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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/21

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Family Representation & Advocacy Act SB 127

ANALYST Bachechi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	FY24	4 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	0.0	\$500.0 to \$1,000.0	\$7,100.0 to \$7,600.0	\$7,600.0 to \$8,600.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SJR 11

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Children, Youth and Families (CYFD)

SUMMARY

Synopsis of Bill

Senate Bill 127 creates the Office of Family Representation and Advocacy (OFRA), an independent office for the representation of children and families in abuse and neglect matters. OFRA will appoint, compensate, evaluate and retain attorneys and other staff to provide legal representation for parents and children in child welfare cases. The office also includes an appellate division. The office is administratively attached to the Administrative Office of the Courts (AOC), which will manage budgets and salaries through warrants managed by the Department of Finance and Administration. The office can receive gifts, grants, donations, or bequests to carry out the purposes of the Family Representation and Advocacy Act. The office must work with AOC to leverage federal funding pursuant to Title IV-E of the Social Security Act. The bill requires the Office of Family Representation and Advocacy director create five regional offices to mirror the five regional offices of CYFD; each region must have an appointed regional manager. The bill sets forth the qualifications for the administrative head of the Office of Family Representation and Advocacy, who will be titled the director, and establishes the duties of the director. The chief justice of the New Mexico Supreme Court shall appoint an interim director by July 1, 2021; a permanent director is to be appointed by December 31, 2022.

The bill additionally creates the Family Representation and Advocacy Oversight Commission (Commission) comprising 13 members. The members will include the director of the Corrine Wolf Center for Child and Family Justice and the director of the Administrative Office of the Courts' Court Improvement Project as permanent members. The additional members will serve limited terms and will include members with expertise in family representation appointed by the governor, members appointed by the chief justice of the New Mexico Supreme Court, members that either served as a children's court judge or attorneys in the child welfare system, and members with lived experience. This commission is to be established by March 30, 2022, with its first meeting no later than 30 days after the appointment process. The commission is tasked with independent oversight of the office and with reviewing and approving standards, providing guidance and support to the director, reviewing and approving fair and consistent policies for the operation of the office and provision of services to children and adults whose children are or are at risk of being placed in the legal custody of CYFD. The bill sets forth how the oversight commission will meet and what the commissions powers and duties are.

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

FISCAL IMPLICATIONS

There is no appropriation contained within this bill and no appropriation is being requested at this time. However, once established, OFRA will require recurring general fund appropriations to operate and fulfill its mandate to provide high-quality representation for children and families in abuse and neglect matters.

OFRA will begin initial operations using the court-appointed attorney fee fund, currently administered by Administrative Office of the Courts. Should this bill be passed and OFRA is created, OFRA may request an appropriation for FY23 to cover startup costs and salaries in the range of \$500 thousand to \$1 million. Once OFRA is fully operational, it is expected to require a budget ranging from \$17.1 to \$17.7 million annually. After subtracting out the \$5.7 million already being spent by the Administrative Office of the Courts for representation in abuse and neglect matters, and \$4.3 million in projected federal Title IV-E matching funds, it is estimated that between \$7.1 million and \$7.6 million in new general fund will be needed annually.

The Family Representation Task Force (FRTF), created by Senate Joint Memorial 10 during the 2019 legislative session, was tasked with recommending a new structure and practice model for providing high-quality legal representation. The work of FRTF culminated in a report to the Legislature dated July 15, 2020, recommending the creation of OFRA as an autonomous entity that would allow for independent decision-making and oversight. In developing the statutory framework for OFRA, the task force engaged in an extensive cost-benefit analysis. The projected long-term budget and return on investment data can be found in the Family Representation Task Force report dated July 15, 2020.¹ In summary, annual cost benefits, once the office is fully operational, are estimated to range from \$5 million to almost \$12 million, primarily derived from shorter lengths of stay in state custody. At a minimum, these benefits are predicted to substantially offset costs and could result in net savings for the state over time. Additional cost

¹ <https://courtpointedattorneys.nmcourts.gov/family-representation-taskforce/>

savings, not monetized in the analysis, are predicted to result from reduced court, attorney, and other legal costs as well as savings in Medicaid and other public programs. The assumptions underlying the fiscal impact and operating budget background are included the full report of FRTF, found on the New Mexico courts website.²

SIGNIFICANT ISSUES

Currently, representation of children and families in abuse and neglect cases is provided by approximately 100 attorneys under contract with the Administrative Office of the Courts (AOC). Representation of the children and family in these cases is statutorily required and the funding is provided through AOC, which is not changed by the bill. At any point in time, these attorneys will be engaged in about 1,500 cases that involve approximately 2,400 children and 2,100 parents, guardians or custodians. Many of these attorneys provide diligent representation and advocacy, but it is far from consistent across the state. AOC has neither the staff nor other resources to support, provide resources to, or engage in routine performance evaluation of these contractors. Over the last 20 years, a number of efforts have been launched to improve the quality of this representation, primarily through the New Mexico Supreme Court Children's Court Improvement Commission (CCIC).

The most recent effort to address this issue began with an in-depth assessment of the quality of representation for families in child abuse and neglect cases. The study, conducted by the CCIC, found a number of issues including overall poor quality of representation, lack of uniformity in representation, caseload mismanagement, inadequate compensation, and lack of monitoring and oversight resulting in delays in permanency and hindrances to other positive outcomes for families. The Family Representation Task Force was created in response to those findings.

