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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/02/16  
**LAST UPDATED** 02/16/16

**SPONSOR** SJC **HB** \_\_\_\_\_

**SHORT TITLE** Children’s Code & Substitute Care Act Changes **SB** CS/CS/49/SPACS/SJCS/aSFL#1

**ANALYST** Klundt/Daly

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal		Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 28.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Department of Finance and Administration (DFA)
- Attorney General’s Office (AGO)
- Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Senate Floor Amendment #1

The Senate Floor Amendment #1 to the Senate Judiciary Committee Substitute for the Senate Public Affairs Committee Substitute for Senate Bill 49 creates an advisory committee made up of six local substitute care review board members. By October 1 of each year, local boards nominate members to the committee, and the statewide council (SCAC) appoints six nominees to an advisory committee. That committee meets with the council at least once a year to advise the council on substitute care review matters.

One technical issue is present in the amendment: the third word in the fourth line of the amendment might more appropriately refer to the “committee”, since the reference appears to be to the six-member advisory committee of local substitute care review board members, rather than to the statewide advisory council (the SCAC).

Synopsis of Original Bill

Senate Judiciary Committee Substitute for the Senate Public Affairs Committee Substitute for Senate Bill 49 changes the statutory structure of the substitute care review board system established under the Citizen Substitute Care Review Act (“Act”), NMSA 1978, as follows:

- Adds “council” and “relative” to the definitions used in the Children’s Code.
- Expands purpose of the Act to include an examination of the policies, procedures and practices of CYFD and, where appropriate, specific cases to evaluate the extent by which the department is effectively discharging its child protection responsibilities.
- Reorganizes the state advisory committee (“SCAC” or Council) into a “substitute care advisory council” to oversee substitute care review boards in their monitoring of children placed in the custody of CYFD. The SCAC is administratively attached to RLD. The composition of the nine person council includes cabinet secretaries or designees from PED, HSD, DFA, and DOH; four public members appointed by the Governor, two of whom are between the ages of 18 and 30 and were previously placed in substitute care and two with expertise in the area of child welfare; and a children’s court judge also appointed by the governor. Public members’ terms are for three years, and they may be reappointed. The SCAC shall adopt reasonable rules related to the functions of the substitute care review boards, including training and criteria for designating and monitoring of cases, membership, and operating procedures. The SCAC shall make a report to the department, the courts and the appropriate legislative interim committee on or before November 1 each year, including recommendations for any changes to the boards.
- Requires CYFD, prior to an initial judicial review, to submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the council rather than going directly to a substitute care review board. The SCAC’s staff or contractor shall be required to review the case, and if the case meets the criteria established in the council’s rules, the case shall be assigned to a substitute care review board. The department shall submit progress reports and give notice of hearings to a substitute care review board if one has been designated by the council.
- Requires the council to establish no fewer than three substitute care review boards statewide and limits the number of boards that can be established in each of the 13 judicial districts. The council, or its contractor, shall provide administrative support to substitute care review boards. The composition of each board should be broadly representative of the community in which the board serves and include members with expertise in prevention and treatment of child abuse and neglect and may include adult former victims of abuse or neglect. Each board shall meet at least once per quarter to review cases designated. Upon request of the council, review boards shall prepare reports on their activities, with the reports containing no confidential information.
- Requires when the council requires a substitute care review board to review a case, that review must be conducted in accordance with the provisions of the Children’s Code and the Abuse and Neglect Act and the council’s rules.

- Requires DFA to transfer all functions, records, personnel, appropriations, money, equipment, property and supplies to the council. All references in the law to the state advisory committee shall be deemed to be references to the council.
- Repeals section 32A-8-3 (which requires DFA to contract with a nonprofit to operate a statewide system of local substitute care review boards).

The effective date of this bill is July 1, 2016.

## **FISCAL IMPLICATIONS**

This bill transfers all appropriations, funds, and costs relating to the Citizen Substitute Care Review Act from DFA to RLD on July 1, 2016.

In FY16, DFA received an appropriation of \$404.6 thousand from the general fund and \$239.9 thousand in internal service funds/interagency transfers to administer citizen substitute care review. The internal service funds/interagency transfer appropriation represents a portion of Title IV-E federal funds available for the program. The bill would transfer any amounts appropriated to DFA for FY17 to the newly-created SCAC, which will be administratively attached to RLD.

