

SENATE BILL 128

CHILD PROTECTIVE CUSTODY PROCEDURES

(Senators Duhigg, Lopez, and Correa Hemphill)



AN EXAMPLE

A short-stay is the removal of a child from the home for less than thirty days. This can be avoided with better strategies and additional in-home services and resources. For example:

- **Current situation:** Ramona, an 8-year-old lives with her mom and dad. When her parents got into a bad argument, a neighbor called the police. The police arrested her father for domestic violence and made the decision to remove Ramona. CYFD placed Ramona into foster care while they completed the safety and risk assessment. After a few days in foster care, the family was reunited and receiving in-home services.
- **The bill's recommendation:** In an improved version of Ramona's story, she was not removed from the home. CYFD determines how to best keep her safe while serving the family. Police focus on the criminal activity (the domestic violence) and CYFD assesses the safety and risk for the child in the home. CYFD determines Ramona can stay with her mother; they work with her mother to determine how to keep her safe. The family is offered in-home services to prevent the child from entering state custody.

THE ISSUE

New Mexico does not follow best practices for who is authorized to remove children from their families, often unnecessarily separating them for several days as a matter of procedure rather than safety. New Mexico's Children's Code currently gives sole authority for removing a child to law enforcement whereas best practice would delegate that authority to CYFD and the courts.

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. Over 90 percent of the state's short-stayers are in care for less than eight days. LFC noted the negative and traumatic impacts on families due to parental separation and the child's feelings of fear, uncertainty, and abandonment as well as costs to taxpayers and families amounting to "tens of millions of dollars per year."

WHAT THIS BILL DOES

The bill shifts the authority to remove a child from the home, following a report of suspected abuse or neglect, from law enforcement to the court, upon an application for removal from CYFD. It removes the burden of the decision from law enforcement, allowing them to focus on public safety.

CYFD and the court have the training and experience to assess whether a threat can be eased by less extreme measures. They can assess whether remaining in the home is contrary to the child's welfare. They can determine whether probable cause exists to believe that temporary custody is necessary to protect the child from imminent threat of abuse or neglect.

Why do we need SB 128?

The national average for the percentage of children who are in foster care less than 30 days is nine percent; in NM 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 by other means, such as increasing the use of evidence-based in-home services and other family preservation models. There are only four states where law enforcement has sole decision making authority for removing children and NM has significantly higher rates of removal than the other three.

Does it give CYFD more authority?

This bill does not give more authority to CYFD. Under federal and state law, CYFD is the only entity with the authority to file an abuse and neglect petition. This bill provides clarity on roles, responsibility, and accountability, making clear that the responsibility for evaluating and determining whether a child should be removed from the home falls to CYFD from the get-go.

I don't trust CYFD to do its work already. Why should it have this authority?

CYFD will work in partnership with the courts to decide if a child should be removed from a home. This will result in reduced unnecessary short stays when children are not in immediate harm, the ability to link families to community resources, and decreased trauma caused by family separation. Furthermore, CYFD will be able to focus its time and resources on abuse cases that need swift action.

Does this bill restrict the role of law enforcement in these kinds of issues?

This bill does not impact law enforcement's ability to assist CYFD in removing a child from the home. It allows law enforcement to file an affidavit to accompany the removal application to the court. It also allows law enforcement to place a child in the department's custody if the officer has evidence to believe exigent circumstances exist and the CYFD declined to take custody.



What will it cost?

This bill 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.

According to LFC's [Program Evaluation Short-Term Foster Care Placements](#) report, short-term placements in foster care cost the state up to \$13.7 million a year and cost families \$16.5 million a year. If the changes in the removal process contained in this bill are successful in reducing short-term placements, then any additional cost will be absorbed through savings.

How was SB 128 developed?

LFC's [Program Evaluation Short-Term Foster Care Placements](#) report prompted the convening of a statewide, multi-disciplinary work group made up of judges, parent attorneys, youth attorneys, tribal representatives, child welfare experts, community organizations, youth with lived experience, and various CYFD staff. Together they created this legislation.

Additional Questions

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