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## FISCAL IMPACT REPORT

SPONSOR Gallegos LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/13/2023  
BILL  
SHORT TITLE Termination of Parental Rights NUMBER Senate Bill 278  
ANALYST Gray

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Related to Senate Bill 207, Senate Bill 128, and Senate Bill 31

### Sources of Information

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Children, Youth & Families Department (CYFD)

## SUMMARY

### Synopsis of Senate Bill 278

Senate Bill 278 (SB278) contemplates a new section of Chapter 40 (Domestic Affairs) to permit a woman who became pregnant as a result of criminal sexual penetration to petition the court to terminate parental rights or permanently suspend physical custody and visitation rights of the respondent, defined as the child's biological father who is not married to the petitioner. The court must determine by clear and convincing evidence the child was conceived as a result of criminal sexual penetration.

The bill also requires the court, prior to terminating custody and visitation rights, to find—in addition to the clear and convincing evidence the child was conceived as a result of criminal sexual penetration—that it is necessary to protection physical, mental, and emotional welfare of the petitioner, and it is in the best interest of the child.

The bill reiterates that the standard of proof is clear and convincing evidence except for a proceeding involving a child subject to the Indian Family Protection Act or the Indian Child

Welfare Act, at which point the standard is raised to beyond a reasonable doubt.

SB278 also contemplates amendments to the Adoption Act, including:

- Changing the term “rape” to criminal sexual penetration; and,
- Providing that a biological parent’s consent to adoption is not required if that biological parent’s legal and physical custody and visitation rights have been permanently suspended or parental rights terminated.

The bill specifically states that the amendments to the domestic affairs matters shall not affect the requirements of the Abuse and Neglect Act with respect to the termination of parental rights in abuse or neglect cases.

SB278 is similar to the enacted Senate Bill 45 of the 2017 Legislature (Section 40-16-1), which provides that termination of parental rights of the child’s biological father shall occur only if the court finds clear and convincing evidence that the child was conceived as a result of criminal sexual penetration for which the biological father was convicted. SB278 differs from current statute because it does not require a conviction for parental rights to be terminated.

The effective date of this bill is July 1, 2023.

## **FISCAL IMPLICATIONS**

There are no estimated fiscal implications.

## **SIGNIFICANT ISSUES**

The federal Justice for Victims of Trafficking Act increases the amount of grant funding available under the Violence Against Women Act for those states that have a law permitting mothers of children conceived through rape to seek termination of parental rights of their rapists. Many states subsequently enacted legislation regarding the parental rights of perpetrators of sexual assault.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Related to Senate Bill 207, Child Abuse Best Interest Standard.

Related to Senate Bill 128, Child Protective Custody Procedures.

Related to Senate Bill 31, Guardianship Changes.

## **TECHNICAL ISSUES**

Subsection P regarding the confidentiality is somewhat vague and may pose interpretation and application issues.

At times, the bill refers to the gender of the petitioner (“woman who became pregnant”) and respondent (“biological father”) while at other times the bill does not refer to their gender. Statute tends to avoid stating gender.

BG/rl/ne/mg