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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 2nd Session, 2018**

**Bill Number** SB87 **Sponsor** Morales  
**Tracking Number** .209174.2 **Committee Referrals** SPAC/SJC  
**Short Title** Child Abuse Definition & Investigation  
**Analyst** Force **Original Date** 2/7/18  
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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 87 (SB87) proposes to expand existing requirements to report child abuse to include most forms of abuse when perpetrated by anyone, unrestricted to those who have a custodial relationship with the child, as is the case under current law. SB87 would accomplish this by adding a definition for “abused child” applicable only to Section 32A-4-3 NMSA 1978, the section of the Abuse and Neglect Act addressing reporting and investigation of child abuse.

The proposed definition closely mirrors the general definition of “abused child” for the entire Abuse and Neglect Act, but in most cases, changes the perpetrator from one in a custodial relationship with the child to any person committing the abuse:

<b>Section 32A-4-2. Definitions.</b>	<b>SB87: Section 32A-4-3. Duty to report child abuse and child neglect – responsibility to investigate child abuse or neglect – penalty.</b>
“Abused child” means a child:	For the purposes of this section, “abused child” means a child:
1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child’s parent, guardian, or custodian;	1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child’s parent, guardian, or custodian;
2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child’s <i>parent, guardian, or custodian</i> ;	2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by <i>any person</i> ;
3) who has suffered sexual abuse, or sexual exploitation inflicted by the child’s <i>parent, guardian, or custodian</i> ;	3) who has suffered sexual abuse, or sexual exploitation inflicted by <i>any person</i> ;
4) whose <i>parent, guardian, or custodian</i> has knowingly, intentionally or negligently placed the child in a situation that may endanger the child’s life or health; or	4) who was knowingly, intentionally or negligently placed, by <i>any person</i> , in a situation that may endanger the child’s life or health; or
5) whose <i>parent, guardian, or custodian</i> has knowingly or intentionally tortured, cruelly confined or cruelly punished the child.	5) who was knowingly or intentionally tortured, cruelly confined or cruelly punished by <i>any person</i> .

Existing language in Subsection A of Section 32A-4-3 NMSA 1978 already places the duty to report on *every person* who knows or has a reasonable suspicion that a child is abused or neglected. The provisions of SB87 only expand the reporting duty to include suspected abuse by anyone.

## **FISCAL IMPACT**

SB87 does not contain an appropriation.

The House Appropriations and Finance Committee substitute for House Bills 2 and 3 allocates a total of \$67.9 million to the Protective Services Program at the Children, Youth and Families Department (CYFD), whose duties include receipt and investigation of referrals of child abuse. The appropriation includes \$500 thousand from the general fund to CYFD contractual services category for statewide domestic violence services and training. These requirements are reflected in the New Mexico Administrative Code, in Section 9 of Part 1 of 6.29 NMAC.

## **SUBSTANTIVE ISSUES**

The Public School Code, Section 22-10A-32 NMSA 1978, already requires reporting of child abuse, and mandates all licensed school employees complete training in the detection and reporting of child abuse and neglect, including sexual abuse and assault and substance abuse. The Public Education Department is required to make the training available to every school district.

According to the National Children's Alliance, in 2015, children's advocacy centers around the country served more than 311 thousand victims of child abuse, and an estimated 683 thousand children were abused. Approximately 3.4 million children received an investigation or alternative response form child protective services (CPS), and 2.3 million children received prevention services. Young children, in the first year of life, had the highest rate of victimization, at 24.2 per 1,000 children of the same age. Neglect is the most common form of abuse, at nearly 75 percent of all abused children; 17.2 percent suffered physical abuse, and 8.4 percent suffered sexual abuse. In 78 percent of substantiated child abuse cases, the parent was perpetrator.

According to New Mexico's Indicator-Based Information System (NMIBIS), a substantiated allegation of abuse is one in which the victim is under the age of 18, a caretaker or provider has been identified as the perpetrator or identified as failing to protect the child, and credible evidence exists to support the conclusion by the child welfare investigator that the child has been abused and/or neglected as defined by the New Mexico Children's Code. Suspected incidents of child abuse or neglect are reported to CYFD and entered into the State Central Intake system (SCI), and then screened for acceptance. Accepted reports are investigated. Reasons for non-acceptance of a report may include: a lack of specific allegation or risk of abuse or neglect; insufficient information to investigate; referral to another agency; the perpetrator is a non-caretaker or is out-of-home; referral to law enforcement; a lack of sufficient screening criteria; or duplicate reports. Once accepted, the report is assigned to the appropriate county office for investigation. It is possible for a single incident to have been reported and entered into SCI multiple times. It is also possible that one incident reported and entered into SCI may include multiple types of abuse, or that an individual child has more than one substantiated incident of abuse or neglect during the same period.

The ratio of abused children per 1,000 children has been steadily rising, according to NMIBIS. Since 2004, the ratio of abused children has risen from 9.2:1000 to a high of 21.3:1,000 in 2015. The figure in 2016 dipped to 17.4:1,000. Between FY14 and FY16, the counties with the highest

rates of substantiated allegations of child abuse were: Colfax, with 84.3:1,000; San Miguel, with 65.6:1,000; and Sierra, with 55.3:1,000. Catron, Mora, and Harding counties all reported zero substantiated allegations per 1,000 children.

The Administrative Office of the District Attorney (AODA) notes it is unclear why SB87 does not change the language in Subparagraph 1 of the definition of abused child – suffering or at the risk of suffering harm due to the action or inaction of a person who stands in a custodial relationship to the child. According to AODA, the distinction between Subparagraph 1 and Subparagraph 4 of the proposed definition results in a situation where abuse means being negligently placed in circumstances that *may* endanger the child’s life or health by *any person*, but also requires that the abuser be a parent, guardian, or custodian when their action or inaction results in definite, serious harm.

### **ADMINISTRATIVE IMPLICATIONS**

The Attorney General’s Office (AGO) notes it is committed to prosecuting cases that have remained unresolved for years, including cases resulting from the delayed reporting due to a lack of duty to report noncustodial sexual abuse. Delays often implicate statutes of limitations bars on prosecution of sexual felonies, as well as evidentiary and witness-related difficulties. SB87 would help alleviate this issue by requiring reporting by those who have a reasonable suspicion of sexual abuse by anyone, not just custodial persons, or risk criminal liability themselves. Investigating these reports in a timely manner will likely save resources over investigating and prosecuting historic or cold cases.

### **TECHNICAL ISSUES**

The general definition in Section 32A-4-2 is the same as the definition proposed for SB87 for the duty to report, aside from requiring reports of abuse committed by *anyone*, rather than only parents, guardians, or custodians. There may be conflict in the application of the two different definitions of the same term, used in the same act.

### **OTHER SIGNIFICANT ISSUES**

AGO reports it is currently prosecuting several cases involving a schoolteacher who is alleged to have sexually abused multiple children, moving from one school district to another, while administrative officials who were aware of the abuse failed to report it.

### **RELATED BILLS**

HB122, Duty to Report Child Abuse & Neglect, which clarifies existing language that every person who has knowledge of or reasonable suspects abuse or neglect must report it.

### **SOURCES OF INFORMATION**

- LESC Files

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