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FISCAL IMPACT REPORT

SPONSOR <u>SJC</u>	LAST UPDATED <u>3/9/23</u>
	ORIGINAL DATE <u>2/21/23</u>
SHORT TITLE <u>Custody Hearings Within 72 Hours</u>	BILL NUMBER <u>CS/Senate Bill 107/SJCS/aSFI#1</u>
	ANALYST <u>Chenier</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Minimal Impact to \$6,900.0	Minimal Impact to \$6,900.0	Minimal Impact to \$13,800.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)

No Responses Received for Committee Substitute

SUMMARY

Synopsis of SFI#1 Amendment to Senate Bill 107

The Senate Floor Amendment to Senate Bill 107 changes wording related to the procedure the department must conduct when a child has been taken into custody for a second time in six months. A department employee above the level of supervisor would be required to conduct a review to determine whether the child should be released to the child's caregiver. If the department has not authorized anyone to review such cases, then the Protective Services director is required to conduct the review.

The amendment also removed the emergency clause.

Synopsis of SJC Substitute for Senate Bill 107

The Senate Judiciary Committee Substitute for Senate Bill 107, would change the timeline for CYFD to file a petition from two days from the date of the petition to not more than three days after the child is taken into custody. The bill would also change the timeline for a custody

hearing from five days to 10 days with the option for the court to grant a continuance of an additional five days. In cases when a child has been returned to CYFD custody within six months, children should not be released from department custody until department executive managers, in consultation with the children's court managing attorney, determine what is in the best interest of the child. If the determination is to petition the court alleging abuse or neglect, the three day timeline to file the petition is extended to five days.

FISCAL IMPLICATIONS

There was not sufficient time to receive agency analysis on the committee substitute prior to the bill being scheduled on the Senate Floor. However, the committee substitute extended the time the department has to file a petition with the court from two days to three days, which should relieve some of the workload on the department's attorneys. Additionally the timeline for a court hearing was reduced from 10-days to five days with the option to extend by five days. This essentially requires the department to prepare for court hearings more quickly, but if needed because of a lack of staff or other issues, the hearings could continue to progress on a similar timeframe as before. Because of this the substitute is likely to have a minimal impact.

AOC said that there is no appropriation contained within this bill, but there is likely to be an effect on the operating budgets of CYFD, the courts, and the Office of Family Representation and Advocacy (OFRA). The shortened timeline until a hearing may require additional staff for both CYFD and OFRA. The courts will also need to have hearing officers or judges able to have docket space with little notice or vacate other proceedings to create docket availability.

- The shortened five-day deadline may require courts to have a rotating judge or special master dedicated to presiding over custody hearing dockets, or risk the extension period overtaking the time period consistently.
 - Upon filing of a petition by the department, courts must ensure that the parties are assigned counsel and that counsel is provided with contact information for their client to permit effective representation.
 - The courts will also likely need adjustments to its data entry process to assure that cases with a five-day trigger date are appropriately distinguished from those with the three-day trigger date.
- The newly created Office of Family Representation and Advocacy will likely require dedicated staff to assure that quick assignment of cases to respondent attorney, guardian ad litem and attorneys for the children can occur.
 - The Office of Family Representation and Advocacy will likely need sufficiently robust case management software to speedily handle conflict identification and assignment.
 - Those attorneys (employed or contracted) assigned to a five day hearing will be required to vacate (or otherwise address) other hearings to prioritize the five day timeline and make contact with clients prior to the hearing.

SIGNIFICANT ISSUES

These hearings are held to determine if there is probable cause that the child should remain in custody pending the adjudicatory hearing outcome.

AOC provided the following:

- The bill, due to the compressed five days' time period, may:
 - Not provide sufficient time for the department to locate parents and provide adequate notice of the of the custody hearing to the parent, guardian or custodian as to the time and place of the hearing (32A-4-18);
 - Not provide sufficient time for attorneys to consult with their clients, review discovery and provide effective representation to parents and children;
 - Strain court resources, especially in jurisdictions with only one or two judges, by requiring court dockets to schedule hearings within five days and assure that all due process requirements are fulfilled.
 - Result in routine reliance on the five day extension.
- Pursuant to Sec. 32A-28-40 when conflict between the Children's Code and the Indian Family Protection Act occur, the provisions of the Indian Family Protection Act (IFPA) shall apply.
 - Pursuant to Sec. 32A-28-5, notice to Indian tribes is required in any child custody proceeding when the court knows or has reason to know that an Indian child is involved. In those cases, the department shall notify the parent, guardian or Indian custodian and the Indian child's tribe, by certified mail with return receipt requested;
 - Further pursuant to Sec 32A-28-4 the department must provide, and the court must document, details demonstrating the quality and quantity of services and assistance provided to alleviate the causes and conditions;
 - Should a violation of Indian Family Child Welfare Act occur, pursuant to Sec. 32A-28-20, a parent, guardian or Indian custodian from whom the child was removed or the Indian child's tribe may petition the court to invalidate the removal.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB34, which generally amends the Family in Need of Court-Ordered Services Act.

Relates to HB129, which provides for supervision and monitoring procedures for the homes of children taken into custody on grounds of abuse or neglect.

Relates to SB31, which generally addresses the placement of children with caregivers who are not their parents.

Relates to SB128, which generally revises the procedures for placing children in protective custody.

EC/al/ne/rl/mg/ne