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FISCAL IMPACT REPORT

SPONSOR Jennings DATE TYPED 3/3/2005 HB _____

SHORT TITLE Drug Addiction as Child Abuse SB 1022

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$.1 See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY06	FY07			
(\$30,000.0) See Narrative			Recurring	Federal Funds

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children Youth and Families Department (CYFD)
 NM Department of Corrections (NMDC)
 Attorney General (AG)
 Administrative Office of the Courts (AOC)
 NM Public Defender Department (NMPDD)

SUMMARY

Synopsis of Bill

Senate Bill 1022 amends Section 30-6-1 NMSA 1978 of the criminal code and Section 32A-4-2 NMSA of the Children's Code. Through these amendments, the bill defines drug addiction and fetal alcohol syndrome as child abuse in both criminal and civil matters. The proposed amendments create more restrictive definitions of child maltreatment in civil matters, limits reunification options by imposing time frames of a minimum of three years and excluding efforts to reunify with fathers. The bill also adds reporting to Statewide Central Intake as an option.

Significant Issues

According to CYFD, the bill significantly limits what the courts may define as child maltreatment in civil matters thereby restricting the state's ability to protect children. The bill restricts reunification efforts involving drug addicted or fetal alcohol syndrome to the child's mother, and only after a period of no less than three years from the date of the child's birth and upon certification by medical authorities that the mother has remained free from alcohol, illegal drugs or abuse of prescription drugs for the entire period. This restriction is in direct conflict with federal and state reasonable efforts requirements and results in termination of parental rights, as children would be in custody for 15 of the most recent twenty-two months. The proposed amendments would also apply to older youth making a teenager's drug addiction a form of child abuse.

Currently, the state is able to provide services to infants born drug exposed or children diagnosed with fetal alcohol syndrome.

The AG suggests the issues should be separately considered as to both alcohol and drug abuse.

The AG indicates that New Mexico criminal law does not recognize the fetus as a person. In the case of fetal alcohol syndrome the majority of the physical harm to the child will have been completed by the time of the child's birth. The mother may be prosecuted post-partum after the child is diagnosed with fetal alcohol syndrome (FAS). The Bill does not authorize intervention during pregnancy.

The Bill, the AG notes does not address the impact of a mother's drug addiction during pregnancy. The harm caused by ingestion of illegal drugs during pregnancy may be addressed post-partum and after medical diagnosis of the child. The Bill subjects the caretaker to sanctions if drug addiction continues after the child is born. As with FAS, the majority of permanent physical harm caused by a drug addicted mother occurs during pregnancy. Cases of direct harm also occur during ingestion of drugs by the baby breast feeding. These incidents are prosecutable under current law.

The PDD indicates that resulting child drug addiction has already been prosecuted under the present child endangerment language. Appeal of this conviction is currently pending before the New Mexico Court of Appeals.

PERFORMANCE IMPLICATIONS

The proposed amendments have a significant impact on CYFD's performance measures including: Percent of Families in Contact with Children in Out-of-Home Placements; Percent of Protective Services Families with Father Involvement; Percent of Children Adopted within 24 months and Percent of Children in Foster care for 12 months with No More than Two Placements; and the Percent of Children with Repeat Maltreatment within Six Months. The impact on each of these measures would be negative, for example, by restricting the definitions of child maltreatment, the state would be less able to legally intervene in civil matters to protect children leaving them at risk of repeat maltreatment. The mandatory three-year reunification waiting period and the focus on reunification with mothers excludes fathers. Children in care longer typically experience a greater number of placement changes and requiring the three-year reunification period excludes the population of children who may be considered for adoption within two years.

FISCAL IMPLICATIONS

Sections of this bill, specifically the three year waiting period put the state in non-compliance with the federal Adoption and Safe Families Act (ASFA). Failure to comply with ASFA, as per CYFD, could result in losing federal IV-E revenues that currently provide approximately \$30 million for protective and foster care services. The three-year requirement prior to reunification and application of these provisions to older youth with drug addiction issues could result in longer lengths of stay in foster care resulting in an increase in the number of children receiving foster care and an increase in the number receiving foster care maintenance payments at any one time. As the state would not be in compliance with IV-E regulations on a number of these children because of the reunification restrictions, the payments made on behalf of the children would need to be solely supported by state general fund dollars.

ADMINISTRATIVE IMPLICATIONS

CYFD is concerned that the potential resulting increase in the number of children in foster care would create a corresponding increase in the caseloads of protective services workers. Increasing caseloads would result in an inability to meet state and federal requirements for protective services case management.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with Senate Bill 233 and Senate Bill 236

OTHER SUBSTANTIVE ISSUES

The bill is defining as child abuse, actions by a parent that were initiated prior the birth of the child. Fetal alcohol syndrome is a diagnosis not always made at the time of the child's birth, but could be made years later, even after a child has been adopted.

Post-partum drug addiction is often prosecutable under current law. Situations that may be prosecuted include a child not receiving appropriate care, malnourishment, needles or drugs within reach of a child, to name just a few.

Additionally, the Bill may have the unintended consequence of discouraging pre-natal care. New Mexico's mandatory child abuse reporting law applies to physicians. A drug addicted or alcoholic mother may forego medical care during pregnancy for fear of criminal charges.

AMENDMENTS

AOC suggests that if the intent is to have the language of Section 32A-4-7.A (3) govern release of a child in custody due to alleged or proven child abuse involving drug addiction or fetal alcohol syndrome, then add the following language to the beginning of subsection A (3): "notwithstanding the provisions of subsection B of this section...."

BD/lg