

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>López /Sedillo Lopez</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>3/3/2025</u>
<b>SHORT TITLE</b> <u>Termination of Parental Rights</u>	<b>BILL NUMBER</b> <u>Senate Bill 406</u>
	<b>ANALYST</b> <u>Garcia/Greenham</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>CYFD</b>	No fiscal impact	At least \$105.0	At least \$105.0	At least \$210.0	Recurring	General Fund and Title IV-E
<b>AOC</b>	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
<b>Total</b>	No fiscal impact	At least \$105.0	At least \$105.0	At least \$210.0	Recurring	General Fund and Title IV-E

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)  
Administrative Office of the Courts (AOC)  
Children, Youth and Families Department (CYFD)

## SUMMARY

### Synopsis of Senate Bill 406

Senate Bill 406 (SB406) proposes an amendment to Section 32A-4-28 NMSA 1978, which governs the termination of parental rights in abuse and neglect cases. Specifically, SB406 seeks to remove the rebuttable presumption of abandonment as a basis for terminating parental rights. SB406 eliminates this provision, requiring that termination of parental rights be based on either actual abandonment or a finding that the conditions leading to neglect or abuse are unlikely to change despite reasonable efforts to assist the parent.

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

SB406 could increase the complexity of cases in which the Children, Youth and Families

Department (CYFD) moves to terminate parent rights, requiring additional resources to establish actual abandonment. This could lead to longer case resolution times, additional court hearings, and increased caseloads for the judiciary.

CYFD reports “no direct fiscal impact on the Children, Youth and Families Department.” However, by eliminating a basis for termination of parent rights, a prerequisite for adoption, this bill may result in extended foster care placement and delay CYFD from achieving permanency for children. Consequently, this could necessitate additional resources from CYFD’s permanency and legal teams. CYFD did not provide a specific cost estimate.

According to previous LFC reports, the annual cost of a child in foster care is estimated at \$21 thousand. This analysis assumes the bill may result in at least five children requiring an additional year of foster care, at a cost of \$105 thousand annually. New Mexico would be eligible for drawdown federal Title IV-E (foster care) funding to cover a portion of any additional costs associated with legal expenses or maintenance payments for children in foster care.

The Administrative Office of the Courts (AOC) notes minimal administrative costs result from the need to update, distribute, and document any statutory changes, and any new law has the potential to increase caseloads. AOC did not provide a specific estimate of potential costs.

The Office of Family Representation and Advocacy (OFRA) notes no fiscal impact resulting from the bill.

## **SIGNIFICANT ISSUES**

The Uniform Child Custody Jurisdiction and Enforcement Act, a uniform state law approved by the National Conference of Commissioners on Uniform State Laws, defines as “abandoned” a child who is “left without provision for reasonable and necessary care or supervisions.” According to American University, Washington College of Law, all states, except Massachusetts and Virginia, contain this definition in their statutes. Beyond this definition, state laws differ about what is needed for a parent to be deemed to have abandoned a child. State definitions may include:

- Failure to provide reasonable care, support, communication, or visitation with a child;
- Failure to perform duties as parents, or as unwillingness to take physical custody of the child or make arrangements for the child’s care.

Within the court system, the party moving for termination has the burden to prove abandonment has occurred. Within child welfare, a rebuttable presumption of abandonment is one that can be used in court proceedings to terminate parental rights, based on conditions such as the parent’s repeated absence or the child’s long-term care by another family.

Under current law in New Mexico, a court may terminate parental rights if a child has been in the care of another family for an extended period, the parent-child relationship has deteriorated, a psychological bond has developed between the child and their caregivers, the child no longer wishes to reside with the biological parent, or the substitute family wishes to adopt.

SB406 eliminates the rebuttable presumption of abandonment as a basis for terminating parental

rights in abuse and neglect cases.

AOC notes that some states (e.g., Alabama, Washington) still employ presumptions of abandonment in their termination statutes that are similar to New Mexico’s current factors.

The changes in SB406 were recommended by the Children’s Code Reform Task Force, which reported:

The elements of presumptive abandonment, as it stands in the Abuse and Neglect Act, most often arise a result of state removal of a child and are often conditions created by the removal itself, the child’s time away from the family, and the experience of foster care, not by the faults or habits of the parent prior to or after removal.

OFRA supports the bill, indicating the current law allows termination based on conditions created by the state’s intervention rather than parental wrongdoing. OFRA contends SB406 aligns with the Children’s Code, which prioritizes family preservation and prevents parental rights from being severed due to systemic delays or limited visitation opportunities while a child is in foster care. Additionally, SB406 would bring New Mexico’s child welfare laws more in line with national trends emphasizing the need for clear evidence of parental unfitness, rather than relying on the passage of time and foster care placement as a basis for termination.

CYFD raises concerns that removing this legal mechanism may delay permanency for children in foster care. CYFD states, without the presumption of abandonment, termination may not be granted even when a child has formed a strong psychological bond with a resource family and no longer has a meaningful connection to their biological parent. CYFD warns this could prolong foster care placements, create uncertainty for families willing to adopt, and potentially discourage individuals from becoming foster parents if the pathway to adoption is perceived as more uncertain.

## **PERFORMANCE IMPLICATIONS**

CYFD reports state and federal laws impose limits on the duration a child may remain in foster care without achieving permanency, and CYFD is held to performance measures regarding the length of time children spend in foster care. This bill proposes the elimination of one of the grounds for terminating parent rights, which CYFD notes, “may unnecessarily extend the time children remain in foster care, potentially delaying their path to permanency.”

## **OTHER SUBSTANTIVE ISSUES**

OFRA notes the amendment proposed in SB406 does not remove presumptive abandonment as grounds for termination of parent rights under the Adoption Act (Section 32A-5-1) and suggests 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.