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## FISCAL IMPACT REPORT

**SPONSOR** SJC **ORIGINAL DATE** 2/16/2020  
**LAST UPDATED** 2/19/2020 **HB** \_\_\_\_\_  
**SHORT TITLE** Foster Youth Changes **SB** CS/SB168/aSF1#1  
**ANALYST** Daly

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

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)\*

Administrative Office of the Courts (AOC)

Indian Affairs Department (IAD)\*

New Mexico Attorney General (NMAG)\*

\*on original bill, as applicable

### SUMMARY

#### Synopsis of SF1#1 Amendments

The Senate Floor #1 Amendments to the Senate Judiciary Committee Substitute for Senate Bill 168 clarify venue for proceedings under the Fostering Connections Act to be the county in which the eligible adult resides. They also provide that for actions under the Act, and those under the Children's Code generally, a transfer of venue may be made if the residence of the child or the eligible adult changes, or for other good cause.

#### Synopsis of Original Bill

The Senate Judiciary Substitute for Senate Bill 168 clarifies provisions in and adds additional provisions to the Fostering Connections Act (FCA), passed in the 2019 session, to provide extended foster care for eligible adults between 18 to 21. SB168/CS:

- Reworks eligibility requirements to include those over 18 who were adjudicated under the children's code, whose placement and care was the responsibility of the department or Indian tribe pursuant to an agreement with CYFD and subject to an out-of-home placement order, OR who entered a guardianship assistance agreements or adoption assistance agreements after the age of 14 which later were terminated or whose parents

are no longer willing to provide emotional or financial support once the child turned 18 (subject to also meeting other educational or employment criteria established in existing law);

- Revises the definition of “transition plan” between CYFD and an eligible adult to include an assessment of the eligible adult’s strengths and needs, the establishment of goals, identification of services and activities to be provided to meet those goals, a timeframe for meeting those goals, and how those services and assistance will be provided, as provided by CYFD rule;
- Revises the definition of “young adult” to mean a person who is at least 18 and under 21 and not currently participating in the Fostering Connections Program and provides a new definition of “placement and care”;
- Clarifies an eligible adult may opt out and reenter the program unlimited times. If barriers to eligibility exist, CYFD must identify those barriers and make active efforts (as that term is now defined in Section 4) to assist the eligible adult in overcoming those barriers. Within 15 days of determining an eligible adult is no longer eligible, CYFD must notify the young adult and that person’s attorney to try to reestablish eligibility. CYFD may not terminate an eligible adult’s participation until the court approves termination at a discharge hearing;
- Requires a judicial review hearing on compliance with the voluntary services and support agreement and implementation of the transition plan occur every six months (rather than every year as required by existing statute). CYFD must hold a periodic review meeting at least five days but no more than 30 days before any such hearing. Adds language specifying CYFD’s burden at that hearing (as well as at the final discharge hearing), and the authority of the court at both review and discharge hearings. Directs that a court conduct a review hearing in a manner that seeks the eligible adult’s meaningful participation by considering procedural modifications and flexible times. At every hearing after the child reaches 16 and one half years of age, the judge must inquire and make a finding as to whether the youth has been informed of the Fostering Connections Program. An additional court finding no later than three months before a youth’s eighteenth birthday is required as to whether the youth has decided to participate in the program;
- Adds an appeal process for a young adult who receives an adverse eligibility decision from CYFD;
- Requires CYFD inform all youth over the age of 16 about the Fostering Connections Program, and provide all youth 17 and one half years of age the opportunity to develop an agreement to enter the program upon attaining the age of 18; and
- Establishes venue for proceedings under the FCA to be the county where the eligible adult resides and provides for transfer when the residence of the eligible adult changes.

SB 168/CS amends other provisions of the Children’s Code to establish venue for court proceedings in the county where the child resides and provides for transfer when the child’s

residence changes. It also allows for extended adoption and permanent guardianship subsidies until age 21 if the child meets certain specified criteria.

### FISCAL IMPLICATIONS

CYFD in its earlier analysis advised that any fiscal impact to that agency will be absorbed by drawing down additional federal funds from Title IV-E of the Social Security Act. It explained that beginning in 2019, states can claim federal matching funds through Title IV-E to help pay the costs of attorneys representing certain children and their parents in child welfare legal proceedings. CYFD reported it has entered into a joint power agreement with AOC to provide supplemental funding to the court appointed attorney fund (CAAF), in part to offset additional legal representation costs anticipated by the implementation of the Fostering Connections Program.

