

LFC Requester:	
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## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:

Original  Amendment  
Correction  Substitute

Date Prepared: 2025-02-19  
Bill No: SB441

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Agency Name CYFD 69000  
and Code  
Number:  
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Short CHILD & DOMESTIC  
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COURTS

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### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

**ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)**

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

**BILL SUMMARY**

If enacted SB 441 would:

Provide for expanded training for the judiciary and court personnel as well as provide direction regarding the determination of child custody in cases where there is evidence of potential child abuse or domestic violence.

- \* Add a new section to Chapter 40 NMSA 1978 directing the administrative office of the courts to provide, at a minimum, annual evidence-based training to judges and court personnel on domestic abuse beginning January 1, 2026;
- \* Provides a definition of domestic abuse to mean an incident by a household member against another household member resulting in
  - \* physical harm
  - \* severe emotional distress
  - \* a threat causing imminent fear of physical harm by any household member
  - \* criminal trespass
  - \* criminal damage to property
- \* stalking or aggravated stalking, as provided in Sections 303A-3 and 30-3A-3.1 NMSA 1978
- \* harassment, as provided in Section 30-3A-2 NMSA 1978

Amend Section 40-4-9 NMSA 1978 to provide guidance regarding the standards for the determination of child custody to include:

- \* evidence of child abuse or domestic abuse, including protection orders, arrests or convictions;
- \* directing the judge to hold a private hearing in the judge's chambers whenever testimony is taken from the minor regarding their choice of custodian;
- \* Provides a definition of child abuse to mean
  - \* that a child has been physically, emotionally or psychologically abused by a parent

- \* that a child has been sexually abused by a parent through criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law
- \* that a child has been sexually exploited by a parent through allowing, permitting or encouraging the child to engage in prostitution
- \* allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law
- \* that a child has been knowingly, intentionally or negligently placed in a situation that may endanger the child's life or health
- \* that a child has been knowingly or intentionally tortured, cruelly confined or cruelly punished and providing clarification that participation in treatment by a spiritual means alone through prayer and in accordance with the tenets and practices of a recognized church or denomination shall not be the sole determination that abuse has occurred
- \* Providing a definition of domestic abuse to mean an incident by a household member against another household member resulting in
  - \* physical harm
  - \* severe emotional distress
  - \* a threat causing imminent fear of physical harm by any household member
  - \* criminal trespass
  - \* criminal damage to property
  - \* stalking or aggravated stalking, as provided in Sections 303A-3 and 30-3A-3.1 NMSA 1978
  - \* harassment, as provided in Section 30-3A-2 NMSA 1978

Amend Section 40-4-9.1 NMSA 1978 Chapter 41, Section 1 to provide standards for determination of joint custody and/or parenting plan to include:

- \* A presumption that joint custody is in the best interests of a child in an initial custody determination
- \* Clarification that an award of joint custody does not imply equal division of financial responsibility for the child
- \* Clarification that joint custody shall not be awarded as a substitute for an existing custody arrangement absent substantial change in circumstances affecting the welfare of the child
- \* Clarification that the court shall not terminate joint custody unless there has been substantial changes in circumstances affecting the welfare of the child
- \* Directing the court to consider the following additional information in the determination of whether a joint custody order is in the best interests of the child:
  - \* determination that the individual completing the evaluation or testifying as an expert witness is qualified as competent in the areas of the effects of domestic abuse on children, adults and families, including the connection between domestic violence and trauma on children
  - \* in cases where there is a claim of domestic abuse, or the court has reason to believe that a party has committed domestic abuse, that the court shall

not order reunification treatment

- \* Provides a definition of child abuse to mean
- \* that a child has been physically, emotionally or psychologically abused by a parent
- \* that a child has been sexually abused by a parent through criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law
- \* that a child has been sexually exploited by a parent through allowing, permitting or encouraging the child to engage in prostitution
- \* allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law
- \* that a child has been knowingly, intentionally or negligently placed in a situation that may endanger the child's life or health
- \* that a child has been knowingly or intentionally tortured, cruelly confined or cruelly punished and providing clarification that participation in treatment by a spiritual means alone through prayer and in accordance with the tenets and practices of a recognized church or denomination shall not be the sole determination that abuse has occurred
- \* Provides a definition of reunification treatment to mean a treatment or therapy aimed at reuniting or reestablishing a relationship between a child and an estranged or rejected parent or other family member of the child

## **FISCAL IMPLICATIONS**

There is no fiscal implication for CYFD

## **SIGNIFICANT ISSUES**

Although mention of domestic violence and child abuse are scattered through custody determination statutes (e.g., contested custody proceedings (40-4-8) and joint custody determinations (40-4-9.1)) there is no mention of abuse in core child custody standards (40-4-9). This inconsistency in statute creates the possibility of inconsistency in custody determinations and fails to require judges to consider evidence of child abuse or domestic abuse in all custody determinations. SB441 creates consistency across custody determination standards and provides improved definitions of child abuse and domestic abuse.

SB441 introduces “reunification treatment” into the statute (treatment or therapy aimed at reuniting or reestablishing a relationship between a child and estranged parent) and prevents courts from ordering such treatment when there is evidence of domestic abuse.

## **PERFORMANCE IMPLICATIONS**

SB441 requires “evidence-based” child abuse and domestic abuse training for judges and court personnel. If this training is effective, it could increase safety of children and non-abusive parents in custody and divorce proceedings.

## **ADMINISTRATIVE IMPLICATIONS**

The Administrative Office of the Courts is tasked with developing and providing training in domestic abuse and child abuse for judges and court personnel.

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

None.

## **TECHNICAL ISSUES**

None.

## **OTHER SUBSTANTIVE ISSUES**

Providing a definition of “reunification treatment” introduces the practice into Statute, where it was not previously mentioned.

## **ALTERNATIVES**

None.

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

Status quo.

## **AMENDMENTS**

None.

