

**NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.**

**Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.**

## FISCAL IMPACT REPORT

SPONSOR: SJC DATE TYPED: 3/6/01 HB \_\_\_\_\_  
 SHORT TITLE: Prohibit Termination of Parental Rights SB 742/SJCS  
 ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB336  
 Relates to HB 415  
 Duplicates HB 455

### SOURCES OF INFORMATION

Children Youth and Families Department  
 Administrative Office of the Courts

### SUMMARY

#### Synopsis of Substitute Bill

The bill amends the Children’s Code to prohibit CYFD from filing a termination of parental rights action solely on the basis of a parent’s incarceration.

#### Significant Issues

The amendment codifies the current case law on this topic, which provides that incarceration alone is not a reason to terminate parental rights. See: *In the Matter of Sara R.*, 122 N.M. 1 (1996). This bill should not impact the aggravated circumstances section of the Children’s Code, §32A-4-2 C.

CYFD provides the following key points on this legislation:

1. The bill’s change in the statute could be confusing, since case law in New Mexico already holds that incarceration standing alone is not a *per se* basis for Termination of Parental Rights (TPR). If the bill is attempting to codify current case law, it should say that incarceration alone is not a *per se* basis for TPR, but that it is a factor which may be considered in a TPR proceeding.

2. The law which this bill attempts to codify is not just that the Department should not file or join in TPR motions based on incarceration alone, it is that Children's Court may not enter a TPR solely because of the incarceration of a parent.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

SB 742 conflicts with HB336 which sets forth mandatory time frames to file termination of parental cases when a parent is incarcerated.

SB 742 relates to HB 415 which sets forth the reasons for CYFD to delay filing a termination of parental rights action for any child in state custody for fifteen out of twenty two months.

SB 742 duplicates HB 455

### **OTHER SUBSTANTIVE ISSUES**

CYFD writes that while this bill is not inaccurate, as far as it goes, in stating existing law, it could create some confusion by partially but not fully codifying existing New Mexico law.

CYFD also reports that under existing law, incarceration alone is not a *per se* basis for TPR, but incarceration is a factor which may be considered by the court (along with such factors as the nature of the crime, prior parental neglect, lack of affection shown toward the children, failure to contact them, failure to support them and disregard for their general welfare). Under the existing statute, incarceration can constitute neglect, as defined in § 32A-4-2(E)(4), but that does not mean that it can be the sole basis for TPR. To grant a Motion for TPR, the Children's Court must find other factors as well, as provided in § 32A-4-28, and as has been found repeatedly by the appellate courts in New Mexico. See, most recently, *In the Matter of Ruth Anne E.*, 1999 -NMCA- 35 , 126 N.M. 670, 974 P.2d 164.

CYFD suggests that to correctly codify existing law, the bill should say that the incarceration of a parent may be considered as a factor in a TPR proceeding, but that it may not be the sole basis for TPR.

Another concern expressed by CYFD is that no TPR can be based solely on the fact of incarceration of a parent, no matter who files the Motion for TPR. As written, the bill relates only to the Department filing or joining in motions. There is no reason for this limitation.

### **AMENDMENTS**

CYFD recommends that the bill should say that the incarceration of a parent may be considered as a factor in a TPR proceeding, but it may not be the sole basis for TPR.

BD/ar:njw:pr