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FISCAL IMPACT REPORT

SPONSOR <u>Duhigg/Lopez/Hemphill</u>	LAST UPDATED <u>2/3/2023</u>
	ORIGINAL DATE <u>1/30/2023</u>
SHORT TITLE <u>Child Protective Custody Procedures</u>	BILL NUMBER <u>Senate Bill 128</u>
	ANALYST <u>Chenier</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		(\$7,653.9)	(\$7,653.9)	(\$15,307.9)	Recurring	CYFD General Fund and Federal Fund Foster Care Caseload Reduction
		\$674.0	\$674.0	\$1,348.0	Recurring	CYFD Additional Staff
Total		(\$6,979.9)	(\$6,979.9)	(\$13,959.8)		

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)
 New Mexico Attorney General (NMAG)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Senate Bill 128

Senate Bill 128 makes changes to the Abuse and Neglect Act and the Family in Need of Court-Ordered Services Act and takes responsibility for removing from the home maltreated children or children suspected of being maltreated away from law enforcement officers and grants this responsibility to CYFD. The bill would still allow for circumstances when law enforcement may still remove children from the home under newly defined exigent circumstances and requires law enforcement to assist in taking a child into custody at CYFD's request.

The bill also increases the number of days a child may be held without CYFD petitioning the court under the Court-Ordered Services Act or the Abuse and Neglect Act from two days to three

days. The timeline for a custody hearing for a child taken into protective custody by the department would be changed from 10 days to seven days. The bill also adds a definition for exigent circumstances to the Abuse and Neglect Act and adds a definition for fictive kin, consistent with the Indian Family Protection Act.

The bill would also repeal Section 32A-4-7 NMSA 1978 (release or delivery from custody) and Section 32A-4-16 NMSA 1978 (Ex Parte Custody Orders).

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

New Mexico's rate of short-term foster care (less than 30 days) was 41 percent while the U.S. average was 9 percent. As of October 2022, the total number of children in custody was 1,797 children and the total cost of providing foster care to those children was about \$38.3 million. Cost calculation steps from enacting this bill are as follows:

- Total cost of foster care for all children = \$38.3 million
- Total number of children in foster placement as of October 2022 = 1,797
- Percent of short stay foster placements (less than 30 days) = 40 percent
- Projected number of children in short stay foster placement = 718
- Assumed reduction in short stay placements if passed = 50 percent or 359 children
- Cost of 40 percent short stay placements = \$15.3 million
- Cost savings from reduction of 50 percent or 359 children in short stay placements = \$7.6 million

The department could also expect an improvement in caseloads with less children entering the system.

CYFD provided the following:

Current staffing levels, particularly after business hours and on weekends and holidays will not be sufficient to meet the new requirements for detailed removal applications within 18 hours. Additional program investigations staff will be needed to meet the 18-hour filing requirement, and to make thorough assessments of the need for removal. Also, CYFD protective services is not staffed with after-hours legal staff. CYFD does have one managing attorney on call for weekends but will need to add Children's Court Attorneys and support staff in each region to support the 18-hour filing requirement.

CYFD said this would all amount to a needed increase of 10 legal staff and 50 program staff. However, their analysis did not consider the reduction in caseloads and the ability to repurpose staff to meet the needs of this bill. The department also did not provide calculations for how they arrived at this estimate. Given an average annual FTE cost of \$106 thousand for attorneys and \$71.2 thousand for investigators. If this bill resulted in an increase of three legal staff and five investigators the cost to CYFD would be \$674 thousand.

AOC said that there are no appropriations in this bill. However, there may be fiscal implications for the judiciary. The requirement that the court produce a removal order for every child

removed from their home by CYFD, even if just for a very short period of time, is expected to be a new burden on the judiciary. This will manifest itself in additional hours worked by judges, training across all positions of the judiciary, and restructuring of docket management. On the flip side, the ability for judicial review before a child is removed may ultimately result in fewer petitions filed alleging abuse or neglect. Fewer petitions mean fewer abuse or neglect cases which take significant amount of docket time and judicial resources.

