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FISCAL IMPACT REPORT

SPONSOR <u>Lord/Harper/Duncan/A. Martinez</u>	LAST UPDATED _____
	ORIGINAL DATE <u>02/23/2023</u>
SHORT TITLE <u>Abuse Case Best Interest of Child</u>	BILL NUMBER <u>House Bill 312</u>
	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$1,200.0- \$2,400.0	\$1,200.0- \$2,400.0	\$2,400.0- \$4,800.0	Recurring	General fund
Total						

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Relates to House Bills 34, 129, 187, 211, 219 and 284; Senate Bills 31, 107, 128, and 150
Near duplicate of Senate Bill 207.

Sources of Information

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
Administrative Office of the Courts (AOC)
Office of the Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 312

House Bill 312, Abuse Case Best Interest of Child, requires that all of the following factors be considered in determining what is in the best interest of the child being assessed:

- 1) Age and physical and mental “vulnerabilities”
- 2) Frequency and reason for previous out-of-home placements
- 3) Frequency and severity of harm done to the child
- 4) Repeated harm suffered by the child
- 5) Fear on the child’s part of returning the child to the home from which he/she was removed or placed or could be placed
- 6) Results of mental health evaluations of the child and parents and extended family members
- 7) History of abuse on the part of the parents or visitors to the home

- 8) Substance abuse by family members
- 9) Whether the person harming the child has been identified
- 10) Whether the person harming the child has or might have continuing access to the child
- 11) Circumstances under which a parent voluntarily relinquished parental rights
- 12) Willingness of the child’s family to accept services, cooperate with continuing agency contact, and go through with recommended psychological, domestic violence and substance abuse assessments
- 13) Willingness and ability of the family to make needed changes
- 14) Demonstration of adequate parenting skills, including
 - a. Nurturing and discipline appropriate for age
 - b. Adequate health and nutritional care
 - c. Supervision of child’s safety
 - d. A safe home environment
 - e. Protection from exposure to violence directed at the child or others
- 15) Adequate social support system from friends and extended family.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 312. CYFD indicates that consideration of each of these items in evaluating each child’s situation would markedly increase costs to that agency. Their estimate if increased cost is as follows: “Minimum FTE for the Protective Services Division of CYFD required to fulfill the mandate of this bill, presuming an effective date of July 1, 2024, is 24, with a minimum fiscal impact of \$1,200.0 per year. CYFD cannot absorb this impact with existing resources.”

AOC and NMAG also indicate considerably increased costs if each of these factors must be considered at each step of the judicial process, but give no estimate of cost.

SIGNIFICANT ISSUES

CYFD points out that “The best interest standard is already used by CYFD in a wide array of circumstances, and no single list of required specific factors can be relevant to each circumstance. Best interest decisions range from initial decisions to bring a child into care, decisions during the case regarding education and placement, through the end of case around permanency plan options, and at every one of these decision points, a different set of factors is most relevant in guiding the decision. One example is the factors to be considered when determining a child’s school after a placement change. *See Program Instruction Guideline 08-2019-#5, attached.* These factors are, necessarily, very different from the factors listed in this bill. In the few states that have a mandatory enumerated list of factors for child welfare, these factors are limited in number and broad in scope. *See Vermont, 33 V.S.A. § 5114.*”

“While several of the factors listed in this bill are already critical components of CYFD’s assessment process for many decisions, the bill’s requirement that a blanket list of factors be consulted at all steps will be a barrier, not an aid, in making best interest determinations. CYFD has the expertise to determine which factors should be considered based on the type of decision of being made; and CYFD must retain the ability to determine which factors are appropriate to

each type of decision and the flexibility to update those factors based on developments in the field.”

AOC quotes extensively from a factsheet produced by the Children’s Bureau of the federal Department of Health and Human Services, entitled “Determining the Best Interests of the Child.” New Mexico is currently listed as using three overall factors included in defining “best interests”: “The importance of family integrity and preference for avoiding removal of the child from his/her home;” “health, safety, and protection of the child; and the importance of timely permanency decisions.” The factsheet, which is attached, indicates that New Mexico would, under this bill, become one of 22 states and the District of Columbia with lists of factors to be considered, while the remainder offer more general guidance.

PERFORMANCE IMPLICATIONS

CYFD notes that it “has performance measures pertaining to safety, permanency, and timeliness which will be negatively affected by this bill. Requiring consideration, and documentation of that consideration, of all listed factors in a wide range of best interest decisions made by CYFD, regardless of relevance, will slow decision-making unnecessarily and add to the per case workload for staff, including, without limitation, investigations, permanency, and placement workers, and children’s court attorneys.”

DUPLICATION

Near duplicate of Senate Bill 207.

RELATIONSHIP

Relates to House Bills 34, 129, 187, 211, 219 and 284; Senate Bills 31, 107, 128, and 150, all of which deal with aspects of CYFD’s work with abused and neglected children.

TECHNICAL ISSUES

CYFD points out that “In New Mexico, when a child in an abuse and neglect case turns fourteen, the legal representation for that child shifts from guardian ad litem to an attorney. This distinction is critical. The court in the case is charged with ensuring ‘child’s guardian ad litem zealously represents the child’s best interest, and that the child’s attorney zealously represents the child.’ *See NM 32A-4-10.*”

NMAG has the following concerns:

- SB207 does not seem to address the precedent articulated by the U.S. Supreme Court in *Troxel v. Granville*, which established that a fit parent’s determination of the child’s best interests should be heavily considered. 530 U.S. 57, 70–71 (2000).
- SB207 also does not include the preference for placement with relatives over non-relatives established by New Mexico case law. *See State ex rel. Children, Youth and Families Dept. v. Laura J.*, 2013-NMCA-057, ¶ 28, 301 P.3d 860 (“Once a child is placed in CYFD’s custody and a court has made a finding of abuse or neglect, a placement preference with qualified relatives is triggered, which remains the case for any future permanency changes involving the child.”).

- Additionally, it is unclear whether the listed factors must be considered by the New Mexico Children, Youth, and Families Department (CYFD), the courts, or both.
- It is unclear whether SB207 would require CYFD to consider all of the factors listed prior to obtaining temporary custody. If so, it could result in significant delays to CYFD's ability to quickly remove children from potentially dangerous situations.

OTHER SUBSTANTIVE ISSUES

NMAG points out several ways in which listed factors (especially L, M, and O) appear to weight cases against families living with limited resources.

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