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FISCAL IMPACT REPORT

SPONSOR <u>Dixon/Silva</u>	LAST UPDATED <u>3/2/2025</u>	ORIGINAL DATE <u>2/13/2024</u>
SHORT TITLE <u>Use of State Devices for CYFD Business</u>	BILL NUMBER <u>House Bill 203/aHJC</u>	ANALYST <u>Hernandez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD	\$0	Up to \$5,000.0	Up to \$4,000.0	Up to \$9,000.0	Recurring	General Fund
DoIT System	\$0	\$1,500.0	\$1,500.0	\$3,000.0	Recurring	General Fund
DoIT Personnel	\$0	\$300.0 to \$350.0	\$300.0 to \$350.0	\$600.0 to \$700.0	Recurring	General Fund
Total	\$0	\$6,800.0 to \$7,300.0	\$6,800.0 to \$7,300.0	\$14,500 to \$14,600	Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
 Children, Youth, and Families Department (CYFD)
 Office of Family Representation and Advocacy (OFRA)
 New Mexico Attorney General (NMAG)
 State Personnel Office (SPO)
 State Records Center and Archives (SRCA)
 Department of Information Technology (DoIT)

Agency Declined to Respond
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment to House Bill 203

The House Judiciary Committee amendment to House Bill 203 (HB203) makes three changes. First, it strikes mention of compliance with local, territorial, and tribal data retention and protection laws. Second, the amendment changes the period of retention from 24 years to seven years. Finally, it adds further clarity by stating that CYFD must “back up the retained electronic records daily, monthly, and annually.”

Synopsis of House Bill 203

HB203 creates a new section of the Children, Youth, and Families Department (CYFD) Act. The bill requires that CYFD employees only use their department issued devices for communication related to their assigned duties—non-compliance is considered grounds for termination. Additionally, the only software and applications allowed must be compliant with federal, state, local, territorial, and tribal data retention and protection laws.

HB203 also requires the Department to create a system approved by the Department of Information and Technology that backs up all electronic records generated and received by employees on an hourly basis. This data must be saved for at least 24 years prior to the termination of an employee's employment.

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

CYFD states that they would need nine additional full-time equivalencies (FTEs) to meet the demand of HB203, which would cost approximately \$1.9 million. However, the Department currently has four fully funded vacant positions in program support, so the total number of staff needed may be fewer. CYFD also indicates that “the estimated fiscal impact for data storage, implementation and maintenance is an additional \$2.1 million per year, with an initial planning and equipment estimate of non-recurring costs estimated at \$1.0 million.”

In a similar vein, DoIT believes that there would be an additional estimated budgetary impact of \$1.5 million annually in order to implement the technology needed for data storage. In addition to maintenance costs, DoIT also stated that they would need three additional FTE to implement, monitor, and manage the system, which would cost between \$300 to \$350 thousand per fiscal year.

SIGNIFICANT ISSUES

Additionally, the Attorney General raises potential concerns about an employee's right to due process: “Public employees generally have due process protections under the New Mexico Constitution and Fourteenth Amendment of the U.S. Constitution, if tenured or classified. Immediate termination without an opportunity for a hearing—although termination is discretionary per the current language—may violate these protections.”

DoIT notes concerns about accessing cellular data and stated that “Access to cellular use data from the cellular carrier currently requires issuance of a subpoena to the carrier. Additionally, carriers have varying data retention schedules; all of which are shorter than this bill requires, so additional third-party retention software must be obtained for archiving the data. Additionally, due to technology changes and rapid adoption of new technologies, the state may not be able to use stored/archived in its current format and may add refactoring costs.”