The Family Representation and Advocacy Act, and an accompanying constitutional amendment, were then drafted and modeled after the Law Office of the Public Defender legislation. The act would create OFRA in the judiciary, as well as an oversight commission. The constitutional amendment, proposed in Senate Joint Resolution 11, creates a concrete plan and timeframe for complete independence of the office.

If the constitutional amendment is passed by voters in November 2022, OFRA would move from AOC.. An interim director would be contracted by AOC to comprehensively restructure the current Court Appointed Attorney Program in preparation for moving the program out of AOC.

OFRA is to develop interdisciplinary legal team services. The model draws on best practices for providing high-quality legal representation for participants in child abuse and neglect proceedings and includes social workers, case managers, and peer advocates. New Mexico is in the forefront on this and New Mexico efforts are being closely watched and modeled in other states.

The task force, now operating as the New Mexico Supreme Court Family Representation Commission (FRC), contends the services to be provided by OFRA will result in better outcomes for children, young people, and families in the areas of safety, permanency, and well-being. OFRA would support the establishment of a highly qualified attorney workforce with reasonable

² <https://courtpointedattorneys.nmcourts.gov/family-representation-taskforce/>

caseloads and decent compensation, provide extensive training for all staff and institute quality control and performance monitoring, develop supports for attorneys to include mentors, paralegals, investigators and administrative staff, engage appellate attorneys and services, and develop collaborative teams that include the attorney, a social worker or case manager, and a peer specialist with lived experience who will advocate for services and help children and families successfully access the resources they need to keep families together whenever possible.

PERFORMANCE IMPLICATIONS

If successful, SB127 would heighten the quality of legal performance of attorneys for children and families in abuse and neglect cases. If SB127 achieves this objective, performance implications beyond the performance of OFRA attorneys include children experiencing less trauma, decreased time to permanency, and increased quality hearings and out-of-court conferences for families. Reduced time in foster care could be associated with long-term cost savings to child welfare systems as a whole.

CYFD has performance measures related to child safety, permanency, and well-being. The Office of Family Representation and Advocacy may help to improve the representation of respondents and children in child welfare cases statewide.

ADMINISTRATIVE IMPLICATIONS

SB127 would ultimately remove the annual administration of approximately 110 contracts for court-appointed attorneys from AOC. It would also remove the administration of the court-appointed attorney fee fund budget, including federal Title IV-E funds. It would place this administrative responsibility with OFRA, independent from the courts.

All key administrative components of OFRA have been considered in this legislation. On passage of this bill, Senate Joint Resolution 11, and the constitutional amendment in the November 2022 election, the administration of OFRA would be the responsibility of OFRA Director, with oversight provided by the Family Representation and Advocacy Oversight Commission. In the interim, the administrative duties will remain with AOC, with a contracted interim director tasked with duties of implementation, including developing the requisite infrastructure and conducting initial research and planning to learn current Court Appointed Attorney Program operations and funding and cooperative development of interdisciplinary legal team services and direct representation practice models. Funding for the Interim Director contract has already been identified within the AOC's Court Appointed Attorney Fee Fund/Title IV-E budget for FY22.

CYFD is the Title IV-E agency for the state identified by the federal government. CYFD has an agreement with AOC to provide AOC the avenue to draw down IV-E revenues as it relates to quality representation for parents.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Joint Resolution 11 proposes an amendment to Article 6 of the Constitution of New Mexico to add a new section to establish in the judicial department an Office of Family Representation and Advocacy. The proposed amendment will be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that

may be called for this purpose.

TECHNICAL ISSUES

CYFD proposes the following amendments:

- Section 3, (B), pg. 2, ln. 11, change “parents” to “respondents” in child welfare cases, to bring the language in line with other sections of statute
- Section 4, (A), pg. 3, ln. 1, replace “lead” with “led.”
- Section 7, (B)(1), pg. 7, ln. 4-5, change “office of the children, youth and families department” to “children, youth and families department.”
- Section 9, (B), pg. 8, ln. 25, amend to expand beyond cases in which legal custody is or may be with CYFD to situations in which a family may be the subject of a case pursuant to the Abuse and Neglect or Family in Need of Court Ordered Services Act even if legal custody is not with CYFD. This amendment would therefore cover situations in which CYFD files or may file a legal case, but not remove the child from the custody of the parent or guardian, thereby ensuring equity in legal representation in respondents across cases.

OTHER SUBSTANTIVE ISSUES

The bill would make the parents’ and children’s’ attorneys more like a law firm rather than independent contractors. This could be a conflict in that the director will be the supervisor of both the parents’ attorney and the child’s attorney. Those two attorneys may be advocating for different positions and outcomes and seeking input and guidance from the same director or regional manager, which creates potential conflict in the firm-like setting this bill creates. To address conflict issues, the FRC plan calls for a hybrid staffing model (both employed and contracted attorneys), along with plans to develop the appropriate data firewalls and supervisory structures.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will be limited advancement in the quality of representation families receive in abuse and neglect matters, and the court-appointed attorneys in abuse and neglect cases will continue to be administered by the courts through the AOC with minimal resources for legal support, competitive compensation, performance evaluation, and proactive recruitment. Additionally, children will continue to have lengthy stays in foster care with delays to final permanency, which increases the likelihood of negative impacts on these children and families.

CLB/sb/al