Currently, DFA contracts with NMSU, which employs four full-time staff members who are the regional facilitators for existing CRBs. NMSU also dedicates three part-time office staff members who provide assistance with obtaining documentation on cases from CYFD and preparing reports for submission to the courts. NMSU's current budget structure includes salaries, benefits, per diem, supplies, operating costs and overhead.

Initially, upon transfer of the program to the council, which is administratively attached to RLD, there may be a minimal impact to the RLD in setting up administrative support for this program.

## **SIGNIFICANT ISSUES**

RLD comments that the agency's main responsibility is regulation of various industries, like alcohol or accountants. Although it notes a concern that nature of SCAC is different in that the various members review actual child abuse cases and offer clinical recommendations, RLD believes this challenge can be overcome and functions can be absorbed by the agency.

A citizen review board is one of the requirements for federal funding in support of state efforts to identify and reduce child abuse under the Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. 5101 et seq. The purpose of these panels is to provide new opportunities for citizens to play an integral role in ensuring that states are meeting their goals of protecting children from abuse and neglect. All fifty states, Puerto Rico, and the District of Columbia have some form of a citizen review board. CAPTA requires each state to have a minimum of three citizen review boards.

The AOC reports New Mexico's existing statutory provisions creates many challenges. First, substitute care review boards are required to report to the courts, resulting in a requirement for more reporting than can be accomplished by the boards and less value than courts get from other sources, such as court appointed special advocates (CASA). Second, the AOC noted concerns regarding citizen review board volunteer training. Lastly, volunteer reports are not timely nor are

the reports relevant or helpful to the courts. The AOC believes creation of the SCAC provides an opportunity to reorganize, look at what other states are doing, study the structure and composition of review boards, establish boards, adopt rules, enhance training, and identify focus areas and case selection criteria for the boards statewide to run efficiently and effectively.

Further, SB 49 no longer requires the local substitute boards to review every dispositional judgment and report to the courts. Instead, the council will review the case first to determine whether the case meets the criteria established by the council's rules before assigning to a substitute care review board.

## **ADMINISTRATIVE IMPLICATIONS**

RLD notes the current contract for this program expires on June 30, 2016, which will require a new contract is put in place prior to the expiration of the current contract to avoid any interruption in services.

## **OTHER SUBSTANTIVE ISSUES**

Under current law, the SAC is required to contract with a nonprofit entity and the contractor administers the statewide CRB system. This substitute repeals the section requiring a nonprofit contractor and instead proposes to allow the newly-created SCAC to hire staff and directly contract for services, allowing greater flexibility in how the SCAC may choose to administer local CRBs.

Under current law, the SAC does not have rulemaking authority, and instead has adopted certain policies without following the rigorous public comment requirements of rulemaking. The bill would require the newly-created SCAC to adopt rules establishing:

- Local CRB training requirements;
- Criteria for selection of cases to receive local CRB review that weigh the importance of factors including sibling placement, the frequency and severity of abuse or neglect, placement of children in households with no relatives, data related to demographics, and relevant trend data;
- Procedures for local CRB review of cases designated for review;
- Criteria for CRB membership, tenure, and operating procedures.

There is no provision in this substitute requiring public notice or comment on any rules proposed by the council.

Current law states that prior to any judicial review, a local CRB shall review any dispositional order or continuation of the order and CYFD's progress report on a child and submit the CRB's report to the court. This requirement for a CRB to review prior to any judicial review is replaced with a requirement for CRB review cases where SCAC rules designate that such cases be selected. All cases will be sent from CYFD to the staff or contractor of the SCAC, who will determine whether the case requires CRB review pursuant to criteria established by SCAC in rule. Local CRBs will continue to submit their reports to the courts on the subset of cases selected for review pursuant to SCAC's case selection criteria.

Current law sets no limit on the number of local CRBs that may be established by the SAC

statewide. Currently, there are 28 CRBs, of which 21 currently have active membership. The bill proposes to limit the number of CRBs that may be established by the newly-created SCAC in each judicial district. A minimum of three CRBs will be established statewide to comply with the federal Child Abuse Prevention and Treatment Act (CAPTA), but no more than a specified number may be established in each judicial district.

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