

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)).

## FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/21  
 SPONSOR Ely LAST UPDATED 02/11/21 HB 190/aHJC

SHORT TITLE Child Support Enforcement Changes SB \_\_\_\_\_

ANALYST Esquibel

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>HSD TANF Federal Funds</b>		(\$122,600.0)	(\$122,600.0)	(\$245,200.0)	Recurring	TANF Federal Funds
<b>HSD Child Support Matching Federal Funds</b>		(\$24,900.0)	(\$24,900.0)	(\$49,800.0)	Recurring	Child Support Matching Federal Fund
<b>HSD Child Support New Collections</b>		\$30,865.2	\$30,865.2	\$61,730.4	Recurring	Other Revenues
<b>ECECD TANF Transfers</b>		(\$64,127.5)	(\$64,127.5)	(\$128,255.0)	Recurring	TANF Federal Funds
<b>CYFD, PED TANF Transfers</b>		(\$1,100.0)	(\$1,100.0)	(\$2,200.0)	Recurring	TANF Federal Funds
<b>Total</b>		(\$181,862.3)	(\$181,862.3)	(\$363,724.6)	Recurring	TANF, Child Support Federal Funds Loss, Child Support Other Revenues Gain

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB140/aSJC/aSFI, Child Support Changes

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Early Childhood Education and Care Department (ECECD)  
Human Services Department (HSD)  
Attorney General’s Office (NMAG)

## SUMMARY

### Synopsis of HJC Amendment

The House Judiciary Committee amendments to House Bill 190 (HB190/aHJC) are summarized below.

1. The HJC amendments add a new definition of “gross income” to the Child Support Guidelines Act, which includes numerous examples what counts as “gross incomes” as well as numerous types of incomes not included. Gross income would include wages, tips, profits, dividends, commissions, etc. while excluding sources of income such as child support awards, alimony payments, means-tested public benefits, and support paid for any older children.
2. The HJC amendments remove all amendments to Section 7 of the Medical Support Act, which consisted of the above definition of “gross income.” The definition of “gross income” is now included in the Child Support Guidelines Act instead of the Medical Support Act.
3. The HJC amendments remove language in the bill that would indicate that income for a primary custodial parent actively caring for a child of the parties who is under the age of six or disabled need not be imputed, and that if income is imputed, a reasonable child care expense may be imputed.

The House Judiciary Committee amendments to House Bill 190 track the duplicate action on SB140/aSJC/aSf1 except for the following:

1. Under the test to determine if a parent has willfully failed to obtain or maintain employment, the SJC amendments add an underemployment factor to the analysis as well as the parent’s ability to obtain or maintain employment due to providing care for a disabled child of the parties or a child under six years of age.
2. The SJC amendments include the caveat “unless prohibited by federal law” in instances where an insurance or medical provider is otherwise prohibited from denying health care coverage of the minor child on the grounds that the minor child was born out of wedlock or does not reside in the carrier’s service area.
3. The SJC also made a number of grammatical changes to language and punctuation.
4. The Senate Floor amended SB140/aSJC to remove the word “disabled” on page 5, line 14. The amendment clarifies that if a court finds that a parent has willfully failed to obtain or maintain appropriate employment, the court may impute to that parent an income equal to that parent's earning and employment potential based on the following criteria, the parent's ability to obtain or maintain employment due to providing care for a ~~disabled~~ child of the parties.

Synopsis of Original Bill

House Bill 190 (HB190) would update several child support provisions to align with federal regulations and national best practices. Specifically, HB190 would implement the following provisions to align with federal requirements:

- o Clarify when imputation of income is appropriate and how an imputation of income is justified;
- o Require justification for deviation from child support guidelines;
- o Provide that the health care needs of a minor child are a basis for a modification of a child support order;
- o Update definitions of terms including “health insurance” (changed to “health care coverage”) and “insurers” (changed to “carriers”);
- o Revise child support guideline amounts to clearly define a non-custodial parent (NCP) self-support reserve and recommend support amounts (i.e., increased support amounts for NCPs with gross income over \$2,800/month when there are three or more children; and the addition of a minimum support amount when the gross income of the parties is under \$1,000/month); and
- o Specify the requirements of a child support guideline review commission, including its purpose and duties.

HB190 would also align New Mexico’s child support statute with the best practices in top-performing states by:

- o Changing the guidelines for the timeframe for assessing fees, costs and expenses from 12 years to 3 years; and
- o Changing the timeframe for assessing retroactive child support arrears from 12 years to 3 years.

HB190 would allow the courts to assess retroactive child support arrears, fees and other expenses for a longer retroactive period when there is a substantial showing that an action to establish paternity could not have been brought before the court any sooner. Additionally, HB190 would align with federal recommendations by defining what a reasonable cost for health care coverage is when determining the medical support order. Finally, HB190, would addresses four separate state child support statutes requiring changes to be in compliance with federal law.

**FISCAL IMPLICATIONS**

HSD writes failure to pass HB190 will result in the loss of \$147.5 million in federal matching funds to New Mexico due to HSD’s non-compliance with federal child support regulations. The loss in funds would include:

- \$122.6 million in federal funds for the Temporary Assistance for Needy Families (TANF) block grant; and
- \$24.9 million in federal matching funds for the state’s child support program.

Additionally, the bill would revise the retroactive arrears timeframe, also referred to as the “lookback period,” from 12 years to three years. This is a best practice that is commonly used in high-performing states resulting in higher child support collections for children. HSD estimates that it will collect an additional \$30.9 million for New Mexico children (or \$420.33 per year per case) if the lookback period is changed as proposed in the bill (see table below).

