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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 3/18/2025

SPONSOR Lord/Block

BILL

SHORT TITLE Family In Need of Court-Ordered Services **NUMBER** House Bill 382

ANALYST Mercer-Garcia

APPROPRIATION*
(dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$1,000.0	Recurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD	No fiscal impact	Up to \$3,200.0	Up to \$3,200.0	Up to \$6,400.0	Recurring	General Fund
AOC	No fiscal impact	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund
OFRA	No fiscal impact	At least \$1,400.0	At least \$1,400.0	At least \$2,800	Recurring	General Fund
Total	No fiscal impact	At least \$4,600.0	At least \$4,600.0	At least \$9,200	Recurring	General Fund

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

Conflicts with Senate Bill 362

Sources of Information

LFC Files

Agency Analysis Received From
 Children, Youth and Families Department (CYFD)
 Office of Family Representation and Advocacy (OFRA)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 382

House Bill 382 (HB382) amends the Family in Need of Court-Ordered Services (FINCOS) Act to expand the definition of “family in need of court-ordered services” under Section 32A-3B-2 NMSA 1978 to include families who were subject to investigation by the Children, Youth and

Families Department and for whom credible evidence was found that the child was abused or neglected, as provided by the Abuse and Neglect Act (Section 32A-4)

HB382 appropriates \$1 million from the general fund to the Administrative Office of the Courts (AOC) for expenditure in FY26 to assist AOC in expanding the Family in Need of Court-Ordered Services (FINCOS) Act. Any unexpended or unencumbered balances remaining from the appropriation shall revert to the general fund.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall revert to the general fund. The expansion of the program will continue in future fiscal years; therefore, the additional costs are assumed to be recurring.

AOC notes potential increased costs because of increased hearings. In addition, the bill appropriates \$1 million to AOC to assist in “expanding the scope” of the FINCOS Act but does not define “expanding the scope.” The agency notes that, “AOC is not the proper entity to receive an appropriation for the purpose of expanding the FINCOS Act.”

CYFD did not provide specific fiscal impacts in their analysis. However, in 2024 the department reported an identical bill would likely expand the CYFD service population and legal filings, requiring an estimated 25 additional social and community service positions and 5 attorney positions at a cost of roughly \$3.2 million annually.

The FINCOS Act requires the assignment of attorney guardians ad litem for children under 14 and attorneys for children over the age of 14, increasing caseloads within the Office of Family Representation and Advocacy’s (OFRA). In addition, while appointment of counsel for parents, guardians, and custodians is not mandatory in FINCOS cases, OFRA anticipates the courts would appoint OFRA for these parties. OFRA did not provide specific cost estimates. In analysis for an identical bill in 2024, LFC estimated these additional costs to be at least \$1.4 million annually.

SIGNIFICANT ISSUES

The FINCOS Act permits the filing of a petition when a child or family has refused family services or CYFD has exhausted the available voluntary services requiring court intervention. In existing statute, family subjects are narrowly defined as: 1) whose child is absent from school, without an authorized excuse, more than 10 days during the school year; 2) where a child is absent from their residence more than 12 hours without consent of the parent, guardian, or custodian; 3) where a child refuses to return home or there is no good cause to believe that the child will run away if forced to return home; 4) where a parent, guardian, or custodians refuse to allow the child to return home (when an abuse or neglect petition is not in the child’s best interest); and 5) where the child is (a) alleged to be engaged in an act that if committed by an adult would be designated as prostitution or (b) the child is a victim of human trafficking.

Both AOC and CYFD report that the number of families for whom FINCOS Act petitions are filed is relatively small, and the FINCOS Act is only currently utilized in a handful of cases annually.

The bill would allow CYFD to file petitions under the FINCOS Act when an abuse and neglect petition does not result from an investigation, including instances in which the children’s court attorney does not endorse the filing as in the best interest of the child and when the department lacks sufficient evidence to prove abuse or neglect by clear and convincing evidence. Unlike cases brought under the Abuse and Neglect Act, the FINCOS Act does not require CYFD to prove by clear and convincing evidence that a child has been abused or neglected. Instead, the FINCOS Act requires clear and convincing evidence that the child is a child of a family in need of court-ordered services. AOC notes that this burden of proof, when expanded beyond situations of truancy, run-aways, or disrupted families, could be subject to over-use or disproportionately impact families in underserved communities, including instances in which the root causes of family circumstances may be result of poverty.

CYFD notes the bill would potentially qualify families who have experienced an investigation, but for whom substantiated abuse or neglect was not found, for FINCOS cases. CYFD reports “significant legal concerns” with the bill, which would allow a family to be placed under court supervision based on “credible-evidence” of abuse or neglect, a lower standard than a fully substantiated finding of abuse or neglect.

PERFORMANCE IMPLICATIONS

CYFD has a variety of performance measures related to child safety and well-being, including repeat maltreatment. The bill could result in increased FINCOS case filings and caseloads, which could impact agency performance on a variety of performance measures.

ADMINISTRATIVE IMPLICATIONS

AOC reports potential administrative impact on the courts resulting from additional hearings.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB362, which defines only substantiated cases as eligible for FINCOS petitions, at the discretion of CYFD children’s court attorneys.

TECHNICAL ISSUES

CYFD reported the language contained in the bill related to a family “that was investigated by the department” is vague and ambiguous.

OTHER SUBSTANTIVE ISSUES

CYFD reported potential disparate impacts of the bill, stating:

Investigations involving Native families are substantiated at a rate nearly 8 percent higher than all substantiated investigations combined for non-Native families. Most of these substantiations are related to neglect. [These families may be] consequently funneled into FINCOS cases, where the courts are unable to address poverty-related issues or help families access necessary services.

CYFD recommends instead:

The current support systems have the potential to be improved by providing families with more accessible resources and services. For example, while a parent may be court-ordered to seek treatment, expanding the availability of treatment options in rural communities would greatly benefit their situation.

The Administrative Offices of the Courts reported the following issues related to HB382:

- The bill appropriates \$1 million to AOC to assist the courts in “expanding the scope of the FINCOS Act but does not define “expanding the scope” nor outline what would be required of AOC.
- The courts play no role in filing petitions to initiate CYFD children’s court cases nor do the courts play a role in completing investigations. CYFD children’s court attorneys determine that a filing is in the best interest of the child and family, and file petitions that must include allegations that the child or family are in need of court-ordered family services, that the child and the family participated in or refused to participate in a plan for family services, and that court intervention is necessary to assist CYFD in providing necessary services to the child and family, as provided by Section 32A-3B-11 NMSA 1978.
- The courts cannot order or encourage an executive agency to file a petition, and the bill’s direction to AOC to expand the scope FINCOS Act would be problematic if interpreted to mean the court should encourage CYFD to file petitions.
- Because the burden of proof in FINCOS cases is lower than in abuse and neglect cases, AOC notes the state may experience additional litigation and challenges due to the evidentiary variation between the two types of cases.