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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/18/25 *Check all that apply:*
Bill Number: SB 429 Original Correction
 Amendment Substitute

Sponsor: Sen. Linda M. Lopez **Agency Name and Code:** AOC 218
Short Title: Reinstatement of Parental Rights Act **Person Writing:** Alison Pauk
Title: Reinstatement of Parental Rights Act **Phone:** 505-470-6558 **Email:** aocabp@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Related to SB 406, removing the rebuttal presumption of abandonment as a basis to consider termination of parental rights in abuse or neglect cases.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 429 enacts the “Reinstatement of Parental Rights Act,” (RPRA) permitting a petition initiating proceedings pursuant to the Act to be filed by a child, a former parent or CYFD, and setting forth the following:

- (1) that reinstatement is in the best interest of the child;
- (2) that a material change in circumstance exists in which the former parent or parents can now be reasonably expected to provide for the safety and stability of the child;
- (3) that at least twelve months have elapsed since the termination of parental rights order was entered and any appeals have been exhausted. The twelve-month requirement may be waived if: (a) the child will turn eighteen years of age in fewer than twelve months; (b) the department files the petition and alleges that good cause exists; or (c) extraordinary circumstances exist;
- (4) that the child is currently or was previously in the department's custody;
- (5) the name and birth date of the child;
- (6) the date the former parent's or parents' rights were relinquished or terminated;
- (7) that the child has not reached permanency through adoption or permanent guardianship, the adoption or permanent guardianship was granted but not sustained or the adoptive parent or permanent guardian consents to the proceeding;
- (8) that the child is not in an adoptive or other potentially permanent placement that will result in sustained permanency for the child, and a potential permanent placement is not likely to occur within six months from the filing of the petition;
- (9) whether the child is an Indian child; and
- (10) the birth name of the child; any other names by which the child has been known; and, if a name change is requested, the child's proposed name, which could be the child's former name.

SB 429 requires the following documents to be attached to the petition for reinstatement:

- (1) consent to the reinstatement by: (a) the child who is the subject of the reinstatement, if ten years of age or older, except when the court finds that the child does not have the mental capacity to give consent; and (b) the former parent whose rights are proposed to be reinstated; or
- (2) an order terminating a prior adoption or guardianship or consent of the adoptive parent or guardian; and
- (3) a plan for transitioning the child back into the former parent's home within a reasonable period, depending on the facts and circumstances of the case but not to exceed ninety days, or a request for the department to provide transition services and establish a plan to transition the child into the former parent's home.

SB 429 provides that if a child is adopted or in a permanent guardianship and the adoptive parents or guardians of the child do not consent to the reinstatement of parental rights of the

former parent, then the case is not ripe for reinstatement. The Act requires that prior to the filing of a petition for reinstatement, the adoptive parent's rights shall have been relinquished or terminated, or the permanent guardianship shall have been terminated pursuant to the provisions of the Children's Code.

SB 429, Section 6, provides for the appointment of counsel upon the filing of a petition for reinstatement, for both an indigent former parent named in the petition and to represent the child.

SB 429, Section 7, requires the clerk of the court to mail to the Protective Services Division (PSD) of CYFD a copy of the petition for reinstatement, notice of hearing and summons within one working day of the notice of hearing being filed with the court.

SB 429, Section 8, requires the court to hold an initial hearing within 20 days of the filing of a petition for reinstatement of parental rights and to issue a notice of a hearing within one day of the filing of a petition for reinstatement of parental rights. The Act provides that the rules of evidence shall not apply. If, upon completion of an initial hearing, the court finds that there is probable cause to believe that the requirements of the petition have been met and that the best interests of the child may be served by reinstatement of parental rights, the court is required to set a hearing on the merits of the petition to be held within 60 days. If probable cause is not found, the petition may be denied or the court may allow an amendment to the petition, in which case an initial hearing is required to be held within 10 days of filing the amended petition.

SB 429, Section 9, specifies the following requirements for a require hearing on the merits of the petition, upon a finding of probable cause:

- A merits hearing is required to be held no late than 60 days from the initial hearing, provided that upon a finding of extraordinary circumstances, the hearing may be continued for no more than an additional 45 days.
- Prior to a merits hearing, all parties shall attend a mandatory meeting to develop a proposed transition plan, and, upon the request of any party, the court shall order mediation in lieu of or in addition to the mandatory meeting.
- The grounds for reinstatement of parental rights are required to be proved by a preponderance of the evidence and the rules of evidence shall apply.
- The court shall grant a petition for reinstatement if the court finds the following:
 - (1) reinstatement is in the best interest of the child;
 - (2) a material change in circumstance exists in which the former parent or parents can provide for the safety and stability of the child;
 - (3) the date the former parent's rights were terminated was established, what that date was, and that at least twelve months have elapsed since the termination of parental rights order was entered and any appeals have been exhausted. The twelve-month requirement may be waived if: (a) the child will turn eighteen years of age in fewer than twelve months; (b) the department files the petition and alleges good cause exists; or (c) extraordinary circumstances exist;
 - (4) the child is currently or was previously in the department's custody;
 - (5) the child has not reached permanency through adoption or permanent guardianship, the adoption or permanent guardianship was granted but not sustained or the adoptive parent or permanent guardian consents to the proceeding;
 - (6) the child is not in an adoptive or other potentially permanent placement that

will result in permanency for the child, and a potential permanent placement is not likely to occur within six months from the filing of the petition;

(7) the Indian tribe or the Indian custodian received notice of the proceedings if the child is an Indian child;

(8) all required consents have been attained; and

(9) a plan to transition is not necessary to transition the child into the former parent's home.

