connection with relatives and fictive kin. Finally, by mandating the structure of this work within statute, CYFD is unable to adapt its practices as CYFD's understanding of the most efficient and effective means to locate adult relatives and fictive kin develops and evolves.

The bill as it is written is inconsistent with current practice and will introduce unnecessary inefficiencies into an established system. Over time, the ability of relatives and fictive kin to be a resource for a child can change and it is important to maintain open communication and a willingness to re-assess. These situations must always be assessed on a case-by-case basis in the best interest of the child, which will not be possible within the restrictions of the bill's Section 1(F) ("Within six months from the date an adult relative or fictive kin of the child receives the notice required by this section, if the adult relative or fictive kin fails to demonstrate an interest in and willingness to provide a permanent home for the child, the court may excuse the department from considering the adult relative or fictive kin as a placement.").

Finally, there does not appear to be any language reflecting how these practices and approaches support CYFD engagement with, and input from, tribal partners. It is critical that they have input and that is particularly true on anything impacting relatives, fictive kin, and placement.

HSD states that its ability to create more robust electronic interfaces with CYFD and its "family finding team" may be problematical:

For CYFD to conduct exhaustive searches of databases such as CSED's automated system, Child Support Enforcement (CSES), may be prohibitive. CSED doesn't share access to CSES due to CSED receiving Federal Tax Information ("FTI"). IRS Publication 1075 mandates strict IRS safeguards to be in place for access to FTI contained in the CSES database. These safeguards include secure database/server platform; background check for each employee accessing CSES; initial and annual compliance trainings; a volunteer waiver acknowledge before each use of CSES; establishing a procedure for periodic safeguard inspections; establishment of policies

regarding FTI; to include record keeping and logs. CSES cannot to be accessed in a limited capacity.

However, considering the significant issues stated, CSED may be able to develop a referral process with CYFD to assist in locating relatives and fictive kin for children taken into CYFD custody as CSED must maintain compliance with IRS Pub 1075 and NMAC 8.50.100.13-14.

Gaining permission from the IRS for CYFD to have access to CSES will likely require a waiver or extensive security agreements and requirements.

LAC/al/ne