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FISCAL IMPACT REPORT

SPONSOR Lopez/Herrera ORIGINAL DATE 02/04/21
 LAST UPDATED 02/15/21 HB _____

SHORT TITLE Children's Code Reform Task Force SB 196/aSRC

ANALYST Bachechi

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$100.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HSD	\$0.0	\$12.0	\$6.0	\$18.0	Nonrecurring	General Fund
HSD	\$0.0	\$23.0	\$11.5	\$34.5	Nonrecurring	Federal Fund
CYFD	\$0.0	\$200.0	\$100.0	\$300.0	Nonrecurring	General Fund
UNM	\$0.0	\$36.0	\$16.0	\$52.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Children, Youth and Families Department (CYFD)
 Corrections Department (NMCD)
 Department of Public Safety (DPS)
 Economic Development Department (EDD)
 Human Services Department (HSD)
 Indian Affairs Department (IAD)
 Attorney General (NMAG)
 NM Sentencing Commission (NMSC)
 University of New Mexico (UNM)

Synopsis of SRC Amendment

The Senate Rules Committee amendment strikes and inserts the following:

- “shall” on page 1, line 21 and inserts “in requested to.”
- “members to serve on the” on page 1, line 21 and 22, and inserts “a”
- “force” on page 1, line 22 and inserts “that shall be comprised of or receive input and recommendation”

The amendment’s revised language eases the requirement of the children’s court improvement commission to appoint task force members from 40 different state departments, commissions, divisions, association, Nations, Tribes and Pueblos, courts, and community advocacy and stakeholder groups (listed on page 2-3). The revised language allows the commission to request “input and recommendations” instead of requiring task force participation from all the indicated participant groups.

Synopsis of Original Bill

Senate Bill 196 creates a Children’s Code Reform Task Force charged with studying and making recommendations for reform of the Children’s Code (Chapter 32A of New Mexico Statutes).

The bill appropriates \$100 thousand from the general fund to the Administrative Office of the Courts for expenditure in fiscal year 2022 for the Children's Code reform task force. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.

The task force will function from the date of its appointment until December 1, 2022, and will be staffed by the children's court improvement commission of the New Mexico Supreme Court (CCIC). The bill directs the Children’s Court Improvement Commission (CCIC) to appoint members to serve on the task force from 40 different stakeholder groups, including state agencies, nongovernmental organizations, other governmental bodies, and individuals with lived experience, such as youth and parents involved in the child welfare system. The task force is directed to report its findings and recommendations to the governor, the Legislative Finance Committee, the Legislative Health and Human Services Committee, the interim legislative committee that studies courts, corrections and justice issues, and other appropriate interim committees by December 1, 2022.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The appropriation of \$100 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY22 shall revert to the general fund. The nonrecurring funding will be used for the administrative costs associated with facilitating and managing the task force and per diem mileage for nonpublic employees, but no other compensation or allowances.

The bill requires a number of organizations to devote staff time to the work of the task force and is likely to impact the participating agencies' operating budgets and staffing needs.

Staff of CCIC will support the task force and this could impact the commission's operating budget and administrative daily operations.

HSD reports its Child Support Enforcement Division (CSED) would assign one legal services attorney and one administrative policy staff member to the task force. The cost for their time and effort is estimated to be \$52,604, total, with a general fund share of \$17,885 (and a federal fund match of \$34,719).

CYFD has significant responsibilities under the Children's Code, including the Abuse and Neglect Act, Family Services Act, Family in Need of Court-Ordered Services Act, and the Delinquency Act. Work on the task force and implementing any changes adopted from the task force recommendations will require staff. Staff from different program areas (protective services, behavioral health, juvenile justice, youth services) would be required to participate on the task force to provide expertise in the various areas covered by the Children's Code. CYFD anticipates the need for additional counsel to assist and review with such a large-scale revision of the Children's Code and estimates cost will be \$200 thousand in the first year and then \$100 thousand a year for an additional two to three years to integrate the changes into the department's operations and practices.

Due to relevant subject matter expertise, four members named to the task force would be staff or faculty of the University of New Mexico (UNM). UNM estimates each task force member will devote approximately 132 hours to the task force (assuming a monthly three-hour meeting, plus eight hours monthly for preparation, research, and drafting.) For example, if the director of the Corinne Wolfe Center for Child and Family Justice were appointed to the task force, the center would expend over \$9,000, or 6 percent of its proposed funding, on task force activities.

SIGNIFICANT ISSUES

It has been many years since the Children's Code had a significant overhaul. Children's and family law and policy have been undergoing a transformation in recent years, with the advancement of a better understanding of child development, the need to acknowledge strength and cultural wealth in the diversity of New Mexico families, the effect of factors such as historical trauma, disability and racial and ethnic disparities in the lives of New Mexico families, the effect of early trauma and adverse experiences in the lives of young people, and changes to federal law that shift the focus of policy from intervention in the lives of families after an adverse event has occurred to a focus on the timely provision of preventive services for children and families at risk.

