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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/07

SPONSOR Zanetti LAST UPDATED 3/16/07 HB 1300/aHAFC

SHORT TITLE Foster Care State Custody until 21<sup>st</sup> Birthday SB \_\_\_\_\_

ANALYST Lucero

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 48  
Relates to Appropriation in the General Appropriation Act

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Moderate*	Moderate*	Moderate*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of HAFC Amendment

House Appropriations and Finance Committee amendment to House Bill 1300:

- Strikes the word “custody” in the title and inserts in lieu “care”
- Strikes the \$5 million appropriation in its entirety
- Clarifies that when a person in CYFD “custody reaches the age of eighteen, the person

may elect to remain with the person’s former foster family, with the family’s agreement, and the department shall arrange payment consistent with department foster care rates and facilitate the person’s planned permanent living arrangement until the person reaches the age of twenty-one”.

Synopsis of Original Bill

House Bill 1300 appropriates \$5,000,000 from the general fund to Children, Youth and Families Department for foster care youth the ability to choose to remain in the custody of the state until age 21. The bill requires the Children, Youth & Families Department (CYFD) to notify a person who is in foster care at age 17 of the option to continue to receive services until age 21. If the person chooses to receive transitional services, the bill requires CYFD to provide services, housing, education and medical care to the same degree as provided before the 18th birthday and for as long as the person remains in care until the 21st birthday.

**FISCAL IMPLICATIONS**

The HAFC amendment removed the appropriation; however, there would still be a moderate impact to the operating budget. The impact can’t be determined because it is unclear how many foster children would choose to stay with their foster families until they are 21.

The appropriation of \$5,000,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of 2008 shall revert to the general fund.

This appropriation is not part of CYFD’s request and is not included in the Executive recommendation.

Administrative Office of the Courts (AOC) states that by maintaining state custody, the district courts will be required to continue judicial reviews and permanency hearings for each child choosing to receive transitional services. Such hearings are not currently conducted after the 18<sup>th</sup> birthday, representing new costs to the judiciary. HB 1300’s appropriation does not cover court costs.

CYFD estimates that about 180 youths leave state custody each year upon their 18<sup>th</sup> birthday and about one-half (90) of those will choose to receive transitional services and remain in state custody. After age 18, an average of two to three hearings each year would be necessary, two judicial reviews and one permanency hearing. The court could combine the permanency hearing with one of the judicial review hearings.

For judicial costs, AOC estimates one hour of in-court time and two hours out-of-court time per hearing and a minimum of 2 hearings. Out-of-court activities include reviewing reports and other materials related to the case, preparing orders, etc. AOC estimates average judicial costs and overhead at \$175 per hour.

Judicial Costs and Overhead		
In-court time/year	\$ 31,500	
Out-of-court time/year	<u>63,000</u>	
Total FY08	\$ 94,500	(General Fund)

For court-appointed attorneys, we estimate one hour of in-court time per hearing, and ten hours out of court per case. Out-of-court activities include contact with the client and others involved in the case, review of reports and other materials, and preparation for court; they do not reflect the hours spent traveling to consult with the child or others involved in the case. We estimate average attorney costs at \$50 per hour.

Attorney Costs and Overhead	
In-court time/year	\$ 9,000
Out-of-court time/year	<u>45,000</u>
Total FY08	\$ 54,000 (Court-Appointed Fee Fund)

Combined, the costs for court-related activities would be \$ 148,500 for FY 08. These costs would double in FY09, as a new group of about 90 youths reach their 18<sup>th</sup> birthday and choose transitional services, thus requiring continued court jurisdiction. Costs would increase again in subsequent years, as another group of 90 youths would reach their 18<sup>th</sup> birthday and choose transitional services and continued court jurisdiction.

CYFD states, that there was a fiscal study done by a committee to begin considering the cost of expanding services to youth transitioning out of foster care. The study assumed approximately 180 foster care youth age out of the system on a yearly basis. Calculations centered on the costs to the Department of hiring new employees and training them, along with administrative support to serve this population over a five year period. To adequately serve this new population of youth at the level suggested in this bill, CYFD could potentially need as many as 25 to 30 additional FTE. These FTEs would be front line workers, supervisors and Children’s Court Attorneys. Assuming a flat average rate of \$54,120 annual salary and benefits cost per FTE, CYFD would require an additional \$1,353,000 to \$1,623,600. As these FTE would be serving youth over the age of 18, the State would not be able to claim any federal match to support their positions/efforts. This figure does not include the fiscal resources that would be required to administratively support and provide the overhead necessary to support these positions. Estimating 1.75% additional administrative cost (office space, supplies, etc.) per FTE raises the total to between \$2.4 million and \$2.9 million.

