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FISCAL IMPACT REPORT

SPONSOR	<u>Padilla</u>	LAST UPDATED	<u>3/14/2025</u>
		ORIGINAL DATE	<u>3/11/2025</u>
SHORT TITLE	<u>Court Intervention After CYFD Determination</u>	BILL NUMBER	<u>Senate Bill 362</u>
		ANALYST	<u>Garcia/Greenham</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD	No fiscal impact	At least \$100	At least \$100	At least \$200	Recurring	General Fund
OFRA	No fiscal impact	At least \$125	At least \$125	At least \$250	Recurring	General Fund
Total	No fiscal impact	At least \$225	At least \$225	At least \$450	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 382

Sources of Information

LFC Files

Agency Analysis Received From
 Office of Family Representation and Advocacy (OFRA)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Senate Bill 362

Senate Bill 362 (SB362) amends the Family in Need of Court-Ordered Services Act (FINCOS Act) under Section 32A-3B-2 NMSA 1978. The bill expands the definition of a “family in need of court-ordered services” to include cases where allegations of child abuse or neglect have been substantiated by the Children, Youth and Families Department (CYFD), but CYFD has determined that filing an abuse or neglect petition is not in the child’s best interest. Specifically, the bill allows CYFD to petition for court intervention to provide services to the family when:

- The family or child has refused family services or failed to follow through with family services recommended by CYFD, or
- CYFD has exhausted appropriate and available voluntary services, and court intervention is necessary to ensure the safety and well-being of the child or to facilitate access to services for the family.

The bill aims to provide CYFD with an additional tool to engage families who are not complying with voluntary services without needing to file an abuse or neglect petition.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

No appropriation is included within the bill.

CYFD reports no fiscal impact for the bill. However, the bill would likely result in agency involvement with more families, which would come at a cost, including the potential need for additional FTE for FINCOS case filings. LFC estimates the cost for at least one additional FTE (roughly \$100 thousand). This FTE would not likely be eligible for federal reimbursement. At the same time, the bill could result in a decrease in filings of abuse and neglect petitions. However, it is difficult to predict what this reduction might be.

The Office of Family Representation and Advocacy (OFRA) reports the bill would increase OFRA's service population, requiring additional attorneys to provide legal services to children and families. OFRA did not provide a cost estimate. LFC assumes the need for at least 1 attorney FTE at a cost of at least \$125 thousand.

SIGNIFICANT ISSUES

New Mexico's Family in Need of Court-Ordered Services within the Children's Code generally addresses situations where families require court intervention for issues like truancy, running away, or situations where a child and parent cannot share a residence. SB362 expands the definition of a "family in need of court-ordered services" to include families which have not followed through with voluntary services.

Currently, the law narrowly defines families who may be subject to the FINCOS Act as a family 1) whose child is chronically absent from school; 2) where a child is absent from their residence for more than 12 days without the consent of their parent or guardian; 3) where a child refuses to return home or there is good cause to believe the child will run away if forced to return home; 4) where a parent or guardian refuses to allow a child to return home; and 5) where a child is alleged to be engaged in an act which, if committed by an adult, would be designated prostitution or is the victim of human trafficking.

CYFD supports the bill's potential to improve child safety and well-being by ensuring that families with substantiated abuse or neglect cases receive necessary interventions through court-ordered services. According to CYFD, "this could result in a shift from filing fewer abuse and neglect cases, which can be a more supportive way of working with families." CYFD also indicates that the bill could reduce the number of children entering the foster care system by providing an alternative intervention mechanism that does not require custody removal. However, CYFD notes that the bill could increase the agency's caseload and the number of court proceedings, which may require additional resources and staffing to handle the increased demand.

The Administrative Office of the Courts (AOC) indicates SB362 would increase CYFD’s ability to work with families who refuse or do not follow through with voluntary services by asking the court to order services. However, AOC cautions that “the expansion of the definition of a ‘family in need of court-ordered services’ may also over broaden the ability of CYFD to involve families in legal proceedings.” This could lead to an increase in the number of families subjected to legal action even when less invasive methods might suffice. AOC reports the FINCOS Act is rarely used in New Mexico, with only a “handful” of cases filed each year.

The Office of the Attorney General (NMAG) raises concerns about how the bill would interact with existing law under the Abuse and Neglect Act, specifically regarding procedural due process. According to NMAG, it is unclear “whether procedural due process would attach under this new definition” since CYFD would not need to prove abuse or neglect by clear and convincing evidence but only that the family “is in need of court-ordered services.” NMAG also highlights that the bill contains contradictory language. On the one hand, the bill defines a family in need of court-ordered services as one with substantiated allegations of abuse or neglect requiring court intervention; on the other hand, it states that filing an abuse or neglect petition is not in the child’s best interest. NMAG argues that this creates a scenario where CYFD could seek court intervention without the procedural requirements typically tied to filing a petition.

