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FISCAL IMPACT REPORT

SPONSOR Soules **LAST UPDATED** 02/27/2023
ORIGINAL DATE 01/27/2023
BILL Senate Joint
SHORT TITLE Children's Bill of Rights, CA **NUMBER** Resolution 2
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
			\$150.0-\$200.0	\$150.0-\$200.0	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Office of the Attorney General (NMAG)

Secretary of State (SOS)

Early Childhood Education and Care Department (ECECD)

No Response Received

Department of Health

Public Education Department

SUMMARY

Synopsis of Senate Joint Resolution 2

Senate Joint Resolution 2 would ask voters to add a section to the Bill of Rights, Article 2 of the state constitution, spelling out a list of rights children would have and mandating legislation to bring those rights to New Mexico children.

The children's rights to be enshrined in the state constitution are as follows:

- A. Right to timely, accessible healthcare;
- B. Right to solution-focused, culturally sensitive behavioral healthcare for the child and family;
- C. The right to nutritious and adequate food;
- D. The right to safe shelter, with plumbing, heating, electricity and internet service;
- E. The right to transportation;
- F. The right to be in a community with home visitation services beginning at birth;
- G. The right to early learning programs;

- H. The right to community schools, including school-based medical, dental and mental health services;
- I. The right to youth mentorship programs;
- J. The right to appropriate training for eventual employment.

In addition to proposing a constitutional amendment, the joint resolution requires the Legislature to enact legislation by the end of the 57th Legislature (probably mid-February 2026) to pave the way to these rights being fulfilled.

SJR2 proposes a constitutional amendment. Voters would be asked to consider the amendment during the next general election in November 2024 or at a special election.

FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SoS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SoS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending on the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

Currently, the state's bill of rights establishes the U.S. Constitution as the supreme law of the land and enumerates the following:

- A. Right of popular sovereignty (political power comes from and is for the benefit of the people);
- B. Right of self-government (the state is free and sovereign);
- C. Inherent rights to freedom, life, liberty, property, and happiness;
- D. Rights under Treaty of Guadalupe Hidalgo
- E. Right to bear arms;
- F. Right of habeas corpus;
- G. Elections are to be free and cannot be interfered with;
- H. The military is subordinated to civil power;
- I. The people must be free of unreasonable searches and seizures;
- J. Freedom of religion;
- K. Right of trial by jury;
- L. Right to bail, except in certain defined circumstances., and no cruel or unusual punishment;
- M. Rights to a grand jury and other court rights;
- N. Rights against self-incrimination and double jeopardy;
- O. Treason limitations;
- P. Freedom of speech and of the press;
- Q. Each person entitled to due process and equal protection of law, not to be denied on basis of a person's sex;
- R. No retroactive laws, bills of attainder, impairment of contracts;
- S. Right of property, requiring compensation for eminent domain;

- T. No imprisonment for debt;
- U. Notice that other rights not mentioned but held by the people are reserved;
- V. Enumeration of victims’ rights.

According to the Annie E. Casey Foundation’s 2022 *New Mexico Kids Count Data Book*, which catalogues measures affecting children’s health in New Mexico and compares them with U.S. rates,

State lawmakers have made ... policy changes that will benefit New Mexico’s children and families. These include a statewide paid sick leave policy so parents can stay home to take care of a sick child, an historic expansion of childcare assistance so parents have safe, affordable environments in which to leave their children while they work, and the extension of postpartum healthcare through Medicaid to help support new parents during some of the most important months in their new child’s life. New Mexico also continues to expand early childhood care and education services such as home visiting and prekindergarten.

In addition to expansions in early childhood care and education services, our cradle-to-career educational system can be improved. We need to ensure that our K–12 student population—which is one of the most racially and ethnically diverse in the nation—is receiving culturally appropriate education. Studies show that when children are connected to their cultures and communities through their curriculum, they are more engaged in school, which leads to better outcomes. And while the state has made college education much more affordable, we still fall behind much of the nation in directing more of our financial aid to those students with the most need.