SIGNIFICANT ISSUES

In New Mexico, according to a 2020 LFC evaluation, over 40 percent of children placed in foster care stay for less than 30 days before being reunited with family, one of the highest rates of “short-stayers” in the nation. Research shows children removed from the home often have worse outcomes than those not removed, costing taxpayers and families tens of millions of dollars per year. These negative impacts are likely related to the trauma associated with parental separation and the child’s feelings of fear, uncertainty and abandonment. Some removals are necessary to ensure child safety however, as are likely unnecessary. Over 90 percent of the state’s short-stayers are in care for less than eight days. These short-stayers are less likely to be placed with relatives, a recognized best practice. While the Children, Youth and Families Department (CYFD) administers child welfare services in New Mexico, the Children’s Code stipulates law enforcement officers have the sole authority for removing a child from the home.

Collaboration between law enforcement and CYFD, could be strengthened through best practices on cross-training, data sharing, and multi-disciplinary teams. There are opportunities for cross-training between law enforcement and Protective Services. Chaves County in 2015 implemented a pilot project training law enforcement regarding the definition and impact of short-term placements in foster care. They saw promising results from this analysis with short-term placements in foster care dropping in April of 2015 after the training. In addition to providing law enforcement with information about short-term placements in foster care, the training created an opportunity to collaborate with law enforcement. Regional training, such as this, could be a model to scale statewide.

Table 1. Models of Practice in Removing the Child from the Home

Models of Best Practice from Other States	Practice in New Mexico	Recommendation
Joint agreement required between law enforcement and child Protective Services	Law enforcement officers make removal decisions with consultation from CYFD investigators.	Changing state statute to require joint agreement in removal decisions between law enforcement and CYFD.
Supervisory approval	Although not stipulated in statute, most law enforcement officers will consult with their supervising officer, and investigators will consult with their supervisors.	When joint agreement cannot be reached, law enforcement and CYFD supervisors will determine if the state should take custody of the child.
Multidisciplinary investigative teams	Not in statute. Law enforcement agencies and CYFD investigators can conduct separate investigations. Collaboration on investigations can depend on relationships between local law enforcement agencies and CYFD.	Joint agreements for removal should reduce the need for duplicative investigations and interviews.
Court approval for removal	After a child is taken into custody, CYFD must petition the court within 48 hours to maintain custody.	Study amending state statute should grant removal authority to CYFD after obtaining a warrant.

To help ensure the reduction of short-term foster care placements, adequate staffing and training needs to be in place. A report by the Government Accountability Office identified a relationship between staffing shortages, caseloads, and short-term placement rates. Staff turnover and shortages can make timely and supported decisions regarding a child’s safety harder.

The LFC evaluation can be found here:

https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Short-Term%20Foster%20Care%20Placements.pdf

DPS state that the department is concerned about the portion of the bill that would require DPS to find a separate reason to remove multiple children from the same home. If the parent or other guardian has caused one child to have a broken bone or drug exposure, it defies common sense not to mention law enforcement training to require law enforcement to turn a blind eye to the possibility that the same thing will occur to other children in the home.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Bill 129, which proposes to amend Section 32A-4-6 NMSA 1978 differently than this bill to require monthly monitoring by CYFD of homes from which children are removed and taken into custody.

Relates to Senate Bill 31, which proposes to add the same “fictive kin” definition to the Children’s Code while removing it from the Abuse and Neglect Act.

Conflicts with Senate Bill 107, which proposes to amend Section 32A-4-18 NMSA 1978 to require hearing in three days (excluding weekends and holidays) rather than the seven days under SB128.

TECHNICAL ISSUES

AGO said that the definition of exigent circumstances uses a number of terms – probable cause, reasonably, imminent, serious, and “no less intrusive alternative” among them – that are susceptible of multiple interpretations or that often carry legal definitions. This could create ambiguity or inconsistency in applying the bill’s provisions. The bill could provide greater clarity by defining this term.

The term “significant, family-like relationship” used in the “fictive kin” definition is not defined in the statute, and could be susceptible to multiple interpretations. The bill could provide greater clarity by defining this term.

EC/mg/ne/mg/al