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FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/21

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Family Representation & Advocacy, CA SJR 11

ANALYST Bachechi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	FY24	4 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS		\$150.0-\$200.0				Nonrecurring	General Fund
OFRA			\$500.0 to \$1,000.0	\$7,100.0 to \$7,600.0	\$7,600.0 to \$8,600.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Companion to SB127

Relates to Appropriation in the General Appropriation Act of 2021

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Children, Youth and Families Department (CYFD)

Administrative Office of the District Attorney (AODA)

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 11 (SJR 11) proposes to amend Article 6 of the New Mexico Constitution to create the Office of Family Representation and Advocacy (OFRA) as an independent agency for the purpose of providing representation to children and families in abuse and neglect cases as provided by law. If approved by New Mexico voters in the next general election, or any prior special election called for that purpose, would allow for the establishment of the OFRA and an independent commission to oversee the OFRA.

SJR 11 is a companion to Senate Bill 127 that sets forth the administrative structure of the OFRA

in detail.

FISCAL IMPLICATIONS

No appropriation is being requested through SJR12 or in its companion, Senate Bill 127. However, once established, OFRA will require recurring general fund appropriations to operate and fulfill its mandate to provide high-quality representation for children and families in abuse and neglect matters.

OFRA will begin initial operations using the court-appointed attorney fee fund, currently administered by Administrative Office of the Courts (AOC). Should Senate Bill 127 pass, creating the OFRA an appropriation for FY23 will be requested to cover startup costs and salaries in the range of \$500 thousand to \$1 million. Once OFRA is fully operational, it is expected to require a budget ranging from \$17.1 to \$17.7 million annually. After subtracting out the \$5.7 million already being spent by the AOC for representation in abuse and neglect matters, and \$4.3 million in projected federal Title IV-E matching funds, it is estimated that between \$7.1 million and \$7.6 million in new general fund will be needed annually.

The Family Representation Task Force, created in 2019 through Senate Joint Memorial 10 and now operating as the NM Supreme Court Family Representation Commission (FRC), completed an extensive cost-benefit analyses. The projected long-term budget and return on investment data can be found in the Family Representation Task Force Report dated, July 15, 2020.¹ The report projects an annual cost benefits, once the FRC is fully operational, ranging from \$5 million to almost \$12 million, primarily derived from shorter lengths of stay in state custody. At a minimum, these benefits are predicted to substantially offset costs, and could result in net savings for the state over time. Additional cost savings, not monetized in the analysis, are predicted to result from reduced court, attorney, and other legal costs as well as savings in Medicaid and other public programs.

Under Section 1-16-4 NMSA 1978 and the New Mexico constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand-\$200 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

Background

Currently, representation of children and families in abuse and neglect cases is provided by approximately 100 plus attorneys under contract with the AOC. Representation of the children and family in these cases is statutorily required. At any point in time, these attorneys will be engaged in about 1,500 cases that involve approximately 2,400 children and 2,100 parents, guardians or custodians. Many of these attorneys provide diligent representation and advocacy,

¹ <https://courtappointedattorneys.nmcourts.gov/family-representation-taskforce/>

but it is far from consistent across the state and the AOC has neither the staff or other resources to support, provide resources to, or engage in routine performance evaluation of these contractors.

Over the last 20 years, a number of efforts have been launched to improve the quality of this representation, primarily through the NM Supreme Court Children’s Court Improvement Commission (CCIC). The most recent effort to address this issue began with an in-depth assessment of the quality of representation for families in child abuse and neglect cases. The study, conducted by the CCIC, found a number of issues including overall poor quality of representation, lack of uniformity in representation, caseload mismanagement, inadequate compensation, and lack of monitoring and oversight resulting in delays in permanency and hindrances to other positive outcomes for families. In response, in 2019 lawmakers passed Senate Joint Memorial 10) creating the Family Representation Task Force tasked with recommending new structural and practice models for providing high quality legal representation. The work of the task force culminated in a report to the legislature dated July 15, 2020, recommending the creation of the Office of Family Representation and Advocacy (OFRA), an autonomous entity that would allow for independent decision-making and oversight.

Senate Bill 127, the Family Representation and Advocacy Act, and an accompanying constitutional amendment, SJR 11, were then drafted and modeled after the Law Office of the Public Defender legislation. The act (SB 127) creates OFRA in the judiciary as well as an oversight commission, but the constitutional amendment proposed in SJR 11 is necessary to create an autonomous entity that would allow for independent decision-making and oversight. This will require passage of SJR 11 by the Legislature, as well as approval of a constitutional amendment by the people of New Mexico in the November 2022 election.