**Projected Increase in Child Support Collections  
Using Proposed 3-Year Lookback Period**

	<b>Increased Collections with 3-Year Lookback</b>
Per Year per Case	\$420.33
Per Month per Case	\$35.03
Per Year per Child	\$284.00
Per Month per Child	\$23.67
Total for all Children	\$30,865,230.65

\*\* The data above are based on a sample of 4,990 cases with retroactive arrears from two large child support offices. On average, there are 1.48 children per child support case.

ECECD writes there will be a negative fiscal impact on the Early Childhood Education and Care Department (ECECD) if HB190 is not enacted. Currently, ECECD receives the following TANF funding from the Human Services Department (HSD): \$41,527,500 for child care; \$17.6 million for prekindergarten, and \$5 million for home visiting. If HB190 is not enacted, HSD will lose its TANF funding and, hence, the TANF funding it distributes to ECECD.

CYFD also receives \$900 thousand in TANF funds for supportive housing and PED receives \$200 thousand in TANF funds for the GRADS program.

**SIGNIFICANT ISSUES**

HSD reports New Mexico’s child support statutes are not currently compliant with the Code of Federal Regulations (CFR), which will result in a substantial loss in federal funding if the bill is not passed. Specifically, New Mexico law does not comply with:

- 45 CFR 303.4(b) - Establishment of support obligations
- 45 CFR 303.31 - Securing and enforcing medical support obligations
- 45 CFR 303.8 - Review and adjustment of child support orders
- 45 CFR 302.56 (c)(1) and (c)(3) - Guidelines for setting child support orders.

In summary, these federal regulatory provisions require that:

- Support obligations must be based on the obligor’s ability to pay; and
- Health care needs must constitute a basis for a support order modification, regardless of whether a monetary adjustment is necessary or appropriate.
- The provisions also clarify that health care coverage must be ordered when it is available at a reasonable cost.

The revised child support guidelines contained in the bill reflect recommendations of a Child Support Guideline Review Commission that was convened in 2018 and included members of New Mexico’s judiciary and other experts. In addition to economic market data and data on the cost of rearing a child, the Commission’s analysis compared New Mexico’s guidelines to those of neighboring states for a range of case scenarios, including low-income scenarios. The amounts of New Mexico’s current guidelines are generally lower than those of neighboring states for middle incomes; however, the New Mexico guideline amounts are generally higher than those of

neighboring states for low-income scenarios. The bill seeks to correct the guidelines by increasing amounts for higher-income noncustodial parents while making amounts more affordable for those at the lowest income thresholds, a strategy targeted to increase voluntary compliance.

Generally, HB190 would increase support amounts for more than three children, except for those at the lowest incomes, and would increase support amounts for all children where combined monthly incomes exceed \$2,800 of the current guidelines.

## **PERFORMANCE IMPLICATIONS**

The statutory revisions in HB190 will assure HSD's compliance with federal regulations and ensure New Mexico will continue to receive \$147.5 million in federal matching funds for New Mexico's TANF block grant and child support enforcement program. If the bill is passed, an additional \$30.9 million in collections is projected by reducing the lookback period to 3 years. HSD reports there has been a significant decline in child support collections as a result of the longer 12-year lookback period currently allowed in state law.

## **ADMINISTRATIVE IMPLICATIONS**

HB190 would require some IT system changes to the Child Support Enforcement System (CSES) that have been funded multiple years by the Legislature.

## **RELATIONSHIP**

HB190 has introduced duplicated Senate Bill 140 as introduced. However, Senate Judiciary Committee and the Senate floor amended SB140/aSJC/aSF1, Child Support Changes. The Senate bill currently is similar to HB190/aHJC, but doesn't totally track the House bill. See HJC amendments to HB190 for a summary of the differences.

## **OTHER SUBSTANTIVE ISSUES**

HSD reports New Mexico's child support statutes are not compliant with federal law. Federal child support regulations were updated in 2016; however, the last substantive updates to New Mexico law were made in 1994, resulting in state laws that do not align with required federal rules.

HSD notes New Mexico district court judges were partners in compiling the recommendations that formed this legislation. The bill does not modify or remove the courts' authority to consider all factors in the case when establishing or enforcing a child support order. HB190 also does not modify or address child support enforcement tools for non-payment, such as license suspensions, tax intercepts and bank account liens.

ECECD reports its programs rely on the TANF funding it receives from HSD for child care services (\$41,527,500), prekindergarten (\$17 million) and home visiting (\$5 million). Without these funds, all three of these programs would be significantly impacted in a negative manner. Many of the families and children that ECECD serves rely on TANF provided from HSD to meet their monthly financial needs. Without TANF funding, HSD might be unable to provide monthly cash assistance to many of the New Mexican families that would otherwise qualify and thereby

support their families and children. As is well acknowledged among experts, children are less likely to succeed in school and have positive outcomes when they face financial instability at home.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

HSD reports the consequences of not enacting HB190 and failing to come into compliance with federal requirements, will be the loss of \$147.5 million in federal funding for TANF and child support, and the loss of the opportunity to collect \$30.9 million in child support for New Mexico children. ECECD could potentially lose up to \$64.1 million in TANF funding received from HSD (\$41,527,500 for child care, \$17.6 million for prekindergarten, and \$5 million for home visiting).

RAE/al