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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	<u>Hemphill</u>	<b>LAST UPDATED</b>	<u>02/05/2024</u>
	CYFD Investigations and Background	<b>ORIGINAL DATE</b>	<u>01/24/2024</u>
<b>SHORT TITLE</b>	<u>Checks</u>	<b>BILL NUMBER</b>	<u>Senate Bill 152/ec/aSJC</u>
		<b>ANALYST</b>	<u>Chilton</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Children, Youth and Family Department (CYFD)

Early Childhood Education and Care Department (ECECD)

#### Agency Analysis was Solicited but Not Received From

Health Care Authority (HCA)

## SUMMARY

### Synopsis of Senate Judiciary Committee Amendment to Senate Bill 152

The Senate Judiciary Committee amendment to Senate Bill 152 (SB152) removes the words “direct or indirect” in the definition of “operator” in Section 2E of the bill. “Operator” is used in the bill to mean a person having oversight over a facility’s or a program’s employees or operations, and these operators would be subjected to background checks if the bill is passed.

### Synopsis of Senate Bill 152

Senate Bill 152 specifies that certain persons working with CYFD and ECECD must undergo background checks.

Section 1 of the bill amends Section 9-29-8.1 NMSA 1978 to add employees and volunteers of providers contracted by CYFD and ECECD to direct employees of those agencies as requiring checks with the state Department of Public Safety and the Federal Bureau of Investigation (FBI).

Section 2 amends Section 32A-15-3 NMSA 1978, which requires similar background checks for persons working in programs having custody of children for more than 20 hours per week,

including juvenile correction facilities, and including student interns. DPS is to review the criminal background checks and provide the information obtained to the department involved. Definitions of the types of services affected by these requirements are newly included:

- Behavior management skills development,
- Case management,
- Child placement agency,
- Comprehensive community support services,
- Day treatment,
- Group homes,
- Intensive outpatient programming,
- Juvenile correction facility,
- Juvenile detention facility,
- Prevention, intervention, and reunification services,
- Residential treatment facility,
- Shelter care,
- Supervised visitation and safe exchange,
- Treatment facility, and
- Treatment foster care services.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

## **FISCAL IMPLICATIONS**

There is no appropriation in Senate Bill 152.

Neither CYFD nor ECECD identify a cost associated with an increased number of background checks as this bill would merely allow the FBI to fully cooperate with the relatively new department, ECECD.

## **SIGNIFICANT ISSUES**

Many types of offense may be uncovered by background checks such as are currently required and are to be required under Senate Bill 152. As an extreme example, in a 2013 LFC evaluation entitled “Children, Youth, and Families Department: Impact of Child Care and Head Start on Student Achievement,” LFC evaluators noted that “CYFD implemented background checks do not include sex offender registries, and as a result, LFC staff found three active registered homes where sex offenders reside. A cross-reference between addresses listed in the sex offender registry and current child care provider addresses conducted by LFC staff revealed three childcare locations that registered sex offenders had listed as their primary current address in the sex offender registry.” These providers were terminated by CYFD, but it is clear that the risk, absent comprehensive background checks, exists.

According to CYFD:

SB152 provides technical fixes made necessary by the split of CYFD and ECECD. This language is required by the Federal Bureau of Investigations so that CYFD and ECECD can continue to receive criminal history information to conduct background checks on those individuals who provide care to New Mexico’s most vulnerable children.

Without this crucial legislation, CYFD will be unable to conduct background checks on those individuals who provide care to New Mexico's most vulnerable children. This legislation is necessary to ensure that CYFD is equipped with a vital tool to ensure the safety of children in state custody.

ECECD elaborates further on the FBI's requirement for this new legislation:

When ECECD became an independent agency the FBI required ECECD to have its own statutory authority to conduct background clearances for child care providers and department contractors, volunteers, and employees. In response, SB 38 was unanimously passed in 2022 which provided independent authority for ECECD to conduct the necessary background clearances. When this statute was reviewed by the FBI, they requested further clarification in the definitions for approval. In response, HB 377 was passed unanimously in 2023 creating the definitions and technical fixes requested by the FBI. In the summer of 2023, the FBI granted background authority for all ECECD programs, but only provided a grace period through September of 2024 for ECECD employees because that category of individual to be cleared was not in the proper section.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If this bill is not passed, the FBI will not be able to cooperate with background checks initiated by ECECD.

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