

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) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Martinez, J. ORIGINAL DATE 2/12/15
 LAST UPDATED _____ HB 277

SHORT TITLE Kinship Guardianship Changes SB _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

SUMMARY

House Bill 277 amends the Kinship Guardianship Act by removing the requirement to state marital status of the child; updating the process of obtaining a hearing date to reflect that the court shall set a date for hearing the petition; and changing the standard of proof in Indian Child Welfare Act (ICWA) cases from beyond a reasonable doubt to clear and convincing evidence to comport with the federal law.

FISCAL IMPLICATIONS

There is no appropriation in this bill and the Children, Youth and Families Department (CYFD) did not report any significant fiscal impact to operating expenditures at this time.

The Administrative Office of the Courts (AOC) reports there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. Additionally, the AOC believes new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

According to CYFD, 25 U.S.C. Section 1912 (e)&(f) set forth the burdens of proof required in ICWA cases. The subsections read as follows:

(e) Foster care placement orders; evidence; determination of damage to child. No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child. No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The agency believes that permanent guardianship of a child could be considered a quasi-termination, and therefore this bill may not comply with ICWA. If, however, permanent guardianship of a child is considered “involuntary foster care placement”, then the level of support for the determination is “clear and convincing evidence, including the testimony of a qualified expert witness” (25 U.S.C. Section 1912(e)).

PERFORMANCE IMPLICATIONS

The AOC reports that courts are participating in performance based budgeting may be impacted by this bill in the following areas: cases disposed of as a percentage of cases filed; and percentage change in case filings by type.

KK/aml