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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/26/19

**SPONSOR** Rubio/Lara/Ely      **LAST UPDATED** \_\_\_\_\_      **HB** 626/ec

**SHORT TITLE** Prohibit Certain Detention Contracts      **SB** \_\_\_\_\_

**ANALYST** Edwards

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
(Potentially substantial, see fiscal implications)	(Potentially substantial, see fiscal implications)	(Potentially substantial, see fiscal implications)	Recurring	Federal Revenues

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 95, House Bill 624, House Bill 625, and Senate Bill 196.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Homeland Security and Emergency management (DHSEM)

New Mexico Attorney General (NMAG)

Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of Bill

House Bill 626 adds new language relating to jails and detention of child refugees. It defines “detention facility” and “family member” and grants rulemaking authority for the Children, Youth and Families Department (CYFD) to define the standards of what constitutes basic needs of a child.

The bill prohibits the state and political subdivisions of the state from contracting with any detention facility involved in separating child refugees from their parent or guardian unless there is a finding from a district court that the parent or guardian is unfit or a danger to the child, the facility meets the child’s basic needs, including family visitation, and the facility has no separation or detention that resulted in intentional or negligent great bodily harm or death to a refugee child. If a detention facility has not violated any of these criteria for the previous three months, an exception is made to the prohibition to contract with the facility. For the exception to occur, a facility must agree in writing that any violation is grounds for termination of the contract with no liability to the state or agency and it must maintain policies consistent with CYFD guidelines.

House Bill 626 also repeals Section 29-1-10, relating to state participation in federal programs.

Contains an emergency clause.

### **FISCAL IMPLICATIONS**

There is no appropriation contained within this bill. There may be a fiscal impact associated with the creation and promulgation of rules which will require additional resources presuming that CYFD is unable to apply existing regulation for detention facilities (8.14.14 NMAC) to those facilities this expanded authority will entail. Regardless, if CYFD is tasked with ensuring compliance with the regulations, additional resources will be required.

This bill could potentially make New Mexico a sanctuary state in the view of the federal government. In the case of many federal law enforcement grants, the federal government requires immigration cooperation assurances as a prerequisite to receiving funding. Should this bill pass, the state and its counties could lose millions of dollars in federal funding. For example, over the summer of 2018, states nationwide, including New Mexico, did not receive more than \$335 million allocated for justice assistance formula grants (JAG) after a federal judge issued an injunction that barred the Department of Justice from imposing immigration assurances as a prerequisite to receiving JAG funding in any jurisdiction. As a result, the Department of Public Safety did not receive until close to the end of FY18 almost \$1 million in JAG funds that cover overtime costs incurred by DPS investigative agents in support of the Controlled Substances Act and training for agents to enhance investigative skills. As another example, this bill could eliminate Operation Stonegarden for border protection and other federal homeland security funding, of which New Mexico receives almost \$3 million per year.

### **SIGNIFICANT ISSUES**

CYFD explains “ensuring safety of refugee children is of great importance. This bill aims to ensure children’s safety when they are applying for asylum status. There may be fiscal implications associated with this bill for CYFD. Currently, CYFD certifies the county juvenile detention centers, and existing regulation specifically limits the population of those centers as follows”:

**8.14.14.2 SCOPE:** This regulation applies to all New Mexico juvenile detention centers operating under the certification of the children, youth and families department and managed by county and local jurisdictions. Juvenile detention centers detain delinquent offenders, youthful offenders, and serious youthful offenders. Juvenile detention centers detain

juveniles pending court hearings but do not provide for long-term care and rehabilitation of adjudicated juveniles. Juvenile detention centers shall not detain children younger than the age limit identified in the Children’s Code, status offenders, persons charged or previously adjudicated as delinquents or youthful offenders who are 18 years of age and older who have previously been detained with an adult population, or persons who are 18 years of age and older who are participating in a juvenile specialty court program serving custodial sanctions. [8.14.14.2 NMAC – Rp 8.14.14.2 NMAC, 01/01/2019]

TE/sb