

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

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** HF1 **ORIGINAL DATE** 03/18/15  
**LAST UPDATED** 03/19/15 **HB** 387/HFIS/aSPAC

**SHORT TITLE** No Parental Rights for Certain Crimes **SB** \_\_\_\_\_

**ANALYST** Klundt/Daly

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		TBD	TBD	TBD		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)

Office of the Attorney General (AGO)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to the House Floor Substitute for House Bill 387 strikes in its entirety both Section 1, which creates a new section of Chapter 40 NMSA 1978 (Domestic Affairs) to terminate or permanently suspend parental rights when criminal sexual penetration results in the conception of a child, and Section 2, which updates certain provisions of the Adoption Act regarding persons whose consents or relinquishments are not required. In their place, the Amendment enacts a new Section 1 amending Section 40-4-9.1, a section of Article 4 of Chapter 40 which governs dissolution of marriage, and more particularly joint custody. The new Subsection L provides that a custodial parent may petition for and the court shall grant termination of parental rights of a noncustodial parent, notwithstanding the provisions of this section, where the court determines that the noncustodial parent has been convicted of criminal sexual penetration and that that criminal act resulted in the conception and birth of the affected child.

Because of its placement in the dissolution of marriage article of the domestic affairs chapter, it is unclear if this new subsection applies to situations where the parents of a child conceived and born as a result of criminal sexual penetration are not nor ever have been married to each other.

Synopsis of Original Bill

House Floor substitute for HB387 uses the term “petitioner” rather than “victim”, to describe the woman who became pregnant as a result of criminal sexual penetration; and now refers to a “petition to terminate parental rights or permanently suspend legal and physical custody and visitation rights” rather than a “motion”.

Other changes to the new section of NMSA Chapter 40 include *(page and line references are to the floor substitute unless noted otherwise)*:

- Adding the phrase “and who is not legally married to the petitioner” to the definition of respondent. (Section A(4), page 2, line 13).
- Adding the phrase “and is in the best interest of the child” to the factors the court must consider when deciding whether to terminate or permanently suspend legal and physical custody. (Section C, page 3, line 5).
- Changing the language describing the statute of limitations from the date she “knew or had reason to know that her pregnancy with the child resulted from criminal sexual penetration perpetrated by the respondent” to the date she “knew or had reason to know the identity of the perpetrator of the criminal sexual penetration that resulted in the pregnancy.” (Section E, page 3, line 15).
- Switch of word order. Section F(4) now reads “the name of the respondent and, if known, the address of the respondent;” (page 4, line 2).
- The phrase “for the service of motions, except that foster parents and attorneys of record in the proceeding shall be served by certified mail” was removed from Section G. (page 5 line 6).
- Section regarding the appointment of counsel was removed. (in original amended bill was Section I at page 5 line 22).

This bill also amends 32A-5-19, PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE NOT REQUIRED.

The changes to this section are:

- Section C was changed and now reads “a biological father of an adoptee conceived as a result of criminal sexual penetration, as defined in Section 30-9-11 NMSA, or incest, as defined in Section 30-10-3 NMSA 1978. (page 9, line 12).
- Section D was changed and now reads “a biological parent of an adoptee whose legal and physical custody and visitation rights with respect to the adoptee have been permanently suspended or whose parental rights with respect to the adoptee have been terminated pursuant to Section 1 of this 2015 act.” (page 9, line 16).

**FISCAL IMPLICATIONS**

There is no appropriation included in this bill and CYFD did not quantify and fiscal implications.

**SIGNIFICANT ISSUES**

The substitute for HB387 address some of CYFD’s previously identified significant issues. However, the substitute does not require the respondent to have been convicted of any criminal activity before having parental rights terminated or permanently revoked, which CYFD believes may raise due process concerns, and may permit petitions to be used in bad faith in divorce or

other hostile custody situations.

The substitute provides that once a judge terminates or permanently revokes the respondent's parental rights, that no party may seek child support for the child from the respondent. (page 7, line 24). CYFD states this could affect CYFD if the child is taken into Protective Services (PS) custody, however the agency notes is obligated by federal law to collect child support on behalf of all children taken into custody. It is unclear how this issue would be handled.

The substitute (1) clarifies that this would not apply to a respondent who was legally married to the petitioner; (2) takes into consideration the well-being of the child by requiring the court to consider whether revoking the respondent's parental rights is "in the best interest of the child"; and (3) removes the section concerning appointment of counsel that required CYFD to appoint counsel to represent the respondent in such a matter.

Finally, the floor substitute now refers to a "*petition* to terminate parental rights or permanently suspend legal and physical custody and visitation rights" rather than a "motion" (emphasis added). This may be to distinguish these petitions filed pursuant to this bill, from the motion to terminate parental rights filed by CCAs.

KK/aml/je/aml/je