New Mexico vs. United States on Key Indicators

Measure	New Mexico Rate	U.S. rate
Children living in household having difficulty paying for usual expenses.	51%	47%
Households with uncertainty about ability to pay the next rent or mortgage payment.	16%	18%
Households with children and 29% of US households had children eating insufficient food because it could not be afforded	35%	29%
Children living in federally-defined poverty	24%	17%
Children in families where no parent had stable employment	32%	26%
Teens neither in school nor working	12%	7%
Three- and four-year-olds not in school setting	55%	52%
4 th graders not reading proficiently (NAEP testing)	79%	68%
High school students not graduating on time	25%	14%
Low birthweight babies	8.9%	8.2%
Children without health insurance	6%	5%
Child/teen death rates	37/100,000	28/100,000
Children obese or overweight	34%	32%
Children in single-parent families	44%	34%
Children living in high-poverty areas	20%	9%
Teen birth rate	22/1000	15/1000

Source: Casey Foundation

POTENTIAL CONFLICTS

NMAG expresses concerns the enumerated rights of children may conflict with parents’ rights to determine matters for their children. It may be, however, that the enshrinement of access to these rights does not mandate parents avail themselves of these rights. For example, the right to bear

arms does not mandate every person carry a gun.

PED also raises concerns:

The children’s rights proposed by SJR2 are a significant expansion of rights currently enjoyed by any citizen of New Mexico, and include, in several instances, guarantees for people other than children. It is uncertain how such rights can be consistently maintained, particularly in light of limited resources. For example, how can the state guarantee that all schoolchildren and their families will have access to medical care at school-based health centers across the state, considering existing shortages of medical personnel? ... SJR2 may therefore benefit from the employment of more precise language, limiting potentially unintended consequences and expense.

DOH contends each of the rights spelled out will, if granted, benefit New Mexico’s children.

PED recounts the almost century-long evolution of a statement on rights of children, beginning with a League of Nations-granted list of children’s rights in 1924:

Conversation about rights for the protection of children began in the early 20th Century with the dissemination of the Geneva Declaration of the Rights of the Child, adopted by the League of Nations in 1924, and by the United Nations, in extended form, in 1959. The original document enumerated five specific rights, including, the means for normal material and spiritual development; appropriate assistance for hungry, sick, orphaned, delinquent, and “backward” children; first right to relief in times of distress; the means to earn a livelihood and protection from exploitation; and consciousness and development of their own talents.

A modern incarnation of the Children’s Bill of Rights was first introduced in Congress in 2015 and has been endorsed by more than 120 organizations. [This Children's Bill of Rights](#) addresses three categories of rights for children: physical wellbeing, social and emotional wellbeing, and educational and life skills. Enumerated rights to physical wellbeing include the right to be free from abuse and neglect, the right to a safe and happy environment, and the right to receive appropriate physical and mental medical care. Rights to social and emotional wellbeing include development of healthy attachments to parents and caregivers, the right to a voice in matters that concern them, the right to have their best interests considered in decisions affecting them, and the right to rehabilitative services if detained as a juvenile. Rights associated with educational and life skills include access to educational services with appropriate educational supports, the right to be heard in relation to issues of their education, access to life-skills training, and the right to protection from unsafe or unfair labor practices ...

RELATIONSHIPS

ECECD mentions a number of other efforts to codify children’s rights, from the state- to the world-wide levels:

- The Children, Youth and Families Department (CYFD) has created a New Mexico Foster Children and Youth Bills of Rights, which lists 29 rights specific to the population of children and youth who live with foster parents (resource parents) or in out-of-home placements, like group homes and residential facilities ([foster_child_bill_of_rights.pdf](#) ([cyfd.org](#)))
- Furthermore, in 2021, CYFD launched the Office of Children’s Rights, which offers

children and youth in foster care services and support, including:

- Immigration Rights: consultation, referrals, representation, language access
- Education Rights & Advocacy: support with schools, collaborations with school staff, school stability, and special education rights
- Disability Rights: public benefits advocacy, family placements, and accommodations
- Youth Grievances: process for violations of the Foster Child and Youth Bill of Rights
- The United Nations **Convention on the Rights of the Child** is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. ([Convention on the Rights of the Child | OHCHR](#))
- Previous attempts to establish a national Children’s Bill of Rights, such as House Resolution 476 introduced in the House of Representatives in 2015, have been unsuccessful.

TECHNICAL ISSUES

NMAG indicates concern regarding imprecision in delineating these rights and that further definition may be needed. Further, NMAG notes, “Very few states have adopted a children’s rights amendment, in part because of the complex balancing act required to maintain parental rights. The states that have made amendments utilized broad and concise language”

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