OFRA notes that SB362 increases the flexibility of the child welfare system by allowing a level of intervention above voluntary services but below a petition for custody when abuse or neglect has been substantiated. According to OFRA, “the bill acknowledges that not all abuse and neglect occurrences require the separation of children from the family unit.” OFRA also points out that the bill could disproportionately impact families in underserved communities where barriers to accessing services may exist.

OFRA states that the term “failed to follow through with family services” is not clearly defined and raises the question of whether this means the family never engaged with services after an initial referral or if it means the family determined that the services were not beneficial or created an additional financial or logistical burden. OFRA recommends clarifying how a family’s engagement with voluntary services is to be monitored and assessed.

PERFORMANCE IMPLICATIONS

AOC indicates SB362 could lead to an increase in the number of FINCOS cases filed, which would place additional pressure on the courts and increase the need for more hearings and administrative support from the courts.

OFRA also anticipates an increase in its service population, requiring additional attorneys to provide legal representation to children and families involved in FINCOS cases. According to OFRA, “there will also be an increased number of hearings requiring court oversight,” which would contribute to a heavier workload for CYFD, OFRA, and the court system. OFRA further notes that no existing performance measures specifically track FINCOS cases, so new performance metrics may need to be developed to assess the impact of the expanded definition and ensure consistent implementation.

CYFD reports that SB362 “could result in a shift from filing fewer abuse and neglect cases,” which may reduce the number of foster care placements but increase the need for case management and court intervention at an earlier stage.

ADMINISTRATIVE IMPLICATIONS

AOC indicates that expanding the eligibility for FINCOS cases could lead to an increase in court filings and hearings, which would place additional administrative pressure on the courts. This would require greater judicial resources, scheduling adjustments, and administrative staff support to manage the higher caseload.

OFRA also anticipates an increased demand for legal representation for children and families involved in FINCOS cases, which would require additional staffing and administrative support. According to OFRA, “an increase in FINCOS filings would also increase OFRA’s service population, requiring additional attorneys to provide legal services to children and families.” Additionally, OFRA raises concerns that the bill does not define how a family’s engagement with voluntary services would be tracked or monitored, creating an administrative gap that would need to be addressed through the development of new monitoring and compliance systems.

CYFD acknowledges SB362 could shift some cases away from abuse and neglect petitions toward FINCOS petitions, which would require modifications to case management processes and increased coordination with the courts and service providers.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB362 conflicts with House Bill 382 (HB382), which proposes a different standard for intervention based on “credible evidence” rather than “substantiated” cases of abuse or neglect. NMAG explains that this creates a fundamental difference in the threshold for action, with SB362 requiring substantiated findings and HB382 requiring only credible evidence. This conflict could create inconsistencies in how cases are handled under the FINCOS Act.

ALTERNATIVES

OFRA recommends specific amendments to SB362:

- Clarify who determines the necessity of court intervention – OFRA states that Section 1, Line 22–24 of the bill should be amended to replace the phrase “it has been determined” with “the department has determined” to specify that CYFD holds the authority to decide whether court intervention is necessary.
- Define “failure to follow through with family services” – OFRA highlights that the term is not clearly defined and raises the question of whether this means the family never engaged with services after an initial referral or if it means that the family determined the services were not beneficial or imposed an additional financial or logistical burden. OFRA recommends clarifying this term to avoid inconsistent interpretation.
- Establish a process for monitoring family engagement with services – OFRA notes that the bill does not describe how a family’s engagement with voluntary services is to be monitored or assessed and suggests that a system for tracking compliance and engagement may need to be developed.

NMAG indicates contradictions and procedural ambiguity could be addressed by clarifying language:

- Resolve contradictory language about abuse and neglect findings – NMAG points out

that the bill defines a FINCOS as a family with substantiated abuse or neglect requiring court intervention, while simultaneously stating that filing an abuse or neglect petition is not in the child's best interest. This contradiction could be resolved by clarifying the circumstances under which court intervention without a formal petition is appropriate.

- Clarify procedural due process – NMAG questions whether procedural due process would apply under the new FINCOS definition and suggests that the bill should clarify the procedural standards CYFD would need to meet when seeking court intervention without a formal abuse or neglect petition.

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