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FISCAL IMPACT REPORT

SPONSOR Herrell **ORIGINAL DATE** 02/03/14
LAST UPDATED _____ **HB** 160

SHORT TITLE Kinship Guardian Background Checks **SB** _____

ANALYST Kludt

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 160 enacts a new section of the Kinship Guardianship Act requiring CYFD to conduct a nationwide criminal history records check conducted on a person who seeks appointment as a guardian pursuant to the Kinship Guardianship Act. This bill authorizes CYFD to use the person’s fingerprints to conduct a criminal history records check through the Department of Public Safety (DPS) and the Federal Bureau of Investigations (FBI).

FISCAL IMPLICATIONS

There is no appropriation attached to this bill. The CYFD reports that any fee for processing criminal records will be charged to the person requesting the fingerprints.

SIGNIFICANT ISSUES

The AOC has reported that it is the policy of this State that the best interests of children are served when they are raised by their parents. But when neither parent is able or willing to provide appropriate care, guidance and supervision to a child, State policy provides that,

whenever possible, a child should be raised with family members or kinship caregivers, Section 40-10B-2 NMSA 1978. The law addresses those cases where a parent has left a child in the care of another person for 90 consecutive days and that arrangement leaves the child without appropriate care, guidance or supervision, and in particular, no legal authority for the relative to make decisions to support the physical, mental and emotional health of the child.

Section 40-10B-3 NMSA 1978 defines the term “relative” to mean an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix “grand” or “great” or the spouse or former spouse of persons specified. Other qualifications in the law primarily address the parents or others who may have legal custody of the child, whether any child abuse or neglect issues are involved, and whether the child is subject to the Indian Child Welfare Act. But nothing in the law requires background checks of relative guardians, except when the case involves child abuse or neglect. This also includes persons not related to the child and with whom the child has a significant bond.

In the abuse and neglect cases, CYFD applies rules calling for background checks of relatives, and other adults residing in the home, when the relatives provide foster care or seek to adopt the child or children. CYFD also conducts background checks on facilities having primary custody of children for 20 hours or more per week, juvenile treatment facilities, and direct providers of care for children, including children’s behavioral health services, licensed and registered child care, and shelter care. These background checks routinely include national criminal history records maintained by the FBI and abuse and neglect screens, records maintained by the CYFD Protective Services Division.

This bill would require CYFD to conduct criminal background checks on persons seeking appointment as a kinship guardian, adding another layer of review as a way to more clearly identify persons who may pose a threat of harm, abuse or neglect when providing care for children.

CYFD does not currently regulate Kinship Guardianships. CYFD would need to work with DPS to obtain authority to process these criminal records checks. Additionally, since there is no current oversight of kinship guardianships by CYFD, while CYFD can provide the criminal records to the courts, the agency states that it cannot provide a recommendation about approval or denial for the kinship guardianship, and the determination would be the responsibility of the court.

The DPS states that individuals seeking to obtain kinship guardianship of children are not currently background checked and their criminal history is not checked for appropriate placement of the child, and it is currently unknown how many kinship guardianship cases would be submitted and therefore DPS cannot determine the impact to CYFD for the submission of background checks.

The AGO reports that requiring fingerprinting and background checks for guardians appointed under the Act would provide added safeguards for child welfare in situations where a child is in the care of an adult other than the child’s parent(s) and a guardian has been appointed for that child under the Act. However, it remains unclear whether persons seeking appointment as a guardian under the Act but who oppose submitting to a criminal background check will challenge this requirement under constitutional, public policy or other legal principles.

PERFORMANCE IMPLICATIONS

CYFD has performance measures concerning the safety and permanency of children. It is unclear that those performance measures would be affected by this bill.

AOC reports that 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

CYFD states that that it is not known at this time how many criminal records checks would be submitted and what existing resources would have to be used to process these criminal records which most likely would require an additional .5 FTE.

DPS has reported that the agency is in the process of obtaining FBI approval in order to properly submit fingerprints to the FBI.

The AOC reports that 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 commenced prosecutions. 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.

Additionally, the AGO reported that although challenges to the fingerprinting and background check requirement are not likely to succeed, it would likely fall upon the Attorney General's Office to defend such challenges, which may require additional financial and staff resources should any such challenge materialize.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. Persons seeking appointment as guardians to children under the Act will not be required to submit their fingerprints to CYFD for the purpose of conducting background checks through DPS and the FBI.

AMENDMENTS

The AGO states that the legislature may wish to specify whether a person seeking appointment as a guardian under the Act will be responsible for paying the costs of fingerprinting and conducting a DPS/FBI background check or whether such costs will be borne by CYFD or some other agency/entity.

KK/svb