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## FISCAL IMPACT REPORT

SPONSOR: Heaton DATE TYPED: 02/27/01 HB 336/aHCPAC  
 SHORT TITLE: Nomination of Potential Guardian SB \_\_\_\_\_  
 ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 415  
 Relates to SB 185

### SOURCES OF INFORMATION

Children Youth and Families Department  
 Administrative Office of the Courts

### SUMMARY

#### Synopsis of HCPAC Amendment

The Consumer and Public Affairs Committee amends the bill by:

- c Providing that incarceration or extended unavailability is a ground for termination of parental rights “unless the department asserts a compelling reason not to proceed with a motion to terminate parental rights”.
- c Eliminating the provision allowing a parent who is subject to a termination of parental rights action to nominate an individual as an adoptive parent.

This amendment permits CYFD to exercise its discretion to assert a compelling reason why a motion to terminate parental rights should not be filed.

The recommended amendments would enable CYFD to meet its performance measure focusing on children being adopted within 24 months of placement in CYFD’s custody.

#### Synopsis of Original Bill

HB 336 amends the termination of parental rights section of the Children's Code to set the standard for incarcerated parents whose children are involved with CYFD. The standard is if the parent is incarcerated or unavailable for eighteen months or longer. The bill permits a parent in this circumstance to nominate a guardian to care for the child within thirty days of the motion to terminate parental rights.

### Significant Issues

CYFD is introducing legislation to amend the termination of parental rights to conform to the Adoption and Safe Families Act (HB 415). CYFD maintains that this amendment could cause confusion with that proposed legislation because it handles cases that capture the same pool of parents. The CYFD legislation clarifies when a motion to terminate parental rights must be filed when a child is in CYFD custody for 15 out of 22 months. CYFD indicates that incarceration by itself is not a reason to terminate parental rights. In the Matter of Sara R., 122 N.M. 1 (1996). The reasons for termination of parental rights should conform to the federal requirements.

CYFD further notes that the allowance of the biological parent to nominate a guardian for the child could impact any adoptive placement that has been selected for a child. CYFD is charged with the responsibility of finding placements for children in foster care, and those placements could be disrupted through this nomination process. In addition, CYFD is supporting legislation to permit the establishment of a guardian for children who cannot live with their parents and have either a relative or adult care giver who can provide for their welfare (SB 185).

### **FISCAL IMPLICATIONS**

It will cost the judicial system \$400 for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the number of child abuse and neglect cases where the parent is incarcerated or otherwise unavailable for an extended period of time and will not be available to care for the child for 18 months or longer after the court proceeding. New laws, amendments to existing laws, and new hearings all have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **ADMINISTRATIVE IMPLICATIONS**

The Administrative Office of the Courts writes that the legislation will place additional administrative and judicial responsibilities on the district courts, especially if there is an additional court hearing that must be held prior to the hearing on the motion to terminate parental rights. Current law under the Children's Code already allows for the termination of parental rights when a parent is incarcerated or unavailable for substantial lengths of time. Incarceration, by itself, is not a reason to terminate parental rights. The federal Adoption and Safe Families Act and the state Children's Code already require mandatory judicial court hearings and meetings which have all been created to expedite the judicial process for determining permanency for children in these cases with the intent of making decisions that are in the best interest of the child.

A mediation process may be helpful in determining possible guardianship or adoptive placements rather than creating new laws for certain circumstances. Four courts in New Mexico are presently using a mediation program to help address conflicts between family members and/or state agencies in child abuse and neglect proceedings. This same type of process may be helpful if conflicts arise in these type of proceedings. There may not be a need for legislation in order to allow for mediation to be ordered by a court or arranged between the parties.

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This bill will require training separate from the Adoption and Safe Families Act training that is now being provided for CYFD employees in the Protective Services Division.

**CONFLICT/RELATIONSHIP**

Relates to SB185. Conflicts with HB 415.

BD/ar/njw