

LFC Requester:	Rachel Mercer-Garcia
-----------------------	-----------------------------

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/21/25 *Check all that apply:*
Bill Number: HB 486 Original Correction
 Amendment Substitute

Sponsor: Stefani Lord & Anita Gonzales **Agency Name and Code:** Office of Family Representation & Advocacy
Short Title: Background checks for returning children **Number:** 68000
Person Writing: Leslie Jones **Phone:** 505-549-3905 **Email:** Leslie.jones@ofra.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0	0		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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:

The bill proposes changes to Sections 32A-4-6 (Taking Into Custody), paragraph (C) and 32A-4-7 (Release or Delivery from Custody), paragraph (E)(1), which would require that whenever a child comes into the custody of the Children, Youth and Families Department (CYFD or the department) because of “evidence that the child has been subjected to abuse or neglect,” the child shall not be released to any person, including the child’s parent, before:

- (a) that person submits to a criminal background check;
- (b) the department determines if that person is listed on the department of public safety’s sex offender registry and a national sex offender website; and
- (c) the department determines whether to release the child based on the results of these checks.

The act proposes to change Section 32A-4-8 (Place of Temporary Custody) by adding to paragraph (A)(2) a requirement that when a child is released to “a person, including a relative of the child,” that person must submit to a criminal background check and the department must determine if that person is listed on the department of public safety’s sex offender registry and a national sex offender website, and that the department shall determine release of the child based on the results of these checks.

FISCAL IMPLICATIONS

The bill makes no appropriation for the additional department staff needed to conduct criminal background checks and search of sex offender registries for every parent of every child brought in to department custody, no matter how briefly.

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.

SIGNIFICANT ISSUES

It is well established that parents have a fundamental liberty interest in the care, custody, and control of their children and the state may only interfere in this relationship when supported by facts indicative of neglect or abuse and in accordance with due process. *Santosky v. Kramer*, 455 U.S. 745 (1982), *Troxel v. Granville*, 530 U.S. 57 (2000). Whenever a proceeding affects or interferes with the parent-child relationship courts must be careful to afford constitutional due process. *State ex rel. Children, Youth and Families Dep’t v. Stella P.*, 1999-NMCA-100 ¶ 14, 127 N.M. 699, 986 P.2d 495

This act seeks to interfere with the right of a parent to custody of their child based on the results

of a criminal background check or the parent's presence on a sex offender registry, if a law enforcement officer or department investigator took their child into custody based on "reasonable grounds to believe" the child had been subjected to neglect or abuse, even when the alleged abuse or neglect does not involve criminal behavior or sexual offenses. This is even if further investigation does not substantiate the allegations of abuse or neglect, a safety assessment performed in accordance with current best practices determines it would be safe to return the child to the parent, or the release would be to the parent who was not the subject of the investigation.

This bill seeks to give the department the authority to interfere with the right of a parent to custody of their child for reasons wholly unrelated to the reasons the child was brought into their custody, with no due process protections provided to the parent. Presumably, the department could refuse to return a child to a parent without the need to prove that the results of the background check or the parent's presence on a sex offender registry resulted in, or even placed the child at risk of, abuse or neglect.

The bill is unconstitutional and contrary to established law on its face. The existence of a criminal history, current criminal charges, or presence on a sex offender registry are insufficient, on their own, to remove a child from their parent. They cannot be a basis for not returning a child who has been removed from the parent when subsequent investigation or safety assessments have found that the child may be safely returned to the parent.

The bill's proposed change to Section 32A-4-8 (Place of Temporary Custody) is duplicative and unnecessary. The department already has a screening process for approval any relative of a child with whom the department is exploring placement.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS