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PROTECTIVE CUSTODY FOR CHILDREN, SENATE BILL 324 (Senator Linda Lopez)

Improve Short Stay Foster Care Placements to End Unnecessary Trauma to Families

THE ISSUE

New Mexico does not follow best practice for who has the authority to remove children from their families, often unnecessarily separating them for several days as a matter of procedure rather than safety. This causes unnecessary trauma to families and is a poor use of taxpayer dollars. According to the New Mexico Legislative Finance Committee's report [Program Evaluation Short-Term Foster Care Placements](#), "...over 40 percent of children placed in foster care stay for less than 30 days before being reunited with family, one of the highest rates of 'short-stayers' in the nation. **Research shows children removed from the home often have worse outcomes than those not removed, costing taxpayers and families tens of millions of dollars per year. These negative impacts are likely related to the trauma associated with parental separation and the child's feelings of fear, uncertainty and abandonment.** Some removals are necessary to ensure child safety however, others are likely unnecessary. **Over 90 percent of the state's short-stayers are in care for less than eight days.** These short-stayers are less likely to be placed with relatives, a recognized best practice. While the Children, Youth and Families Department (CYFD) administers child welfare services in New Mexico, the Children's Code stipulates law enforcement officers have the sole authority for removing a child from the home" (emphasis added).

THE OPPORTUNITY

This bill will address the above issue by:

- Shifting removal authority from law enforcement to CYFD, which is required to obtain court approval. CYFD and the court have the training and experience to assess whether a threat can be eased by less extreme measures or whether remaining in the home is contrary to the child's welfare
- Removing the burden of this decision from law enforcement, allowing them to focus on public safety
- Eliminates the need for CYFD to transmit to law enforcement reports of alleged abuse or neglect that are not accepted by Statewide Centralized Intake (SCI)

FREQUENTLY ASKED QUESTIONS (FAQ)

What does the bill do?

The bill shifts the authority to remove a child from the home based on suspected abuse or neglect from law enforcement to CYFD, which is required to obtain court approval. CYFD and the court have the training and experience to assess whether a threat can be eased by less extreme measures or whether remaining in the home is contrary to the child's welfare and probable cause exists to believe that temporary custody is necessary to protect the child from imminent threat of abuse or neglect.

FAQ CONTINUED

What is a short stay in foster care?

A short-stay is the removal of a child from the home for less than eight days. This can be avoided with better strategies or additional in-home services and resources. Here is an example of how a current situation is handled and the bill's recommendation:

- **“Current situation:** Ramona is an 8-year-old living in Las Cruces. She and her siblings live with their mom and dad. When her parents got into a bad argument, a neighbor called the police. The police arrested her father for domestic violence. Because the fight happened on a weekend night, law enforcement removed the children prior to CYFD arriving. CYFD looked for a placement for the family and put the children into foster care. CYFD completed the safety and risk assessment for the family while the children were in custody. After a few days in foster care, the family was reunited and are provided in-home services for an undetermined amount of time.
- **The bill's recommendation:** In an improved version of Ramona's story, she and her siblings would not have been removed from the home. CYFD would determine how to best keep the children safe while serving the family. Police would focus on any criminal activity (the domestic violence) and Protective Services would assess the safety and risk for the children in the home. CYFD could determine the children could stay with their mother and work with her to determine how to keep the children safe. The family would be offered in-home services to prevent the children from entering custody” (New Mexico Legislative Finance Committee, “Program Evaluation Short-Term Foster Care Placements.” May 2020).

Why do we need it?

The national average for the percentage of children who are in foster care less than 30 days is nine percent; in New Mexico it is 41 percent. Of these short-stays, 92.6 percent are in care for less than eight days before being reunited with family. In most cases, this indicates that the child should not have been removed and the situation could have been addressed through other means, such as increasing the use of evidence-based in-home services and other family preservation models. New Mexico is one of only four states that grants law enforcement the sole authority to remove a child from the home based on suspected abuse or neglect and the policy adds to the state's high rate of short-term placements, which is not best practice.

What will it cost?

This legislation does not have an appropriation. CYFD's involvement on the scene will remain the same, and these changes do not increase CYFD's workload. District courts have judges available outside business hours to make decisions about warrants; these judges will also take calls about ex parte removal orders.

How was this bill developed?

The report [Program Evaluation Short-Term Foster Care Placements](#) by the New Mexico Legislative Finance Committee prompted the convening of a statewide multi-disciplinary work group made up of judges, court staff, law enforcement, youth attorneys, tribal representatives, child welfare experts, community organizations, and various CYFD staff that created this legislation.

Why does the bill limit reports of alleged abuse or neglect to law enforcement?

CYFD currently reports all SCI reports (up to 40,000 per year) to law enforcement, including the nearly 50 percent that are not accepted because they do not meet the criteria to warrant an abuse/neglect investigation of the caretaker. Reasons for non-acceptance may include: no specific allegation/risk of abuse/neglect; insufficient information to investigate; does not meet sufficient screening criteria; perpetrator is non-caretaker/out-of-home; duplicate reports; and/or referral to another agency, such as law enforcement. **Reports against non-caretakers and other cases that warrant a criminal investigation will continue to be reported to law enforcement, as that is the appropriate entity to pursue them.**

Additional Questions

Please contact Director of Policy and Advocacy Arika E. Sánchez at 808-225-1494 or Arika.Sanchez@nmcan.org.



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