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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Lord/Gonzales **ORIGINAL DATE** 2/28/2025

BILL

SHORT TITLE Background Checks for Returning Children **NUMBER** House Bill 486

ANALYST Garcia

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	At least \$100.0	At least \$100.0	At least \$200.0	Recurring	General Fund
DPS	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
 Office of Family Representation and Advocacy (OFRA)
 Department of Public Safety (DPS)
 New Mexico Corrections Department (NMCD)

Agency Analysis was Solicited but Not Received From
 Children, Youth and Families Department (CYFD)

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

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Bill 486

House Bill 486 amends sections of the Children’s Code which would require that, when a child is taken into Children, Youth and Families Department (CYFD) protective custody by law enforcement because of suspected abuse or neglect, CYFD conduct a criminal background and search of the sex offender registry of the person to whom the child will be released, including the child’s parent, guardian, or custodian. In addition, the bill would require these background checks before placing a child in a foster care placement, including in a kinship placement.

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

The Department of Public Safety (DPS) indicates no direct fiscal implications for the department's Law Enforcement Records Bureau. The Office of Family Representation and Advocacy (OFRA) and the Corrections Department (NMCD) also indicate no fiscal impact resulting from the bill.

CYFD did not provide analysis for House Bill 486. LFC estimates the bill could result in additional costs for the agency to run background checks. This analysis assumes the agency may need to hire one additional FTE at a cost of \$100 thousand annually.

SIGNIFICANT ISSUES

Existing federal law (42 U.S.C. 671(a)(20)) requires background checks for foster and adoptive placements but not for returning children to biological parents or guardians. House Bill 486 would go beyond federal law by requiring background checks before returning a child to their parent or other custodial caregiver.

DPS reports the bill could “close gaps in federal and state laws” and would require interagency collaboration to implement to avoid placement delays while prioritizing child safety.

OFRA notes:

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; *Troxel vs. Granville*, 530 U.S. 57). 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*). This bill 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...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 parents.

OFRA also notes one of the proposed statutory changes to Section 32A-4-8 (Place of Temporary Custody) is duplicative and unnecessary because CYFD has a screening process for approving any relative of a child with whom the department is exploring placement. NMCD similarly notes CYFD already requires criminal background and fingerprint checks before releasing children to

adoptive or foster parents, including kinship caregivers.

DPS notes special considerations are required for Native American children under the Indian Family Protection Act and the Indian Child Welfare Act, particularly regarding jurisdiction over background check processes for tribal members.

ADMINISTRATIVE IMPLICATIONS

DPS noted the bill will increase LERB's administrative workload, requiring expanded use of the criminal history databases, additional trainings for CYFD and law enforcement personnel, and increased interagency collaboration to ensure timely child placements.

TECHNICAL ISSUES

DPS recommends the bill explicitly require the use of fingerprint-based background checks, which are more reliable.

OTHER SUBSTANTIVE ISSUES

DPS notes the bill does not specify the type of background check required, distinguishing between name-based searches and fingerprint-based background searches. DPS reports name-based background checks rely on personal identifiers, which can be inaccurate because of identify fraud, misspellings, or common names. Meanwhile, fingerprint-based searches provide a more reliable method, as they verify identity against state and federal criminal databases.

Additionally, DPS analysis suggests criminal background checks may not provide a full picture of an individual's suitability to care for a child.

For example, someone who has a criminal history but has since rehabilitated and maintained a stable, positive life might be unfairly disqualified. Conversely, someone without a criminal record could still pose a threat to the child if other risk factors are not considered.

DPS also indicated the bill could potentially violate procedural due process rights guaranteed by the U.S. and New Mexico Constitutions and noted concern that background check could disproportionately impact certain communities.