

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Lord/Vincent **ORIGINAL DATE** 1/30/2023

BILL

SHORT TITLE Monitoring of CYFD Custody Children **NUMBER** House Bill 129

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$1,139.4- \$8,600.0	\$1,139.4- \$8,600.0	\$2,278.8- \$17,200.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From
Children, Youth and Families Department (CYFD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 129

House Bill 129 would require CYFD to supervise and monitor, for every child released from custody, the home from which the child was removed, whether temporary protective custody or court-ordered custody, on a monthly basis for a three-month period of time, which can be extended to ensure the child's safety.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

CYFD Provided the following:

There is no appropriation contained within this bill. CYFD cannot absorb the fiscal implications with existing resources.

If this amendment is intended to apply to children being released from temporary protective custody or following the denial of an ex parte custody motion, the fiscal

impact is anticipated at \$4,300.0 (four million three hundred thousand) per fiscal year to ensure sufficient investigators to handle the increased case load.

If this amendment is intended to apply to children being released from temporary protective custody to children released following the denial of an ex parte custody motion, and children being released following the dismissal of an abuse/neglect proceeding, the fiscal impact is anticipated to be at least \$8,600.0 (eight million six hundred thousand) per fiscal year to ensure sufficient investigators and permanency workers to handle the increased caseloads.

However, LFC data and analysis indicates that in 2022 there were 1,072 children released from the department's custody. The U.S. average caseload for investigations workers is 67. Using the average caseload and the number of children released, the department would need about 16 investigations workers to fulfill the requirements in this bill. The average annual FTE cost of Protective Services investigations case workers, senior case workers, and their supervisors is \$71.2 thousand which comes to an annual cost of \$1.1 million.

The estimated additional operating budget impact table at the top of this analysis uses the LFC amount for the lower limit and CYFD's higher estimate for the upper limit.

SIGNIFICANT ISSUES

CYFD provided the following:

First, although this bill requires CYFD to monitor “the home from which a child is removed and taken into custody”, the bill fails to invest CYFD with the authority necessary to require the home's owners or residents to permit CYFD to fulfill their monitoring obligations under this bill. When a child is not in CYFD's custody, or under CYFD protective supervision by court order, parents, custodians, and guardians have the right to deny CYFD access to their home. Without statutory authority to enter the home, CYFD cannot guarantee that it will be able to monitor or supervise the home.

Next, this monitoring requirement applies to all children released from custody, regardless of circumstances or need. Currently, regulation states that investigations can remain open for 45 days and extended for another 30 days. When a child is released from a police hold (or on a denial of an ex parte order), CYFD has the authority to continue the investigation, and the flexibility to assess when it is appropriate to close the investigation for that family, within that 75-day period. Mandating that CYFD continue its surveillance of a house for a minimum 3 months, rather than allowing the flexibility to close within 75 days, is an inflexible approach. This approach is also inconsistent with national child welfare best practices. Children are released from CYFD for a wide variety of reasons and, for some, continued monitoring and supervision would not be necessary or appropriate.

CYFD already has the authority to take alternative actions if, at the close of an investigation, CYFD has assessed that continued intervention is necessary to ensure the child's safety, including in-home services (if the family is willing to engage voluntarily) or legal action to seek custody of the child or pursue court-ordered services for the family.

Next, the bill requires CYFD to monitor “the home from which a child is removed and taken into custody”. This geographical requirement will result in the following scenarios:

- The “home” from which the child is removed is a hotel room. Following the child’s release from custody, the family relocates. CYFD remains obligated to continue monitoring the hotel room, despite the departure of the child.
- The child was taken into custody following the arrest of a parent at a location that is not the child’s home (e.g., a parent arrested for unsafe driving while the child is in the vehicle), and subsequently released to the non-offending parent. Which “home” was the child removed from?
- The child is taken into custody while travelling through New Mexico, and their full-time residence is in another state. CYFD has no jurisdictional or investigative authority over residences outside of New Mexico.
- A child who was taken into custody from one home is released to a parent who lives at another address. Again, CYFD remains obligated to monitor the child’s previous place of residence, rather than the child’s current place of residence.

Finally, as discussed in Fiscal Implications, it is unclear as to the scope of the target population. Does the bill target only children being released from temporary protective custody or following the denial of an *ex parte* motion? Or does it include the entire population of children in custody, including those who have been reunified following a custodial proceeding? If the bill only targets the first population, its failure to imbue CYFD with the authority to enter the house without consent means that CYFD can never fully discharged the bill’s mandate.

However, if this bill covers the entire population of children in custody, and requires supervision and monitoring *after* dismissal of an abuse/neglect case or a family in need of court ordered services case, this would significantly increase the additional staff required to implement the change, and the issue of CYFD’s lack of authority to enter a home to supervise and monitor continues to apply after case dismissal. Once an abuse/neglect case has been initiated, decisions around when to end a trial home visit, when to return custody to a parent, when to have a period of protective supervision, and when to dismiss a case are best left to the Court, with input from all parties, on a case-by-case basis. In making these decisions, the Courts can consider the services to be provided to the family that will continue after dismissal, with participation on a voluntary basis.

ALTERNATIVES

CYFD said that the bill could clarify CYFD’s authority to reach out to families after an investigation is closed, allowing CYFD to assess which families to do this with. For example, CYFD could put this practice into place for families identified as high risk. Participation would be voluntary on the part of the family, but CYFD could follow up on their engagement with services and inquire if CYFD could further assist the family.