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FISCAL IMPACT REPORT

SPONSOR Chasey ORIGINAL DATE 3/3/17
 LAST UPDATED 3/7/17 HB 506/aHJC

SHORT TITLE Termination of Parental Rights SB _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See fiscal impact			Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 506 (HB 506) strikes page 7, line 15 “has not requested” and inserts in lieu thereof “does not timely request.”

Synopsis of Original Bill

HB 506 clarifies portions of the Children’s Code relating to Adoption and Termination of Parental Rights (TPR). Section 32A-5-15 NMSA 1978, currently titled “Termination of Parental Rights,” is renamed “Initiation of Termination of Parental Right.” Section A adds the language “A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding.” This language was deleted from Section 32A-5-16 Termination Procedures. HB 506 deletes 32A-5-15 (B)-(C).

Section 1 (B) of HB 506 provides that *only* the Children, Youth and Families Department (CYFD) may petition for TPR when based on abuse, neglect, or abandonment and *only* pursuant to the Abuse and Neglect Act. Subsection C provides that a proceeding to terminate based on presumptive abandonment may be brought by CYFD or any other person having a legitimate interest in the matter including (1) the child’s guardian; (2) child’s guardian ad litem or attorney in other action; (3) foster parent; or (4) a relative of the child or the child.

HB 506 also amends Section 32A-5-16 regarding termination procedures. HB 506 removes the language regarding who may initiate a termination proceeding at Page 4 Lines 2 through 10 (this language having been moved to Section 32A-5-15). Section G is amended to include a provision for extending time to have the TPR hearing within 30 days of the filing for TPR, only if the request and extension are granted. Additionally, HB 506 adds a mandatory dismissal requirement if no hearing is requested.

Section J provides conditions for proving presumptive abandonment. The current language for proving presumptive abandonment is in Sections 32A-4-28(B)(1) and 32A-4-28(B)(3).

FISCAL IMPLICATIONS

CYFD believes eliminating the option for a family to seek, on its own, termination of parental rights for a child who has been actually abandoned may mean that families in that situation prefer the child be in foster care pursuant to an abuse and neglect action. The family would become licensed foster parents to maintain placement with them, but allow CYFD to pursue termination due to actual abandonment. If this were to occur, there may be a fiscal impact as it relates to having those additional children in foster care; however, this impact was not quantified.

New Mexico spends about \$113 million through the Child Protective Services program (CPS) responding to child maltreatment, through investigation, in-home services, foster care, adoption, and associated administrative costs. CPS spends most of its funding on foster care, adoption and administration. Of this close to \$36 million is for foster care services and \$30 million for adoption services. A single foster care placement is close to \$21 thousand a year.

The AOC reported 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 appeals. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase.

SIGNIFICANT ISSUES

The AOC reported the following:

- Language is added to Section 32A-5-15 to clarify procedures for TPR when the permanency plan has changed to adoption and the theory is based on presumptive abandonment. *In re Grace H.*, 2014-NMSC-034 and subsequently *State ex rel. CYFD v Melvin C.*, 2015 NMCA-067 the court grappled with presumptive abandonment and the idea of the department changing theories for its basis for TPR. HB 506 may be an attempt at codifying the distinctions of presumptive abandonment, and abandonment when brought pursuant to the Abuse and Neglect Act. HB 506 also clarifies the TPR requirements within the adoption statutes; TPR based on presumptive abandonment can only happen if the substitute family wishes to adopt the child. HB 506 separates and clarifies when presumptive abandonment should be invoked and who may bring this action.

- Renaming Section 32A-5-15 clarifies governance of the actual initiation of TPR proceedings under the adoption statutes; currently the statutes can be confusing about termination through Section 32A-5-14 as opposed to 32A-5-15.
- Mandatory dismissal rules have the potential to create litigation; however, the Children’s Code and the Children’s Court rules mandate dismissal when an adjudicatory hearing is not held within six days or within the approved extension time. It may follow that a TPR hearing should have the same consequence for failure to request a hearing or extension within 30 days. See NMRA 10-343(E) and Section 32A-4-19 NMSA 1978.

Many children in New Mexico are being raised by relatives without having ever come to CYFD’s attention. In those cases, the families are raising the children without seeking court documentation, filing for kinship guardianship or attempting private adoption. It is not unlikely that in those situations children are being left for extended periods of time without any contact with, or support or guidance from, their biological parents. Because of these situations, CYFD believes the option for relatives to initiate termination of parental rights on behalf of children for whom they have been the primary custodians is an important aspect of the adoption act.

CYFD also stated the removal of the option to terminate parental rights within adoption proceedings due to actual abandonment has the potential to leave children languishing in situations where their primary caretaker cannot adopt them. The agency believes this could be detrimental to children for several reasons. First, children in permanent homes have overall better outcomes. Second, without the ability to terminate rights for actual abandonment the child may never gain the ability to inherit from the persons actually providing their care, custody, and control.

CYFD also stated while this bill attempts to address the recent Supreme Court decision in *Darla D. v. Grace R.*, 2016-NMCA-093, 382 P.3d 1000, the bill goes far beyond the ruling within that case and, as stated above, potentially leaves children languishing in third party care-taker situations. The appropriate way to address the *Grace R.* Court decision is to simply strike NMSA 32A-5-15(B)(2), which would make clear that termination for abuse/neglect can only be brought by CYFD pursuant to the abuse and neglect act.

This bill changes language regarding presumptive abandonment that would now require the child to be in the care of relatives for “at least one year.” Current law states “an extended period of time”. CYFD is concerned regarding the wait time of one full year before attempting to make the child a permanent part of their family. During this required one-year waiting period, the agency believes the child is potentially missing out on benefits both through assistance programs and from the adoptive parents.

This bill removes language that currently allows a child to continue to have inheritance rights from a parent after a termination of parental rights. CYFD believes it would be to the child’s benefit to be able to maintain inheritance from the biological parent, as is in current law.

Finally, this bill repeals the implied consent section of the adoption act which allows the court to gain consent by meeting criteria showing the parent was properly served and notified of the proceedings, however CYFD reported the bill did not come forward for specific periods of time to rebut the termination or adoption.

TECHNICAL ISSUES

The AOC suggested language may need clarification at Page 7 line 14, where it reads: “the petition shall be dismissed if the petitioner has not requested a hearing as provided in this subsection” and add either “with prejudice” or “without prejudice.”

KK/sb/jle