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FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 02/27/01 HB 455/HJCS
 SHORT TITLE: Prohibit Termination of Parental Rights SB _____
 ANALYST: Dunbar

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY01 | FY02 | FY01 | FY02 | | |
| | | NFI | | | |

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB336
 Relates to HB 415

SOURCES OF INFORMATION

Children Youth and Families Department
 Administrative Office of the Courts

SUMMARY

Synopsis of Bill

The bill amends the Children’s Code to prohibit CYFD from filing a termination of parental rights action solely on the basis of a parent’s incarceration.

Significant Issues

The amendment codifies the current case law on this topic, which provides that incarceration alone is not a reason to terminate parental rights. See: *In the Matter of Sara R.*, 122 N.M. 1 (1996). This bill should not impact the aggravated circumstances section of the Children’s Code, §32A-4-2 C.

CYFD provides the following key points on this legislation:

1. The bill’s change in the statute could be confusing, since case law in New Mexico already holds that incarceration standing alone is not a *per se* basis for Termination of Parental Rights (TPR). If the bill is attempting to codify current case law, it should say that incarceration alone is not a *per se* basis for TPR, but that it is a factor which may be considered in a TPR proceeding.

2. The law which this bill attempts to codify is not just that the Department should not file or join in TPR motions based on incarceration alone, it is that Children's Court may not enter a TPR solely because of the incarceration of a parent.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

HB 455 conflicts with HB336 which sets forth mandatory time frames to file termination of parental cases when a parent is incarcerated.

HB 455 relates to HB 415 which sets forth the reasons for CYFD to delay filing a termination of parental rights action for any child in state custody for fifteen out of twenty two months.

OTHER SUBSTANTIVE ISSUES

CYFD writes that while this bill is not inaccurate, as far as it goes, in stating existing law, it could create some confusion by partially but not fully codifying existing New Mexico law.

CYFD also reports that under existing law, incarceration alone is not a *per se* basis for TPR, but incarceration is a factor which may be considered by the court (along with such factors as the nature of the crime, prior parental neglect, lack of affection shown toward the children, failure to contact them, failure to support them and disregard for their general welfare). Under the existing statute, incarceration can constitute neglect, as defined in § 32A-4-2(E)(4), but that does not mean that it can be the sole basis for TPR. To grant a Motion for TPR, the Children's Court must find other factors as well, as provided in § 32A-4-28, and as has been found repeatedly by the appellate courts in New Mexico. See, most recently, *In the Matter of Ruth Anne E.*, 1999 -NMCA- 35 , 126 N.M. 670, 974 P.2d 164.

CYFD suggests that to correctly codify existing law, the bill should say that the incarceration of a parent may be considered as a factor in a TPR proceeding, but that it may not be the sole basis for TPR.

Another concern expressed by CYFD is that no TPR can be based solely on the fact of incarceration of a parent, no matter who files the Motion for TPR. As written, the bill relates only to the Department filing or joining in motions. There is no reason for this limitation.

AMENDMENTS

CYFD recommends that the bill should say that the incarceration of a parent may be considered as a factor in a TPR proceeding, but it may not be the sole basis for TPR.

BD/ar:njw:pr