Achieving independence

The task force report emphasized the need for the OFRA to operate independently in order to ensure effective oversight of agency attorneys, quality representation, and optimally managed caseloads. As observed by the task force, “the location of the court appointed attorney program in AOC was found to hinder independent decision making and oversight” and “AOC personnel and financial resources were . . . inadequate to address issues of oversight and quality assurance, retention, and caseload management.” Meaningful control of its budget, regulation, and policy decisions requires independence and a constitutional amendment was considered necessary to achieve true independence. The task force modeled The Family Representation and Advocacy Act, Senate Bill 127, and SJR 11 after the Public Defender Act, which describes the requirements, powers, and duties of both the Public Defender Commission and the chief public defender (NMSA 1978, §§ 31-15-1 to -12 (1973, as amended through 2014)).²

The OFRA would reside in the AOC until the constitutional amendment is passed by the voters in the November 2022 election. An interim director would be contracted by the AOC to comprehensively restructure the current court appointed attorney program in preparation for moving the program out of the AOC. OFRA will develop interdisciplinary legal team services, modeled on best practices for providing high quality legal representation for participants in child abuse and neglect proceedings, including social workers, case managers, and peer advocates. New

² After existing as the Public Defender Department in the executive branch since 1973, in 2012 the Law Office of the Public Defender pursued a constitutional amendment to create an independent state agency, overseen by the Public Defender Commission (N.M. Const. art. VI, § 39 (as adopted November 6, 2012)).

Mexico is in the forefront on this and our efforts are being closely watched and modeled in other states.

Future considerations

The language in SJR11 has been drafted with broad and references “as provided by law” to (1) allow OFRA to expand the services it provides to clients as needed and as the OFRA has capacity, and (2) allow for any expansion or restriction of the OFRA to be amended via statute, rather than additional attempts to amend the New Mexico Constitution.

There has been a national trend for offices such as OFRA to provide pre-petition services for collateral civil legal issues that bring a lot of families to the attention of the Children, Youth, and Families Department (CYFD), such as housing, education, protective orders, and social benefit issues. In addition, CYFD has developed extensive programming toward prevention efforts and addressing the needs of New Mexican families prior to the crisis level that requires legal intervention. Should OFRA choose to expand legal services to collateral matters and/or in collaboration with CYFD’s prevention programming, this could be done with the language as drafted in SJR11, without further amendment to the NM Constitution. OFRA also aspires to an interdisciplinary representation model that expands a client’s legal team to include a social worker and peer mentor, similar to the current federal grant-fund [New Mexico Family Advocacy Program](#). The language of SJR11, as drafted, allows for OFRA to represent the full needs of children and families, as its capacity allows. It contemplates an ability to grow.

PERFORMANCE IMPLICATIONS

SJR11 is specifically designed to heighten the quality of legal performance of attorneys for children and families in child welfare matters. It creates full budgetary, policy, and operational independence, while establishing clear and direct oversight.

The task force, now operating as the NM Supreme Court Family Representation Commission (FRC) emphasizes that the services to be provided by the OFRA will result in better outcomes for children, young people and families in the areas of safety, permanency, and well-being, including children experiencing less trauma, decreased time to permanency, reduced time in foster care, and long term cost savings to the child welfare systems as a whole.

ADMINISTRATIVE IMPLICATIONS

SJR11 would ultimately remove the administration of approximately 110 contracts for court appointed attorneys from the AOC annually. It would also remove the administration of court appointed attorney fee fund budget, including federal Title IV-E funds. It would place this administrative responsibility with OFRA, independent from the courts.

All key administrative components of OFRA have been considered in this legislation presented through SJR11 and SB127. Upon passage of the SJR11, SB127, and the constitutional amendment in the November 2022 election, the administration of the OFRA would be the responsibility of the OFRA Director, with oversight provided by the Family Representation and Advocacy Oversight Commission. In the interim, the administrative duties will remain with the AOC, with a contracted interim director tasked with duties of implementation, including but not limited to conducting

initial research and planning to develop the requisite infrastructure. The funding for the Interim Director contract has already be identified within the AOC’s current budget.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 127 is a companion bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will be limited advancement in the quality of representation families receive in abuse and neglect matters, and the court appointed attorneys in abuse and neglect cases will continue to be administered by the courts through the AOC with minimal resources for legal support, competitive compensation, performance evaluation, and proactive recruitment. Additionally, children will continue to have lengthy stays in foster care with delays to final permanency, which increases the likelihood of negative impacts on these children and families.

In addition, if SJR11 is not enacted, it will limit full OFRA independence from the Judiciary with regard to policy, implementation and budget.

The Family Representation Commission is committed to developing and passing legislation to establish OFRA as an independent office. If SJR11 and/or SB127 do not pass, the commission will take back all the lessons from the process, recalibrate, and continue to pursue avenues to achieve this goal.

CLB/sb