

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 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: Date 2-8-17
Original **Amendment** _____ **Bill No:** SB322
Correction _____ **Substitute** _____

Sponsor: George Munoz **Agency Code:** 264
Short Additional Child Custody **Person Writing** Gail MacQuesten
Title: Proceeding Security **Phone:** 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB322 enacts new material providing for additional security measures in proceedings determining the legal or physical custody of a child or visitation of a child.

Each court in which such a proceeding is heard shall, to the extent possible, implement the following security measures:

- Provide training for judges and court personnel on safety concerns (with the assistance of the administrative office of the courts and local or state law enforcement agencies);
- Install security surveillance cameras on interior and exterior court facilities;
- Allow one party to a proceeding to participate in hearings via video;
- Upon request provide a party with an escort when leaving the facility;
- Provide a waiting area to enable staggered departure times for parties leaving the court.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SB322 contains no appropriation. The main fiscal impact will be on the judiciary, which is charged with implementing the security measures “to the extent possible.” There will also be costs to the administrative office of the courts and law enforcement agencies, related to providing training.

There are no direct fiscal impacts for the district attorneys.

SIGNIFICANT ISSUES

Because SB322 provides no appropriation, and requires the additional security measures “to the extent possible,” the bill sets out suggestions, rather than requirements.

PERFORMANCE IMPLICATIONS

See Significant Issues, above.

ADMINISTRATIVE IMPLICATIONS

See Significant Issues, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

The provision allowing a party to participate in a hearing via video conferencing could raise confrontation clause problems in some cases. Cases adjudicating legal or physical custody of a child or visitation are usually civil cases, and thus not subject to the confrontation clause. Abuse and neglect cases have been held to be civil cases, and the parties are not given the constitutional rights afforded to criminal defendants. See *State of New Mexico ex rel. Children, Youth & Families Department v. Michael T.*, 2007 NMCA 163. However, in cases brought under the delinquency act, the child is given the same basic rights as an adult (see NMSA 1978, Section 32A-2-14), and although the proceedings may not result in a criminal conviction, the proceedings are quasi-criminal in nature. The argument will be made that allowing a witness to testify via video, without a showing of necessity, is a violation of the confrontation clause. Because SB322 only allows participation via video, and does not require it, this problem can be avoided by judges and district attorneys serving as children's court attorneys.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Child custody proceedings will have the same security measures as other court proceedings.

AMENDMENTS

None proposed.