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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/19
 SPONSOR Louis LAST UPDATED 2/01/19 HB 149/aHSEIC/aHJC
 SHORT TITLE Juvenile Delinquency Notices to Tribes SB _____
 ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$10.1	\$10.1	\$20.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)
 Children, Youth and Families Department (CYFD)
 New Mexico Attorney General (NMAG)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee’s amendment adds several words to make it clear that notice to and collaboration with an Indian child’s tribe should begin at the time of the referral and continue through the process.

Synopsis of HSIVC Amendment

The House State Government, Elections and Indian Affairs Committee amendment to House Bill 149 changes some of the language in the bill to the following effects:

- 1) It specifies that notice of delinquency petitions be delivered by certified mail,
- 2) It removes the requirement that the notice comply with provisions of the federal Indian Child Welfare Act, and
- 3) Require consultation and exchange of information with an Indian child’s tribes throughout the delinquency proceedings, rather than simply notifying the tribe of the existence of the petition.

Synopsis of Original Bill

In the Children’s Code, Section 32A-1-14 is entitled “Notice to Indian tribes.” Currently there are two instances where notice must be given to Indian tribes regarding their members:

- 1) When a petition is filed involving a family deemed “in need of services,” and
- 2) In abuse, neglect or adoption proceedings involving an Indian child.

House Bill 149 amends this language to add a third occasion in which a tribe would be notified: when an Indian child is involved in a delinquency proceeding.

In all cases, included those under the new third instance, notice would be required to comply with provisions of the 1978 federal Indian Child Welfare Act.

In section 2 of the original House Bill 149, language is removed that states that an Indian tribe is to be contacted during delinquency proceedings to “consult and exchange information for the purpose of preparing a predisposition report...” This language is replaced with “notify the child’s tribe if the filing of a delinquency petition is recommended” by CYFD. This change has been reversed by the amendment summarized above.

FISCAL IMPLICATIONS

CYFD estimates its costs to implement the provision of HB149 as follows:

Any administrative implications can be absorbed by existing resources.

[Other costs would be] minimal. CYFD currently provides notice concerning juvenile justice matters via regular mail where required by statute. This bill expands the notice requirements to include at least the petition recommendations and possibly the petition filings, while the Indian Child Welfare Act requires that both parents and tribe be notified by registered, certified, return receipt requested, mail. The expanded notice requirements and the additional mailing requirements are not presently accounted for within CYFD budget. In the event that CYFD is responsible for notifying the tribe of both the recommendation for a petition, and the outcome of that petition (filed/not filed), based on FY2018 numbers (744 recommendations made) and 2019 postage rates (\$6.80/ounce/certified with return receipt), budget impact will be at least \$10,118.40.

In addition, AOC notes that the courts might be impacted by “any additional time the court needed to hear and resolve any challenges to the notice requirements required in the bill.” As this required is impossible to quantify, any costs involved would be in addition to the number in the table above.

SIGNIFICANT ISSUES

CYFD notes the following:

While CYFD is specifically identified as responsible for notifying the Indian child’s tribe if CYFD proposes a petition be filed, there is nothing in the bill to identify who is responsible for notifying the tribe if the petition is actually filed. Also, there is no requirement in the bill for tribal notification in the event that the District Attorney’s office declines to file a petition as proposed by CYFD.

Also, the bill requires notification in compliance with the 1978 ICWA, which may conflict with the New Mexico Supreme Court Rule 10-521, which prescribes the form of the ICWA notice, but does not address delinquency notices.