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FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/22

SPONSOR House Floor LAST UPDATED _____ HB 46/HCPACS/HFIS

SHORT TITLE Family Representation and Advocacy Act SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$500.0- \$1,000.0	\$7,100.0- \$7,600.0	\$7,600.0- \$8,600.0	Recurring	General Fund and Title IV-E (OFRA)
		(\$500.0)- (\$1,000.0)	(\$7,100.0)- (\$7,600.0)	(\$7,600.0)- (\$8,600.0)	Recurring	General Fund and Title IV-E (AOC)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families (CYFD)
 Administrative Office of the Courts (AOC)
 New Mexico State University (NMSU)
 Attorney General's Office (NMAG)

SUMMARY

Synopsis of Bill

The House Floor Substitute for House Consumer and Public Affairs Committee Substitute for House Bill 46 creates the Office of Family Representation and Advocacy (OFRA), an independent office for the representation of children and families in abuse and neglect matters. OFRA will appoint, compensate, evaluate, and retain attorneys and other staff to provide legal representation for parents and children in child welfare cases. The office also includes an appellate division.

The Substitute revises the definition of "commission" to mean "the family representation and advocacy commission that provides oversight of the office of family representation and advocacy. The office is "created as an adjunct agency pursuant to Section 9-1-5 NMSA 1978 and shall be overseen by the commission."

The substitute defines “at risk of being placed”, to include conditions within a child’s family that may require the child be removed and placed in the custody of CYFD. The substitute also defines client and cleans up other definitions.

The office can receive gifts, grants, donations, or bequests to carry out the purposes of the Family Representation and Advocacy Act. The office must work with CYFD to leverage federal funding pursuant to Title IV-E of the Social Security Act. The bill requires the Office of Family Representation and Advocacy director create five regional offices to mirror the five regional offices of CYFD; each region must have an appointed regional manager. The bill sets forth the qualifications for the administrative head of the Office of Family Representation and Advocacy, who will be titled the director, and establishes the duties of the director. Additionally, the bill creates the Family Representation and Advocacy Oversight Commission with 13 members. The members will serve limited terms.

The commission is tasked with independent oversight of the office and with reviewing and approving standards, providing guidance and support to the director, reviewing and approving fair and consistent policies for the operation of the office, and provision of services to children and adults whose children are or are at risk of being placed in the legal custody of CYFD. The bill sets forth how the oversight commission will meet and what the commission’s powers and duties are.

FISCAL IMPLICATIONS

This bill does not contain an appropriation.

AOC said that initially, the OFRA will begin operations using the current court appointed attorney fee fund (CAAFF) budget, including federal Title IV-E funds. AOC would likely enter into a memorandum of understanding for the first year of OFRA operation. In subsequent years, appropriations for OFRA would have to be reduced at AOC and established at OFRA.

The current CAAFF budget consists of appropriations averaging \$6,213,000 plus a special carryover allotment of up to \$500 thousand in unexpended funds from fiscal year 2021.¹ Additional funds anticipated in the CAAFF budget in FY22 consist of reimbursement draws of indirect federal funds from Title IV-E Social Security Act pursuant to a joint powers agreement with CYFD.

AOC also said the Supreme Court’s Family Representation Commission (FRC) hired a consultant to conduct a cost-benefit analyses study. Annual cost benefits, once the office is fully operational, are estimated by the FRC to range from \$5 million to almost \$12 million, primarily derived from shorter lengths of stay in state custody. At a minimum, these benefits are predicted to substantially offset costs, and could result in net savings for the state over time. Additional cost savings, not monetized in the analysis, are predicted to result from reduced court, attorney, and other legal costs as well as savings in Medicaid and other public programs.

CYFD said OFRA must work closely with CYFD to leverage federal funding pursuant to Title IV-E of the Social Security Act. Currently, AOC contracts with independent attorneys or with

¹ Representing indirect federal funds authorized by Title IV-E of the Social Security Act.

law firms to provide for the representation of parents and children in child welfare cases. Under the bill, AOC would no longer contract or provide funding for these services. Instead, recurring general funds would be needed to fund OFRA operations. While CYFD would work with OFRA to leverage funds relative to children and families in abuse and neglect matters, this funding would likely be insufficient to fund all OFRA's operations.

CYFD is the Title IV-E agency for the state identified by the federal government. CYFD has an agreement with the AOC to provide the AOC the avenue to draw down IV-E revenues as it relates to quality representation for parents. CYFD has the capacity to work with the Office of Family Representation and Advocacy to provide the support the office would need to draw down IV-E funding.

SIGNIFICANT ISSUES

CYFD provided the following:

The creation of an Office of Family Representation and Advocacy aligns with and would support CYFD's strategic plan, which relies on high quality attorneys who enforce access to legal entitlements and supports for the children in CYFD's care.

In rural areas of the state, some contracts to represent parents and children in child welfare cases are not competitive. This opens the possibility for attorneys with little child welfare experience to litigate complex matters. The creation of an Office of Family Representation and Advocacy could secure jobs in rural areas for attorneys with previous experience or acute interest in this area of law, which would be in the best interest of the families CYFD serve to ensure they receive high quality legal representation.

NMSU said that this bill would not have any significant financial implications for social work programs in higher education institutions in the state. The Director of the School of Social Work would be expected to serve in the Commission of Family Preservation and Advocacy for an initial three-year term. This participation would require a minimal allocation of time and effort for the Director of the School of Social Work. The commission however would provide the school's director with per diem to cover travel and food expenses.

TECHNICAL ISSUES

The Substitute proposes that the office is "created as an adjunct agency pursuant to Section 9-1-5 NMSA 1978 and shall be overseen by the commission." However, Section 9-1-5 NMSA 1978 does not provide for the creation of adjunct agencies. The substitute should reference Section 9-1-6 NMSA 1978, which defines "adjunct agencies."

ADMINISTRATIVE IMPLICATIONS

AOC said the bill would ultimately remove the annual administration of approximately 110 contracts for court-appointed attorneys from AOC. It would also remove the administration of the Court Appointed Attorney Fee Fund budget, including federal Title IV-E funds. The removal of the Title IV-E funds would also remove the oversight and other duties placed upon AOC by the joint powers agreement with CYFD (the agency responsible for administration of Title IV-E funds). The removal of some or all administration of the court appointed attorney fee fund would free up an analyst and a director position to be applied to other AOC projects.

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