In its updated Feb. 19, 2020 analysis, AOC first notes that increasing the frequency of review hearings from once a year to every six months doubles the number of court hearings. Further, allowing eligible adults to opt out of and then opt back in any number of times increases the number of initial hearings and discharge hearings. It reported that CYFD and New Mexico Child Advocacy Network (NMCAN) collaborated in seeking a fiscal analysis of the FCA, which produced these court costs:

Court Review Assumptions			
	FY 2021	FY 2022	FY 2023
Number of youth per year	207	212	220
Court-Appointed Attorney Hearings/Client Meetings	\$240,000	\$240,000	\$240,000
	\$190,000	\$190,000	\$190,000
Total Annual Court Review Costs	\$430,000	\$430,000	\$430,000

AOC advised that it and CYFD recently entered into a JPA to authorize CYFD to reimburse AOC for costs for court appointed attorneys who provide legal representation to parents and children. Under the JPA, CYFD would provide funds to AOC from Title IV-E of the Social Security Act. In its Feb. 19, 2020 analysis, AOC advised that it anticipates that Title IV-E funding will cover the costs associated with additional court hearings.

AOC also advises that the fiscal analysis above takes into account the eligible adult’s attorney would be preparing for and participating in at least two review hearings per year, in addition to out-of-court meetings. The cost estimate is based on CAAF’s current flat rate payment structure, and assuming client obligations would continue three years beyond the current obligation duration.

### SIGNIFICANT ISSUES

CYFD first commented that it strongly supports this bill. It explained that extended foster care, also known as the Fostering Connections Program, passed with bi-partisan support in the 2019 session. Further, it advised the bill contains changes that need to be incorporated into the Act to ensure the program’s continued success, and to optimally leverage federal dollars to help fund implementation of the law. CYFD provided this analysis of the bill:

Young people leaving foster care are often not prepared and do not have the needed support to transition successfully into adulthood at age 18. This bill will assist in improving outcomes for young people who are at-risk and under-resourced by improving the Fostering Connections Act as previously passed. For example, the provision that there is no limit on the number of times an eligible adult may opt in or reenter the Fostering Connections Program recognizes that 18-21 year olds do not have the same decision-making ability as older adults. When youth prematurely opt out of foster care but still need help, these supports can be costly to the state. This bill would better enable CYFD to leverage federal dollars for these youth by allowing youth to easily re-enter foster care. Approximately half of all youth in foster care are currently eligible for federal funding; yet, more than 90 percent of all youth who re-enter foster care after 18 will be eligible for federal funding under this bill. This bill ensures that CYFD is able to use federal funding for services and housing for eligible youth under 21 years of age.

CYFD also commented on the provision including adults in the Fostering Connections Program who were at least 14 when a guardianship or adoption assistance agreement was in effect and whose guardian or parents are no longer willing to provide emotional or financial support after the child turned 18. It asserted this provision would remove potential disincentives to permanency for older youth that was unintentionally created by opting into extended foster care. CYFD advised that currently, it is under federal penalties due to low permanency numbers. It believed this bill would help CYFD's priority to increase permanency numbers among older youth while also implementing extended foster care beginning July 1, 2020. CYFD also advised that the change from annual to bi-annual review hearings is a federal requirement.

In comments related to language in the bill (at Section 10(B)) concerning how review hearing should be conducted AOC reported judges are able to de-formalize the courtroom procedure to enhance the comfort level of the eligible adult. In addition, judges (and the required court staff) do have the ability to be flexible with the timing of the hearings, including outside regular court hours, to accommodate eligible adults. Both of these approaches were well received by judges in the Sixth and Twelfth Judicial Districts whom AOC consulted, who are very open and willing to making the court process as comfortable and engaging for children and eligible adults as possible.

## **PERFORMANCE IMPLICATIONS**

CYFD has performance measures related to the safety, well-being, and permanence of children.

## **TECHNICAL ISSUES**

The new venue provision for court proceedings under the Children's Code generally in Subsection 1(B) appears to conflict, in part, with that provided in existing Subsection 1(A).

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Both CYFD and AOC noted this bill was drafted to comply with federally-required language to secure Title IV-E funding. They advised that without much of the language contained in the bill, significant funding might be unavailable for the services and support for the eligible adults the FCA aims to serve.