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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/11

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE CYFD Safe Exchange Program Background Checks SB 165

ANALYST Peery-Galon

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$25.0 to \$50.0	\$25.0 to \$50.0	\$50.0 to \$100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

#### No Response Received From

Department of Public Safety

### SUMMARY

#### Synopsis of Bill

Senate Bill 165 amends Section 40-12-5.1 NMSA 1978 requiring the Children, Youth and Families Department to conduct criminal history records and background checks on individuals providing services for the Safe Exchange and Supervised Visitation Program. The background checks are to include fingerprint-supported national criminal history records checks and screenings for abuse and neglect. The Children, Youth and Families Department is to have the final decision on whether the individual is suitable to provide services pursuant to this section.

### FISCAL IMPLICATIONS

CYFD noted the proposed legislation does not include an appropriation. The department reported that meeting the requirements of the proposed legislation will require additional efforts including additional FTE to conduct background checks, develop rules and administer the appeals process.

AOC noted there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. It is expected that a maximum of 22 individuals annually

would undergo the background check and abuse and neglect screening by CYFD, since many persons employed by the courts' contractors already undergo such checks a requirement to provide services in other programs regulated by CYFD.

## **SIGNIFICANT ISSUES**

CYFD reported the department will be required to review existing policies and procedures to assure they provide sufficient due process and implement additional safeguards to comport with the due process requirements of the federal and state constitutions to the extent necessary.

CYFD reported the proposed legislation requires the department to conduct activities for which it has no legal authority to do. CYFD having sole responsibility for making the final employment decision for the district court creates a new role for the department that is unprecedented and problematic from a litigation standpoint. Authorizing CYFD to make the final decision over an employment decision for the district courts in New Mexico, aside from a separation of powers issue, could have financial consequences for the department. CYFD reported the department cannot take on the administrative, legal and fiscal consequences for making employment decisions for the judiciary. This fundamental boundary should remain intact and any language attempting to convey responsibility for employment decisions for the judicial branch to the executive branch of government should be stricken as a violation of the separation of powers established by Article III, Section I of the New Mexico Constitution.

AOC and eight judicial district courts currently contract with 11 service providers to deliver monitored exchanges and visits. More than 2,389 clients received services through the program in FY10, including 1,009 children of which 525 were under the age of five. AOC has adopted standards that require background checks of new and continuing employees.

AOC reported some service providers have other programs regulated by CYFD and thus, their employees undergo the background checks and abuse and neglect screens conducted by CYFD. However, other providers may only have partial criminal background information when making decisions about new hires, because they often rely on various internet services to check public records for such information. Also, the courts cannot access abuse and neglect screens on applicants because CYFD does not have absolutely clear, express statutory authority to conduct background checks or abuse and neglect screens for the Administrative Office of the Courts.

AOC noted it seeks to ensure that all contractors' staff, about 65 individuals, who supervise visits and exchanges for more than 1,000 children annually, have thorough background checks and abuse and neglect screens done to make sure they are suitable for employment.

AOC reported there are two court cases from other states that have ruled that potential disclosure of confidential information in a background check context may require individuals to have more due process than allowed by those states. These cases are critical of entire background check systems without recognition of the critical importance of background checks for the safety of children. Respectfully, these are not the types of opinions that can guide another state with a different system. The New Mexico system, unlike the systems ruled upon in these other cases, carefully prevents disclosure absent a signed waiver and imposes severe consequences from breaches of confidentiality. The New Mexico system also provides for substantially more due process than the other states in question.

**ADMINISTRATIVE IMPLICATIONS**

CYFD stated administrative resources necessary to fulfill the requirements of the proposed legislation would be absorbed by existing resources. Additionally, the proposed legislation requires the department to include screenings for abuse and neglect as part of its background check. New Mexico does not provide a statutorily mandated child abuse registry.

AOC reported the agency would work with CYFD to provide them with the necessary information and/or documents to conduct background checks and abuse and neglect screens. No confidential records would be disclosed or released because CYFD makes the final decision on suitability for employment.

**OTHER SUBSTANTIVE ISSUES**

AOC reported the agency has established minimum practice standards for professional safe exchange and supervised visitation services, as set forth in Sections 40-12-1 through 40-12-6 NMSA 1978. The standards require background checks on employees who perform these services.

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