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FISCAL IMPACT REPORT

SPONSOR Chasey **ORIGINAL DATE** 02/04/14
LAST UPDATED _____ **HB** 247
SHORT TITLE Children's Court Immediate Appeals **SB** _____
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY14 | FY15 | FY16 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | Unknown | Unknown | Unknown | Recurring | General |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 247

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Children, Youth, and Families Department (CYFD)

SUMMARY

House Bill 247 amends the abuse and neglect act (32A-4-18 NMSA 1978) to allow an appeal of right from a custody hearing for any aggrieved party.

FISCAL IMPLICATIONS

The AOC and CYFD have reported enactment of this bill may have a significant fiscal impact, but neither agency was able to quantify the potential cost.

The CYFD stated that the likely increase in number of appellate cases will require additional attorneys in the Protective Services Division of CYFD.

The AOC has noted that the Court of Appeals may also need additional resources to handle more appeals on an expedited docket. Further, there will be a direct impact on the billings by court appointed appellate counsel.

Because of the federal mandate under the Adoption and Safe Families Act for children in foster care to achieve permanency within two years of coming into care, it is possible that the addition

of this appellate avenue could negatively affect New Mexico's receipt of Title IV-E funds that support foster care costs.

SIGNIFICANT ISSUES

CYFD states the following:

Aside from the fact that this bill may invade the province of the judiciary, which normally determines rules relating to appeals, it creates the prospect of additional appeals before the adjudicatory hearing, which would interrupt the normal unfolding of the litigation process, and interfere with the strict timelines (for example, commence the adjudicatory hearing within 60 days) that apply to these cases, and which are designed to achieve prompt permanency for children. Appeals at this early stage of a case, where an appellate court would be invited to substitute its judgment of the facts (probable cause) for that of the trial court, could impede the efficient disposition of the case, undermine efforts of the trial court to gain timely and accurate assessments of the family situation, and ultimately interfere with efforts to achieve timely permanency for children.

As such, this bill does not promote the primary purpose of the Children's Code which is to "first provide for the care, protection and wholesome mental and physical development of children..." (§32A-1-3(A) (emphasis added). It necessarily slows the process down for parents and children alike, thus delaying mandated permanency for the child which might include a return home. It does not further any party's interests or provide additional protection for the due process rights of any party. It will have a serious negative impact on the permanency, and therefore the wellbeing of the children.

Next, this bill is not practical with regard to appellate procedure timelines when looked at simultaneously with federal and NM timelines for the adjudicatory hearing which must take place within 60 days of the child's placement in the legal custody of the department.

Finally, this bill does not consider the checks and balances already in place that protect the interests of the children, parents, and CYFD, such as the guardians ad litem, and the Court Appointed Special Advocates. These participants have significant input with regard to the initial (ten-day) custody decision made pursuant to §32A-4-18.

ADMINISTRATIVE IMPLICATIONS

It is likely that an increased number of appeals from custody hearings will result in a need for additional funding in the AOC for Court Appointed Attorneys and additional staff at the Court of Appeals to handle the increased workload. The CYFD will likely need to hire additional attorneys to handle appeals.

DUPLICATION

House Bill 247 duplicates Senate Bill 183.

CJ/ds