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FISCAL IMPACT REPORT

SPONSOR Chasey/Jaramillo LAST UPDATED _____
ORIGINAL DATE 2/10/2023
SHORT TITLE Children Rights & Attorneys BILL NUMBER House Bill 235
ANALYST Gray

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of House Bill 235

House Bill 235 amends the guardian ad litem (GAL) section in the Children's Code. Guardians ad litem are directed by statute to represent a child's best interests and find the best course of action to provide adequate care for a child.

The bill contemplates requiring guardians ad litem to consult with a child before every hearing, convey any interests the child expresses to the court at every hearing, and to incorporate the child's stated interest in their analysis of what is in that child's best interest.

The bill also proposes

- To require a GAL to be appointed for children age 5 and younger;
- To change the age (from age 14 to age 6) at which a child is appointed an attorney rather than a GAL; and
- To add the right of a child of an abuse or neglect proceeding to attend all hearings related to the child's case and a procedure for the child to attend those hearings; a court may exclude a child only on finding of a compelling reason.

HB235 provides that a child has the right to appear remotely and that a court is required to arrange for remote participation.

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

There are no estimated fiscal implications.

SIGNIFICANT ISSUES

Currently, a child under 14 in an abuse and neglect proceeding is represented by a GAL who provides the court their opinion of the child's best interest. According to analysis from the Administrative Office of the Courts, the best interest model of representation has been critiqued by the legal community nationally because the majority of attorneys acting as the GAL are not formally trained or licensed experts in child development and may lack the expertise to adequately determine a child's interest. The New Mexico Family Representation Commission (FRC) supports the transition from GAL representation to the use of direct representation, which is accomplished under HB235.

FRC asserts, "Direct representation would ensure the child's voice [is] paramount in judicial proceedings and provide the child the ability to be engaged in the proceedings impacting their life" The commission unanimously recommended New Mexico move from GAL/best interests representation to direct representation for children and young people who have the cognitive and communicative ability to direct their representation.

AOC also notes the judiciary would need to offer trainings to meet requirements and enforce standards as outlined in the bill.

Analysis from the Children, Youth and Families Department (CYFD) notes the added requirements concerning child participation in hearings are consistent with current best practice and provide clarity around allowing children to appear remotely. The bill is unclear whether the courts, CYFD, or GAL/attorneys are required to arrange for the remote hearings. It is likely it will be the responsibility of the courts, and that this will add administrative cost.

TECHNICAL ISSUES

The Children's Mental Health and Developmental Disabilities Act currently uses the prior definition of representation. The act directs children under 14 directed to have a guardian ad litem. See Section 32A-6A-13(A).

Similarly, Section 40-4-9(B) requires that, in a child custody hearing, the court must consider the wishes of a child 14 years or older in determining custody. There may be some conflict between what age a child's wishes or stated interests are to be heard or considered by the court depending on whether it is an abuse or neglect proceedings or a child custody proceeding.