Over the years, the Children's Code has been amended many times without the benefit of a task force, resulting in piecemeal additions and amendments across the Code's 21 articles, which address a wide, but interrelated, array of topics affecting children and families (e.g., child abuse and neglect, adoption, family services, juvenile justice, children's mental health and developmental disabilities, guardianship, residential treatment programs, emancipation, prekindergarten, early childhood care and education, home visiting, extended foster care). In this legislative session alone, several bills have already been introduced to amend different articles of the Children's Code, including SB97 (guardianship changes), SB127 (creating the Office of

Family Representation and Advocacy), and HB209 (State Indian Child Welfare Act). A comprehensive review of the entire Children’s Code by a multidisciplinary group of stakeholders will create an opportunity to harmonize apparently inconsistent provisions, clarify how different provisions interrelate, and ensure consistency among articles.

In addition to general provisions, the Children’s Code (32A) includes the following acts: Delinquency; Family Services; Family in Need of Court-Ordered Services; Abuse and Neglect; Adoptions; Children’s Mental Health and Developmental Disabilities; Juvenile Public Safety Advisory Board; Citizen Substitute Care Review, Children’s Shelter Care; Interstate Compact for Juveniles; Interstate Compact on Placement of Children; Residential Treatment Program; Juvenile Assistance Programs; Children’s Juvenile Facility Criminal Records Screening; Family Support; and, Emancipation of Minors. Many of these acts have not been amended in many years and are also in need of updates.

The list of participants is comprehensive and cover agencies, entities and interested individuals essential to providing input for possible reforms. However, the bill does not establish the total number of members to be appointed or the number of members to be appointed from each of the 40 different stakeholder groups enumerated in the bill. IAD noted that, while it supports having adequate representation from each tribal government, this could result in the task force needing 23 additional representatives, as the state has 23 nations, tribes and pueblos. Even if only one person from each stakeholder group were appointed, the task force would be quite large, which could significantly impede its efficiency and capacity to fulfill its mission. While there is clear value in the input of each stakeholder group mentioned, if the task force were to be as large as contemplated in the bill, the task force could benefit from (a) designating a chairperson, (b) designating smaller workgroups to tackle portions of the Children’s Code specific to member expertise, (c) establishing voting and nonvoting members, and (d) a continuity or oversight group to ensure alignment and continuity throughout the proposed amendments. Explicitly providing for the authority of the taskforce to create subcommittees and clarifying an entity with final approval authority for the task force’s recommendations could be helpful.

The Children’s Code is an extensive statute. It is unclear if the timeline provided by this bill will be sufficient to complete its review. Language that would allow the task force to extend the deadline if necessary could be helpful. Moreover, IAD points out that the bill’s reporting deadline of December 2022 would likely not allow adequate time to both complete the study and present to interim legislative committees.

ADMINISTRATIVE IMPLICATIONS

The bill requires the task force be staffed by the CCIC. However, the CCIC does not employ staff, but rather is itself staffed by AOC, which administers the three federal Court Improvement Program grants that fund the CCIC and CCIC initiatives. Currently the CCIC is staffed by one (vacant) project coordinator and the AOC’s senior attorney for Children’s Court Programs. It is envisioned by the AOC that the Children’s Code Reform Task Force, as drafted, would be staffed by the same senior attorney for Children’s Court Programs.

Currently, the HSD Child Support Enforcement Division (CSED) provides services to parents and the Children, Youth and Families Department (CYFD) for foster care cases under federal Title IV-E. This bill could revise the process and responsibilities for how CSED interfaces with foster care, depending on the recommendations put forth by the task force.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have already been introduced to amend different articles of the Children’s Code, including SB97 (guardianship changes), SB127 (creating the Office of Family Representation and Advocacy), and HB209 (State Indian Child Welfare Act).

TECHNICAL ISSUES

The bill may not adequately define the scope and focus of the task force. The Children’s Code is extensive and portions of it relate directly to federal legislation, such as the Adoption and Safe Families Act of 1997, Preventing Sex Trafficking and Strengthening Families Act of 2014, and “Megan’s Law,” the International Law to Prevent Child Exploitation. The bill may need to be amended to better define the scope and time frame required to analyze and report on such an extensive piece of legislation.

ALTERNATIVES

Senate Joint Memorial 18 was introduced in 2019. That memorial sought to direct the chair of the New Mexico Children’s Cabinet to convene a task force in the same manner as proposed by this bill. As was recommended in 2019, a framework of smaller committees analyzing and reporting on different aspects of the code might be more effective.

CLB/sb/rl