

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date January 31, 2014
Bill No: HB247-305 Feb 3

Sponsor: Rep. Gail Chasey
Short Children's Court Immediate
Title: Appeals

Reviewing Attorney General's Office
Person Writing Joseph Dworak, AAG
Phone: 827-6986 **Email** jdworak@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion Letter. This is a staff analysis in response to the agency's, committee's or legislator's request.

BILL SUMMARY

Summary Synopsis: HB 247 proposes additions to Section 32A-4-18, NMSA 1978, which if adopted, would allow for filing an immediate appeal as a matter of right to parties in a custody hearing for children alleged to be neglected or abused. The legislation does not proscribe procedural requirements but does mandate that the appeal be expedited through rules adopted by the New Mexico Supreme Court.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

Unknown

SIGNIFICANT LEGAL ISSUES

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

An identical bill is being introduced in the House as SB 183.

TECHNICAL ISSUES OR DRAFTING ERROR

HB 247 refers to "an order entered pursuant to this section" as those which are applicable to the new right to immediate appeal. There could be some confusion with whether any order is appealable or if only "final orders" are those which are entitled to immediate appeal.

OTHER SUBSTANTIVE LEGAL ISSUES

New Mexico has a hybrid model for adopting court rules and procedures. Although the legislature has shared procedural rule-making with the judiciary, any conflict between

court rules and statutes that related to procedure are resolved in favor of the court's rules. See Albuquerque Rape Crisis Center v. Blackmer, 2005-NMSC-032. See also State ex. rel. Bliss v. Greenwood, 63 NM 156, 162 (1957) ("The statutory regulation must preserve to the court sufficient power to protect itself from indignities and to enable it effectively to administer its judicial functions.").

Rule 10-352 NMRA governs judgments and appeals for abuse and neglect proceedings in Children's Court, and no portion of Rule 10-352 conflicts with the provisions of HB 247. With no court rules in apparent conflict, HB 247 may be enacted by the legislature.

Although the language of HB 247 does suggest that the supreme court will need to adopt new rules to accommodate the new right of immediate appeal, the bill avoids a clear directive that might otherwise be considered a command on the court and an improper intrusion on the judiciary.

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS NEEDED TO IMPROVE THIS BILL