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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**56th Legislature, 1st Session, 2023**

<b>Bill Number</b>	<u>SJR2</u>	<b>Sponsor</b>	<u>Soules</u>
<b>Tracking Number</b>	<u>.223665.1</u>	<b>Committee Referrals</b>	<u>SRC/SJC</u>
<b>Short Title</b>	<u>Children’s Bill of Rights, CA</u>		
<b>Analyst</b>	<u>Andrews</u>	<b>Original Date</b>	<u>1/25/2023</u>
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**BILL SUMMARY**

Synopsis of Bill

Senate Joint Resolution 2 (SJR2) amends Article II – the Bill of Rights – of the Constitution of New Mexico to add a new Section 25, the Children’s Bill of Rights.

As this is a constitutional amendment, its adoption is subject to voter approval at the next general election or special election prior to the date of the next general election. If this item passes, and the proposed constitutional amendment were to be duly approved, the state legislature would then be required to enact laws to implement the constitutional amendment.

**FISCAL IMPACT**

SJR2 does not contain an appropriation.

Section 1-16-13 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters. The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. The cost will vary on the length of the ballot question. However, as a reference, in 2022, the SOS published three constitutional amendments and three bond questions for approximately \$404 thousand.

**SUBSTANTIVE ISSUES**

SJR2 proposes to amend the Constitution of the State of New Mexico to add the Children’s Bill of Rights, establishing rights including but not limited to health care, food, housing, and education. Child well-being is a significant concern in New Mexico. The Annie E. Casey Foundation ranked New Mexico last for student well-being in its [2022 report](#) and data from [the Child and Adolescent Health Measurement Initiative](#) shows 49 percent of children in New Mexico have at least one

adverse childhood experience (ACE) compared with 39.8 percent of children nationally. In addition, according to the Public Education Department, statewide data points to a current 40 percent chronic absenteeism rate overall.

The Children’s Code, Section 32A NMSA 1978, articulates several rights and protections for children. The New Mexico Attorney General (NMAG) notes that the sixth right in SJR2 – the right to live in a community that provides home visitation programs starting at birth to ensure safe households, parental support and education; and navigation to local vital services – is similar to Section 32A-23B NMSA 1978, which requires statewide home visiting services. A thorough review will need to be conducted to ensure the current laws comport with the language in SJR2. This could require significant revisions of the Children’s Code.

**Children’s Bill of Rights in Other States and Nationally.** Montana adopted a children’s rights amendment in its 1971-1972 Constitutional Convention and its citizens ratified the amendment in 1972. No other state has adopted such an amendment. Montana’s children’s rights amendment to Article II, Section 15 states that the “rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article [Montana's bill of rights] unless specifically precluded by laws which enhance the protection of such persons” (see **Alternatives**).

According to the National Conference of State Legislatures (NCSL), five states – New Hampshire (2021), California (2017), Louisiana (2009), Texas (2009), and New Jersey (2008) – have introduced a broader children’s bill of rights; however, none were enacted. States have more often legislated bills of rights for children within specific circumstances or settings.

More recently, Representative Karen Bass of California introduced HR 5856, the [21st Century Children and Families Act](#), which expands nondiscrimination requirements for state agencies involved in adoption or foster care placement, requires states to address disparities in service access and extends the timeline for modifying parental rights when a child is not in the care of a relative.

**Conflict with Certain Parental Rights.** According to NMAG, some of the rights articulated in SJR2 could come into direct conflict with certain parental rights. The United States Supreme Court has long-held that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions as to care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000); U.S. Const. amend. XIV. This fundamental principle has been adopted and cited favorably by our New Mexico Supreme Court. *See Tue Thi Tran v. Bennet*, 2018-NMSC-009, ¶ 25, 411 P.3d 345 (“New Mexico law confers a variety of rights and privileges on a child’s parents and subjects them to the duties and obligations of parentage.”).

Similarly, in *Pierce v. Society of Sisters*, the NMAG notes the United States Supreme Court held that the “liberty of parents and guardians” includes the right “to direct the upbringing and education of children under their control.” 268 U.S. 510, 534-35 (1925). Subsections 1(7), (8), and (9) of SJR2 are currently written as compulsory rights to specific methods of education. For instance, “the right to early childhood education programs” can be construed to mean that a child has a right to *attend* an early childhood education program rather than the right to *access* those programs. Clarifying language should be considered to avoid infringing upon certain parental rights to direct the education of their children.

Finally, according to NMAG, there are several ambiguous terms used throughout SJR2 that will necessarily result in differing interpretations on what is expected or required. For example,

subsection (2) calls for “the right to behavioral health care that is solution-focused and culturally sensitive,” and difficult to objectively define. Subsection (10) provides for “the right to acquire all the skills needed to maintain quality employment.” This leaves the door open for significant debate as to what constitutes “all the skills” and what definition of “quality” should be applied. Although some of these interpretation issues can be addressed through future legislation, more definite language in SJR2 would provide clearer direction to the courts, officials, and the public in understanding these proposed rights.

### **ADMINISTRATIVE IMPLICATIONS**

According to ECECD, a constitutional guarantee of the right to universal early childhood programming would have a significant operational impact on ECECD.

According to NMAG, their office would necessarily be involved in any litigation related to challenges or constitutional issues associated with the passage of SJR2 or subsequent bills related to its enactment.

### **ALTERNATIVES**

NMAG notes the lack of states adopting a children’s rights amendment reflects the complex balancing act required to maintain parental rights, and suggests Montana’s broad and concise language could be a potential alternative to SJR2 because it protects the rights of children and also provides the legislature with the latitude necessary to craft laws that will not encroach upon parental rights.

### **SOURCES OF INFORMATION**

- LESC Files
- Secretary of State
- Early Childhood Education and Care Department
- New Mexico Attorney General

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