

LFC Requester:

Rachel Mercer-Garcia

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 02-01-2024

Bill No: SJR 17

Sponsor: Sen. Soules

Short Title: Rights of Children, CA

Agency Name and Code Number: 305 – New Mexico
Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Senate Joint Resolution (“SJR”) 17 proposes to amend the State of New Mexico Constitution to incorporate a new section, Section 25, into Article II of the Constitution, dedicated to safeguarding the rights of children.

SJR 17 establishes ten enumerated protections and rights for children, ensuring they have 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.

As this is a constitutional amendment, its adoption is subject to voter approval at the next general election or special election that may be called for this purpose before that date. In addition to the proposed constitutional amendment, SJR 17 also calls on the state legislature to enact laws to implement the constitutional amendment by the end of the 57th Legislative session.

FISCAL IMPLICATIONS

SJR 17 does not contain an appropriation.

Section 1-16-13 NMSA 1978 mandates the Secretary of State to print and distribute the proposed constitutional amendments in Spanish and English, equal to 10% of registered voters. Costs depend on the amendments' quantity and length and voter numbers. Additionally, these amendments must be published weekly in newspapers statewide for four weeks pre-election, with varying costs based on ballot question length.

SIGNIFICANT ISSUES

The children’s rights proposed in SJR 17 might intersect with parental rights, necessitating an analysis and balancing of the different rights and interests. The Supreme Court of the United States has consistently recognized that the Due Process Clause of the Fourteenth Amendment protects the inherent authority of parents over decisions related to the care, custody, and control

of their children *Troxel v. Granville*, 530 U.S. 57, 66 (2000); U.S. Const. amend. XIV). This right is supported by the jurisprudence of the New Mexico Supreme Court, which acknowledges the broad spectrum of rights and responsibilities inherent to parenthood (*Tue Thi Tran v. Bennet*, 2018-NMSC-009, ¶ 25, 411 P.3d 345). Clarifying the language in SJR 17 to distinguish between ensuring access to education and mandating participation could help preserve the balance between children's rights to education and parental rights to direct their upbringing.

SJR 17 also contains several terms that could lead to varying interpretations regarding its provisions. For instance, subsection (B) mentions ensuring “the right to behavioral health care that is solution-focused and culturally sensitive...,” which may be subject to different understandings of what this entails. Similarly, subsection (J) mentions “the right to acquire all the skills needed to maintain quality employment,” which could lead to questions about the scope of "all the skills" and the criteria for "quality" employment. Future legislation could help provide more precise guidance for courts, officials, and the public regarding interpreting these proposed rights.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

The New Mexico Department of Justice would be involved in any future legislation, legal, and litigation-related issues associated with the passage of SJR 17 or subsequent bills related to its enactment.

Implementing SJR 17 will likely necessitate updates to existing laws, including New Mexico’s Children’s Code, see N.M. Stat. Ann. § 32A-1-1 et seq. and New Mexico Administrative Code (NMAC). Additionally, SJR 17’s potential impact on the state’s Indian Family Protection Act and the federal Indian Child Welfare Act (ICWA) should also be examined.

Additionally, New Mexico has already articulated several rights and protections for children under the Children’s Code. *See generally* NMSA 1978, Chapter 32A. For instance, the right articulated in subsection (F), the right to live in a community that provides home visitation programs starting at birth to ensure safe households, parental support, education, and navigation to local vital services, is similar to Article 23b of the Children’s Code, which requires statewide home visiting services. A thorough review will need to be conducted to ensure the current laws comply with the language in the amendment. This could require significant revisions of Chapter 32A.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A