

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: 02/18/2025 *Check all that apply:*
Bill Number: SB 406 Original Correction
 Amendment Substitute

Sponsor:	<u>Linda Lopez & Antoinette Sedillo Lopez</u>	Agency Name and Code Number:	<u>Office of Family Representation & Advocacy 68000</u>
Short Title:	<u>Removing a Presumption of Abandonment as a Basis for TPR</u>	Person Writing	<u>Leslie Jones</u>
		Phone:	<u>505-549-3905</u> Email <u>Leslie.jones@ofra.nm.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(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: Amends Section 32A-4-28 to remove presumptive abandonment as a grounds for termination of parental rights within an abuse or neglect action.

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.

SIGNIFICANT ISSUES

The proposed amendment appropriately removes presumptive abandonment as a grounds for termination of parental rights within an abuse or neglect action. Presumptive abandonment is not needed as a grounds for termination of parental rights in abuse and neglect actions. The Children, Youth and Families Department can prevail on an action for termination of parental rights based on actual abandonment, or based on a showing that the conditions and causes of neglect and abuse that originally brought the child in to care are unlikely to change in the foreseeable future despite reasonable efforts to assist the parent in adjusting those conditions (or a showing that reasonable efforts would be futile or the parent has subjected the child to aggravated circumstances).

The very intervention of the state in removing the child and placing them with substitute caregivers creates the conditions under which presumptive abandonment may be found in an abuse or neglect action. The state should not be able to create a condition that impedes the parent/child relationship, and then use that condition to terminate a parent's rights. Further, a termination of parental rights under presumptive abandonment could be found even when the parent had successfully worked their case plan and addressed the reasons the child came into care. Such a result, in which a child's natural and healthy development of an attachment to a substitute caregiver is used as a grounds for termination of parental rights, without a showing that the parent failed to address the conditions of abuse or neglect that created the need for substitute care, would be contrary to the purpose of the Children's Code, which is to preserve the unity of the family whenever possible.

PERFORMANCE IMPLICATIONS

Adoption of this amendment to Section 32A-4-28 of the Children's Code should not impede the ability of the department to pursue and secure termination of parental rights when necessary and appropriate.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The amendment does not remove presumptive abandonment as a grounds for termination of parental rights under the Adoption Act, Section 32A-5-1 et. seq. This basis is appropriate in private adoptions as there has been no state actor intervening in the parent/child relationship and no state actor required to make efforts to assist the parent.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, a parent who has had their child removed from their care due to abuse or neglect—but has since addressed the issues and can safely parent—could still face termination of parental rights solely because the child has bonded with a substitute caregiver while the parent's relationship weakened because of the state's intervention (from, for example, limited and poor-quality visitation opportunities while the child was in custody).

AMENDMENTS