Additional cost would also include foster care maintenance for youth beyond their 18<sup>th</sup> birthday. Assuming half of the emancipating youth would remain and assuming the current foster care maintenance rate of approximately \$470.00 a month, an additional \$1.1 million would be required annually. As youth over the age of 18 are not eligible for Title IV-E funds and other available federal funding to serve this population is limited, the majority of this cost would be borne by the State.

As the bill requires that youth would receive the same services as if under the age of 18, it implies that the court oversight services would also be required. The fiscal implications do not include an analysis of the additional cost to the courts that would result with the increased requirements and caseload. Additional expenditures could be incurred should there be court orders or other requirements to pay costs associated with housing, health care, and education

**SIGNIFICANT ISSUES**

The bill defines transitional living services as the same type and degree of services that children in foster care receive, rather than the set of services designed to and provided to ensure a

successful transition in adulthood and living independently. As it is written, the bill appears to be an effort to extend foster care on a voluntary basis until age 21.

The language in the bill could be interpreted to include oversight of the courts. This conflicts with the New Mexico Children's Code which does not provide for such judicial review of youth's cases past their eighteenth birthdays. Some of the services listed in the bill would be defined differently for a child in foster care than for an adult. For example, education services provided by CYFD for a child in foster care focus on securing appropriate services from the Public Education Department and educational advocacy. However, these services may not be necessary or desired by a youth seeking to move into the job market. The bill also fails to mention employment or job skills that are significant in transition.

The courts currently do not have jurisdiction over youths after the 18th birthday, so the bill will increase the courts' caseload by 90 cases in FY08, by 180 cases in FY09, and by 270 in FY 2010 and subsequent years. Child abuse and neglect cases are among the most complex and time-consuming in the court's caseload. These types of cases often require the testimony of many parties and expert witnesses, and for these youths, the court may call upon other state agencies and organizations in the fields of education, housing, and health care to review the services provided to these individuals. There is also the possibility that physical, emotional or psychological trauma experienced by the youth would need to be addressed, which could require more hearings.

#### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill will have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

The potential for increased caseloads could negatively impact the CYFD strategic plan and General Accountability Act measure of "child welfare worker turnover rate."

#### **ADMINISTRATIVE IMPLICATIONS**

There will be an administrative impact on CYFD and the courts as the result of the increased caseload and in the amount of time necessary to dispose of these challenging cases.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 48 would also establish transitional services for youths aging out of the state foster care, including additional court hearings as requested by the youth, but provide no appropriation.

#### **TECHNICAL ISSUES**

The bill does not have a provision for youths to opt out after the initial decision to stay in custody after the age of 21.

The bill does not distinguish transitional services from services received in foster care.

**OTHER SUBSTANTIVE ISSUES**

Federal funding via the John H. Chaffee Foster Care Independence Program does not serve all youths who are eligible for services.

The bill does not address the importance of community agencies and other state agencies in coordinating programs, services, and benefits to provide effective transition services to youth age eighteen to twenty-one.

**ALTERNATIVES**

The Court Improvement Project (CIP) has been evaluating the provision of transitional services to youth aging out of foster care. Last fall, a summit was convened and experts offered their advice and suggested policies for consideration by the CIP Task Force. A specific committee was formed to review existing state and federal laws, regulations, and services available, in order to develop recommendations for CYFD, the courts, and others to implement. Existing services are limited due to scarce resources and compounded by lack of access in rural areas. Participating agencies will be enhancing services to the extent possible, but the initiative could produce a request for legislative action during FY09. The task force anticipates that recommendations for legislation will be made in advance of the 2008 session. Given the complexity of the subject and the need for careful study of what programs are needed, what those programs will cost, and the funding streams available for funding the programs, it would be advisable to defer legislative action until the task force completes its work.

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