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## FISCAL IMPACT REPORT

SPONSOR Dow/Chatfield/Cadena ORIGINAL DATE 2/11/19  
/Fajardo/Ruiloba LAST UPDATED \_\_\_\_\_ HB 309

SHORT TITLE Intervention of Foster Parents SB \_\_\_\_\_

ANALYST Klundt

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of Bill

House Bill 309 (HB309) amends the intervention statute in the Children’s Code, Abuse and Neglect Act, 32A-4-1, et seq., to remove the permissive intervention provision for foster parents and make intervention mandatory when a foster parent has had a child reside with the foster parent for at least six months, the foster parent desires to adopt the child and CYFD moves the child or proposes to move the child to: (1) a different foster care placement; (2) place the child with a relative; or, (3) return the child to a biological parent.

The bill removes the current mandatory intervention for a foster parent when CYFD seeks to terminate parental rights based on presumptive abandonment, § 32A-4-28(B)(3), which requires a showing that the foster parent desires to adopt and that the child has a developed a psychological parent-child relationship with the foster parent.

### FISCAL IMPLICATIONS

There is no appropriation contained within this bill. CYFD reported interference with, or violation of, a parent’s protected liberty interest in maintaining a relationship with their child has the potential to increase CYFD liability, with a consequent fiscal impact. However no estimate was provided by the agency.

## SIGNIFICANT ISSUES

CYFD reported, the current statute, § 32A-4-27(A)(1), provides for permissive intervention by foster parents when a child has resided with them for at least six months. In determining whether a foster parent should be permitted to intervene, the court considers the foster parent's rationale for the proposed intervention, and whether the intervention is in the best interest of the child.

Under current statute, even if the court finds that intervention would be in the best interest of the child, the court *cannot* permit the intervention if a party opposing the intervention “can demonstrate that a viable plan for reunification with the [parent] is in progress and that intervention could impede the progress of the reunification plan.”

Currently, the same parameters for permissive intervention apply to relatives within the fifth degree of consanguinity with whom the child has resided, a step-parent with whom the child has resided, or a person who wishes to become the child's permanent guardian.

HB 309 amends the statute to allow foster parent with whom a child has resided six months or more to intervene essentially anytime CYFD proposes to change the child's placement. But such intervention is still subject to the court's consideration of the child's best interest and whether the intervention would impede a plan of reunification.

However, CYFD believes this amendment risks interfering or violating, a parent's constitutionally protected liberty interest in a relationship with the parent's child. In accordance with this constitutionally protected liberty interest, CYFD has an obligation to make reasonable efforts to assist the parent whose child is in custody to address the conditions and causes that brought the child into custody so that the child can be safely returned to the parent's home. Because the current provision of not allowing intervention by others if that intervention would impede a viable reunification plan recognizes this parental right, and the State's obligation to preserve it, CYFD believes the current statute should remain as it stands.

Additionally, CYFD is required by both the federal Fostering Connections to Success & Increasing Adoptions Act and state statute to make efforts to identify, locate, and give notice to relatives, and to give preference to appropriate relatives in placing a child. Relatives in New Mexico are fully licensed as foster parents and, therefore, placing a child with a relative is the same as placing the child in a different foster care placement. To the extent that the bill seeks to differentiate between placement in non-relative foster care and relative foster care by listing them separately, CYFD reported it does not recognize the federal and state preference for placement of children with relatives.

**PERFORMANCE IMPLICATIONS**

The LFC and federal government have established performance measures requiring CYFD to report the percentage of children from foster care to permanent homes within 12 to 23 months of being in foster care, depending on the permanency plan for the child, and a set percentage of children who enter care to achieve permanency in less than 12 months. CYFD is already not meeting those performance measure targets. The agency believes if foster parents are automatically allowed to intervene if the child is going to be moved from the foster parent's home, even if it is to the home of the parent, the State's ability to meet its permanency goals for children will be negatively impacted.

KK/gb/al