- At the conclusion of the hearing, the court is required to order one of the following:
 - if all requirements in Subsection E of this section have been met, the petition is granted and the former parent is granted legal and physical custody of the child;
 - if all the requirements in Subsection E of this section except for the requirement in Paragraph (9) of that subsection have been met, the court shall order a plan to transition the child into the former parent's home and any necessary transition services; or
 - the petition is denied.
- When a transition plan is ordered, the plan shall include a transition within 90 days. Legal custody of the child remains with the legal custodian during the transition period.
- At the end of a plan to transition the child back into the child's former parent's home, the court shall:
 - Enter an order granting the petition if all parties are in agreement; or
 - Hold a hearing to determine whether the petition should be granted or denied, or if additional time to transition is necessary, the court may extend the plan to transition the child back into the former parent's home for up to an additional 90 days.

SB 429, Section 10, requires the court, upon granting a petition for reinstatement of parental rights, to enter a final order of reinstatement of parental rights restoring all rights, powers, privileges, immunities, duties and obligation of the parent as to the child. The Act provides that the granting of a petition for reinstatement does not vacate or otherwise affect the validity of the original termination order as to any nonpetitioning parties. A judgement of the court reinstating the parental rights to a parent divests the consenting adoptive parent, the permanent guardian or the department of legal and physical custody or guardianship of the child. SB 429 requires the court to order dismissal of any pending matter relating to the child originating out of the case against the petitioning parent pursuant to the provisions of the Abuse and Neglect Act. The Act provides for a temporary custody and time-sharing order to be entered if the rights of both former parents are reinstated and the parents do not reside together.

SB 429, Section 11, provides that nothing in the RPRA shall supersede CYFD's obligation and ability to investigate allegations of abuse or neglect on a child who is the subject of a petition for reinstatement of parental rights. Under the Act, if a child is removed from the child's former parent's home prior to reinstatement, CYFD is required to file notice with the court.

SB 429, Section 12, provides that a parent whose parental rights are reinstated is not liable for any unpaid child support or the unpaid costs of any services provided to the child from the date of the original order terminating the parental rights to the date of the

order reinstating the parental rights.

SB 429, Section 14, provides that indigent former parents and children are entitled to court-appointed counsel upon appeal.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and required hearings upon the filing of a petition for reinstatement of parental rights and an order for a transition plan, as well as appeals from the granting or denial of petitions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) The National Conference of State Legislatures (NCSL) reports that, as of January 2020, 22 states had legislation in place allowing for the reinstatement of parental rights following termination of parental rights. According to the NCSL, in 13 states, if a permanent placement has not been achieved within a specific timeframe, a petition may be filed with the court requesting reinstatement of the parent's rights. If the court determines that the parent is now able to provide a safe home for the child, the request may be granted. In 10 States, the statutes specify that reinstatement is available only to older children who have not attained a permanent placement. The NCSL notes that the laws were developed in response to children who were aging out of the foster-care system and re-establishing ties with parents and family members. See *Reinstatement of Parental Rights State Statute Summary*, National Conference of State Legislatures, January 2020, <https://www.ncsl.org/human-services/reinstatement-of-parental-rights-state-statute-summary#:~:text=Approximately%2022%20states%20have%20legislation,not%20attained%20a%20permanent%20placement>. (Includes a chart documenting states' reinstatement of parental rights statutes, and listing who may file and court duties and authority and grounds for reinstatement.)
- 2) In June of 2024, the Children's Code Reform Task Force (CCRTF) released its initial report containing a proposed version of the Reinstatement of Parental Rights Act. In the report, the task force explained that the bulk of the work on the Act had been completed by a workgroup of the Children's Court Improvement Commission (CCIC).

In introducing the proposed Act, the task force noted, "Rarely, but occasionally, a young person's best interest would be served by reuniting safely with a parent who has, subsequent to the loss of their parental rights, been able to address the "causes and conditions that brought the child into [state] custody."
- 3) SB 429, Section 9(C) requires a mandatory meeting but does not say who shall lead or direct the meeting, schedule it, or where it will be held.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB 406, removing the rebuttal presumption of abandonment as a basis to consider termination of parental rights in abuse or neglect cases.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

- 1) In Section 9(D), specify who shall schedule and lead the mandatory meeting.