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## FISCAL IMPACT REPORT

SPONSOR SJC ORIGINAL DATE 3/10/15  
 LAST UPDATED 3/17/15 HB \_\_\_\_\_

SHORT TITLE Activities for Out-Of-Home Care SB 198/SJCS/aSFI#1

ANALYST Klundt

### 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			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Senate Floor Amendment Bill

The Senate floor amendment to the Senate Judiciary substitute for the Senate Public Affairs committee substitute changes the language from mandatory considerations of a caregiver to suggested considerations, eliminating the requirement that the caregiver consider eight (8) listed items and granting them a greater measure of flexibility.

#### Synopsis of Bill

Senate Judiciary Committee Substitute for Senate Bill 198 (SB 198/SJCS) amends Section 32A-1-4 NMSA 1978 of the Children’s Code by adding definitions of caregiver(s) and reasonable and prudent parent standard(s). A new section of the Children’s Code allows for children placed in out-of-home placements to participate in age appropriate activities without prior approval from the Children, Youth and Families Department (CYFD).

Section 32A-4-21 NMSA 1978 of the Neglect and Abuse Act is revised requiring the child’s participation in age appropriate activities or limitations in the activities to be a part of the child’s predisposition study.

Section 32A-4-25.2 NMSA 1978 is amended to require CYFD to request and review the child's Next Step Plan (NSP) or Transition Plan prior to the first permanency hearing after a child turns fourteen years old. Reporting on the child's progress in meeting post-secondary goals must be included in the child's treatment plan. The committee substitute also allows for the participation of a child's court appointed special advocate.

SB-198/SJCS creates a new section under the Abuse and Neglect Act that provides for the child's rights to participate in the development of a case and transition plan.

The effective date of the bill is October 1, 2015.

## **FISCAL IMPLICATIONS**

CYFD identified several impacts this bill may have on the operating budget; however the impacts are unquantifiable at this time. There is no appropriation attached to this bill. CYFD analysis also indicated that this bill requires additional training for foster parents, resulting in the need for additional resources to develop and implement the training. Additionally, CYFD believes the agency would need to hire or contract with educational liaisons to carry out some portions of this bill. Finally, expanding transition services to children under 16 years will also require additional staff resources according to the agency.

## **SIGNIFICANT ISSUES**

While the number of children in foster care in New Mexico fluctuates, in 2010, 1,776 children were in the foster care system in New Mexico. Additionally, according to the New Mexico Children, Youth and Families Department, on any given day in New Mexico, nearly 2,500 children need short or longer term foster care (<http://cyfd.org/foster-care>). Children and youth in transition also include homeless children and youth. In the 2013-2014 school year, New Mexico public school districts and state charter schools reported an aggregate total of 12,305 homeless children and youth in the Student Teacher Accountability Reporting System (STARS).

According to STARS 40-day count for SY 2013-2014, there were 12,703 students with Individualized Education Programs (IEP's) ages 14 through 18 years.

Additionally, data from states indicate that foster youth are more likely than non-foster youth to repeat a grade, score poorly on standardized tests, and drop out of school. (See, National Youth in Transition Database, 5-15-11; Courtney, M., et. al., Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 26, Chapin Hall at the University of Chicago, 2011). There is also evidence that academic failure, truancy, and school disciplinary actions like suspension and expulsion increase the odds that a student will drop out or become involved in the juvenile justice system. SB 198/SJCS, through the clarifying language around out-of-home care provide children the opportunity to participate in age-appropriate activities when such activities are approved by the caregiver; this opportunity allows for strengthening protective/resiliency factors (assets) of children and youth through their connectivity with the school, community, and with peers.

In New Mexico, young people in the state's custody need consent to engage in extracurricular activities from the CYFD. This bill gives the caregiver the discretion to make "reasonable and prudent" decisions without requiring prior approval from the department. By encouraging

“thoughtful decision-making,” this bill provides caregivers with the ability to “promote the healthy development, create safe and affirming homes, and approve participation in critical opportunities such as cultural, social and enrichment activities for those in their care.”

This committee substitute is a response the Preventing Sex Trafficking and Strengthening Families Act (Act). However, CYFD is concerned the substitute does not mirror the Act, and therefore is at risk of potential conflict with emerging standards. CYFD reports the agency needs additional time and federal guidance for the development of policies and procedures and foster parent trainings regarding the Act. The agency analysis flagged concerns throughout its analysis that this committee substitute may not meet federal guidelines.

CYFD states the agency is concerned that this bill mandates that children “shall” be permitted to participate in activities approved by the foster parents; however no recognition of the duties and obligations of the legal custodian, CYFD, is included. Additionally, the agency believes the bill incorporates a reasonable and prudent parent standard to allow children in foster care to access “typical childhood experiences,” but does not allow CYFD to develop these approaches and concepts in a systematic and deliberate manner with its agents, foster parents, and with the guidance and assistance of the federal representatives.

The bill references “age appropriate activities” without sufficient acknowledgement of the developmental limitations of specific children which is in direct conflict with the federal law.

Finally, CYFD is also concerned that the bill may not sufficiently address liability issues which may follow upon activities in which a child may participate on the sole permission of the foster parent, and the potential for litigation and judicial participation into CYFD’s relationship with its foster parents. Additionally, CYFD has concern that our children in Residential Treatment Centers and Treatment Foster Care are in treatment and cannot leave their placement.

### **PERFORMANCE IMPLICATIONS**

CYFD states this bill may impact the maltreatment in foster care performance measure negatively and the possibility of repeat maltreatment.

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