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FISCAL IMPACT REPORT

SPONSOR	<u>Taylor</u>	ORIGINAL DATE	<u>1-29-06</u>	HB	<u></u>
		LAST UPDATED	<u>1-31-06</u>		
SHORT TITLE	<u>Kinship Guardianship Act Review Task Force</u>	SJM	<u>14</u>		
		ANALYST	<u>Lucero</u>		

Duplicates HB363, Relates to SB141 and HB13 and HB206, HB19 and SB161

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

NM Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 14 identifies a need for incarcerated parents to be able to ensure the safety and health of their children while the parents are temporarily incarcerated. The current provisions of the Uniform Probate Code, the Kinship Guardianship Act and powers of attorney statutes may not provide appropriate mechanisms for addressing the concerns of incarcerated parents. The legislature believes that a mechanism should be in effect for incarcerated parents to delegate their decision-making powers related to their children.

Senate Joint Memorial 14 calls for the Children, Youth and Families Department (CYFD) to establish a task force to study the issue of temporary guardianship and make recommendations to the legislature no later than September 2006 through the Courts, Corrections and Justice Committee or its successor interim committee.

CYFD is directed to work with the Administrative Office of the Courts (AOC), advocates for incarcerated parents and advocates for children to determine appropriate membership of the task force.

A copy of the memorial shall be delivered to the Secretary of CYFD.

FISCAL IMPLICATIONS

The study will require some use of AOC resources and staff to participate in the task force.

There is no appropriation made by the memorial so AOC will absorb the expense.

SIGNIFICANT ISSUES

Administrative Office of the Courts provides the following comment:

There are no provisions in the Kinship Guardianship Act or other statutes for temporary guardianship specifically for incarcerated parents to permit them, while incarcerated, to delegate decision-making powers regarding their children, and to regain custody when released.

Incarcerated parents and their advocates feel the Kinship Guardianship Act, (as well as the Uniform Probate Code and powers of attorney statutes), are complicated and do not address their needs. Currently, parents facing incarceration must sign away permanent custody and when they are released, they must hire an attorney and prove fitness before regaining custody. They lack funds to hire an attorney and have little faith in the legal system. In consequence, many have instead signed power-of-attorney documents that have not proven to be effective to provide protection for and serve the interests of the children, as, without legal custody or guardianship of the children, the holder of the power of attorney cannot apply for benefits for them, such as Medicaid, nor advocate or make decisions for them with schools.

The AOC's Court Improvement Project (CIP) Task Force has agreed that the guardianship of children of incarcerated parents is an important issue that needs to be addressed as such children now have little "safety net" of support and services, nor means of securing temporary guardianship. CIP has made work on this issue an initiative in its strategic plan, and supports this memorial and other efforts to study and improve this situation.

NM Corrections Department provided the following comment:

Because the welfare of a child has a significant impact on an incarcerated parent, changes made in the Kinship/Guardian Act may have an emotional impact on the general prison population that impacts prison operations, especially if the Department is required to transport incarcerated parents to hearings for the purpose of delegating decision making power.

ADMINISTRATIVE IMPLICATIONS

The study will require some use of resources and staff time to participate in the task force.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to SB270 and HB87 which appropriates general fund to help grandparents and kinship providers.

TECHNICAL ISSUES

The Corrections Department should be a taskforce member.

OTHER SUBSTANTIVE ISSUES

Previous memorials have reviewed related issues regarding temporary guardianship for children being raised by grandparents, including children of incarcerated parents. ALTSD and HSD were also identified as being impacted by this issue.

From SAN FRANCISCO PARTNERSHIP FOR INCARCERATED PARENTS:

http://www.centerforce.org/families/bill_of_rights.pdf

“MORE THAN TWO MILLION AMERICAN CHILDREN HAVE A PARENT BEHIND BARS TODAY, (that is) 50 percent more than a decade ago. Approximately ten million—or one in eight of the nation’s children has experienced parental incarceration at some point in their lives. Little is known about what becomes of children when their parents are imprisoned. There is no requirement that the various institutions charged with dealing with offenders—the police, courts, jails and prisons, probation departments inquire about children’s existence, much less concern themselves with children’s care. Conversely, there is no requirement that the front-line systems serving vulnerable children—public schools, child welfare, juvenile justice inquires about or account for parental incarceration. Children of prisoners have a daunting array of needs. They need a safe place to live and people to care for them in their parents’ absence, as well as everything else a parent might be expected to provide: food, clothing, and medical care. But beyond these material requirements, young people themselves identify an array of less tangible, but equally compelling, needs. They need to be told the truth about their parents’ situation. They need someone to listen without judging, so that their parents’ status need not remain a secret. They need the companionship of others who share their circumstance, so they can know they are not alone. They need contact with their parents; to have that relationship recognized and valued even under adverse circumstances. And rather than being stigmatized for their parents’ actions or status they need to be treated with respect, offered opportunity, and recognized as having potential.

These needs, too often, go not just unmet but unacknowledged. Over the years, a series of court cases has delineated the rights of prisoners in the United States. These rights are limited—some would argue insufficient but they are, at the least, recognized. The idea that prisoners, while they may be required to forfeit the right to liberty, nevertheless retain other rights that demand respect, is generally taken for granted. Where it is not, advocates are ready and able to step in and fight on behalf of the incarcerated. The same does not hold true for the children of prisoners. They have, it ought to go without saying, committed no crime, but the penalty they are required to pay is steep. They forfeit, in too many cases, virtually everything that matters to them: their home, their safety, their public status and private self-image, their source of comfort and affection. Their lives and prospects are profoundly affected by the numerous institutions that lay claim to their parents police, courts, jails and prisons, probation and parole—but they have no rights, explicit or implicit, within any of these jurisdictions. This need not be the case. Should the rights that follow be recognized, the children of prisoners would still face a daunting array of obstacles and traumas. But they would do so with the knowledge that the society that had removed their parents took some responsibility for their care. A criminal justice model that took as its constituency not just offending individuals but also the families and communities within which their lives are embedded one that respected the rights and needs of children might become one that inspired the confidence and respect of those families and communities, and so played a part in stemming, rather than perpetuating, the intergenerational cycle of crime and incarceration.

SAN FRANCISCO PARTNERSHIP FOR INCARCERATED PARENTS’ Children of Incarcerated Parents Bill of Rights:

1. I have the right to be kept safe and informed at the time of my parent’s arrest.
2. I have the right TO BE HEARD WHEN DECISIONS ARE MADE ABOUT ME

3. I have the right TO BE CONSIDERED WHEN DECISIONS ARE MADE ABOUT MY PARENT.
4. I have the right TO BE WELL CARED FOR IN MY PARENT’S ABSENCE.
5. I have the right TO SPEAK WITH, SEE AND TOUCH MY PARENT.
6. I have the right TO SUPPORT AS I STRUGGLE WITH MY PARENT’S INCARCERATION.
7. I have the right NOT TO BE JUDGED, BLAMED OR LABELED BECAUSE OF MY PARENT’S INCARCERATION.
8. I have the right TO A LIFELONG RELATIONSHIP WITH MY PARENT.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

DL/nt