

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Baldonado ORIGINAL DATE 02/01/14  
LAST UPDATED \_\_\_\_\_ HB 171  
SHORT TITLE Parental Rights & Criminal Sexual Penetration SB \_\_\_\_\_  
ANALYST Jorgensen

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

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Children, Youth and Families Department (CYFD)

Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 171 amends Chapter 40 NMSA 1978 to address termination of parental rights or permanent suspension of parental rights and visitation in cases of conception resulting from criminal sexual penetration. In the event that a party to the case is indigent, the court is granted the authority to appoint upon request a counsel from CYFD to represent that party. Records from any such court proceeding shall be confidential; and may not be used in any other legal proceeding or action.

The bill amends Section 32A-5-19 NMSA 1978 to place biological parents of children conceived as a result of criminal sexual penetration and whose rights have been terminated on the list of those whose consent or relinquishment does not need to be sought prior to an adoption of the child. This bill would be effective on July 1, 2014.

### FISCAL IMPLICATIONS

It is unclear how many actions may be taken under this legislation, or how many individuals involved in such actions would be deemed indigent by the court and therefore entitled to request and receive CYFD counsel. It is therefore difficult to anticipate the fiscal implications, if any, CYFD may face.

In addition, a judge may request that a guardian ad litem be appointed to safeguard the best interests of the child in the proceeding. This would likely impact the court appointed attorney fee funds. The AOC reports this fund is already taxed to meet its current obligations and therefore, more funding would be required.

## **SIGNIFICANT ISSUES**

CYFD has identified several concerns with HB 171

The bill does not require the respondent to have been convicted of any criminal activity before having his parental rights terminated or permanently revoked, which may raise questions of due process, and may more easily permit the legislation to be used in bad faith in divorce or other hostile custody situations.

It is not clear what impact this law might have, if any, on the ability of the mother to collect child support on behalf of the child.

It is unclear, in the event of criminal sexual penetration rape within marriage, what the effect of the bill might be on the relationship of the father to other children of that marriage.

In the event that the court finds one of the persons involved with the case to be indigent and appoints a CYFD counsel for that person, it is possible that CYFD may find itself in a conflict of interest position, particularly if CYFD counsel is appointed to represent an individual who is also a respondent in an abuse or neglect proceeding before the Children's Court.

## **ADMINISTRATIVE IMPLICATIONS**

CYFD notes that any administrative burden created as a result of fulfilling the requirement under this bill to provide counsel to indigent parties will be absorbed by existing resources.

## **OTHER SUBSTANTIVE ISSUES**

The AGO notes that the bill does not take into consideration a John Doe that may be identified by DNA analysis after the six year mark. Also, while it is highly unlikely that a woman should be the perpetrator of criminal sexual penetration, it is not out of the realm of possibilities and should be equally applied to both genders in the event this did happen.

At present, approximately 32 states have enacted laws addressing or limiting the parental rights of the biological father of a child conceived as a result of criminal sexual penetration.

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

Under current New Mexico law, a biological father of a child conceived as a result of criminal sexual penetration may be able to move for custody of that child. Failure to enact this bill would maintain that status quo.