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## FISCAL IMPACT REPORT

SPONSOR Fajardo ORIGINAL DATE 2/12/19  
 LAST UPDATED \_\_\_\_\_ HB 383

SHORT TITLE Foster Parent Rights 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>		\$80.0	\$80.0	\$160.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families (CYFD)

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 383 (HB 383) enacts a new section of the children’s code and is a declaration of policy and standards for foster parents. Including the right to:

- Be treated with dignity
- Be notified of scheduled meetings concerning the child
- Actively participate in case planning and treatment
- Provide input concerning the child’s plan
- Communicate with professionals who work with a child including therapists, doctors, and school personnel
- Receive a copy of the treatment plan, revisions, the substitute care placement agreement
- Receive standard on-going training
- Access to department policies and notification of change in policies
- Impartial investigation when complaint is received
- Free from harassment
- 24-hour access to department staff
- Report misconduct by the department
- Notification of substitute care advisory council meetings

- Opportunity to be heard in court
- Submit written statements to the court
- Receive and be informed about potential services
- Be considered the first placement option upon a child's reentry into care
- Receive full reimbursement
- Department resources with loss or separation from a child
- Intervention
- Exit interviews
- Full disclosure of all medical, psychological and behavioral issues of children
- A travel file

HB 383 would also require when the child has a plan of adoption to be given priority along with a relative. Foster parents also have the right to be free from discrimination.

CYFD reported HB 383 codifies the foster parent bill of rights given to foster parents during the foster parent training completed by each incoming foster parent, but slightly deviates from the existing standard.

### **FISCAL IMPLICATIONS**

There is no appropriation contained in this bill. CYFD reported additional FTE might be necessary to accommodate the notification requirements and timelines contained within this bill. The average cost per FTE in the Protective Services Program \$80 thousand annually.

The Administrative Office of the Courts (AOC) reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **SIGNIFICANT ISSUES**

HB 383 is known as a foster parent bill of rights. About 19 states currently have some form of a foster parent bill of rights; some states have this in statute and other include this in administrative code and child welfare agency policy. Bill of rights for children also exist across the country. The general purpose of these is to inform the child or parent of their rights within the child welfare system. For more national information on foster parent and children's bill of rights see: <http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx>

AOC reported HB 383 would put policy into statute and could create some concern for the courts in terms of their obligations to the foster parent, who without judicial approval is not a party to abuse and neglect cases. §32A-4-27 NMSA 1978.

AOC also reported concerns HB 383 allows foster parents to submit "factually based written statements" to the court. It is unclear when the reports would be submitted, what weight judicial officers are to give the written statements, and how another party may challenge the statements.

**CYFD provided the following:**

“While this bill for the most part codifies the foster parent bill of rights already provided to foster parents, it deviates from that existing foster parent bill of rights as follows:

First, in that it requires notification of policy and procedure changes within 24 hours of a change accompanied by detailed information related to the change. The bill does not indicate if these are clock hours or business hours. Due to the number of foster parents licensed through CYFD, dissemination of this magnitude in that tight a timeframe will be difficult. A more workable timeline would be a minimum of 30 days.

Second, misconduct of CYFD employees is already addressed in accordance with the New Mexico State Personnel Act, CYFD policy and procedure, and the Collective Bargaining Agreement where applicable.

Third, sections of the proposed bill seem to contradict federal law in at least two different places. First, the bill requires the agency to prioritize former foster parents as first placement options when a child formerly placed with them reenters foster care. This contradicts current federal law, which requires state agencies to prioritize relatives as placement options (42 USC §671(a)(15)(A)). CYFD makes placement decisions based on the child’s best interests, and in accordance with the mandates of both state and federal law, which include considering relatives before non-relatives. This is not just federally required – it is also best practices for children. Research shows that children who are placed with relatives have improved wellbeing outcomes, fewer placement changes, and achieve permanency more timely. Second, the automatic prioritization for former foster parents raises conflicts with the Indian Child Welfare Act, where, for an Indian child, placement with extended family is the first placement preference (ICWA § 1903(2)).

Fourth, by adding a “right” to receive an exit interview upon the foster parent relinquishing their license.

Finally, with regard to the full disclosure of medical, behavioral, and psychological issues of a child, CYFD can only, and already does, provide the information it has available.

The proposed bill duplicates many things that already exist – either in existing law or in policy.

First, the “Foster parent bill of rights”, defined in regulation as “a statement of [Protective Services Division’s] responsibilities to foster parents” (NMAC 8.26.2.7(X)), and CYFD policy requires that CYFD provide each foster parent with a copy of the foster parent bill of rights (NMAC § 8.26.2.11(E)).

Second, the right to be notified of, and given an opportunity to be heard at, court hearings and to intervene in abuse and neglect and termination of parental rights hearing under specified circumstances, already codified in the Children’s Code.

Third, the right to fair, timely, and impartial investigation concerning referrals regarding foster parents and the appeal process and the process regarding disclosure of a child’s

records, already codified in the NMAC and implementing procedures.

Any proposed bill language on these issues should cite to existing law to ensure it is not creating ambiguity or contradictory language that will be difficult for CYFD to follow.

The remaining items in the bill from the foster parent’s bill of rights are issues that can be addressed through policy, procedure, and practice, which do not necessitate legislation.”

## **AMENDMENTS**

CYFD requested the consideration of the following amendments:

Page 3, line 6 add “in accordance with State Personnel rules before the “;”

Page 3, line 24 add “unless fit and willing relatives have been identified or unless in violation of state or federal law” before the “;”

Page 4, line 16 add “known” between “all” and “medical”.

## **TECHNICAL ISSUES**

AOC provided, “Section 1(B) states that a foster parent who has a child in their care and that child has a plan of adoption will have the right to priority consideration as an adoptive parent - along with a relative. It is unclear how both a foster parent and a relative would both have “priority consideration” as an adoptive parent.”

KK/sb/gb