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FISCAL IMPACT REPORT

ORIGINAL DATE 2/24/15

SPONSOR Torraco **LAST UPDATED** _____ **HB** _____

SHORT TITLE Duty to Report Suspected Child Abuse **SB** 456

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	minimal	minimal	minimal	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to
 Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
 Attorney General’s Office (AGO)
 Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 456 amends Section 32A-4-3 NMSA 1978, relating to the duty to report child abuse and neglect. This bill strikes language from subsection (A) listing categories required to report, leaving a requirement that “every person” is under a duty to report. Where the codified statute limits the duty to report to instances of abuse committed by parents, guardians or custodians, SB 456 expands this duty by requiring “everyone” to report any person reasonably suspected of child abuse or neglect. This bill also adds a reference to the legal definitions of abuse and neglect for purposes of reporting. Finally, proposed subsection (B) carves out an exception from the duty to report for clergy in receipt of information obtained during confidential spiritual communications.

FISCAL IMPLICATIONS

The Children, Youth and Families Department (CYFD) did not identify any significant fiscal implications at this time. However, the Administrative Office of the District Attorneys (AODA) reports to the extent SB 456 results in increased prosecutions for child abuse and neglect there will be increased costs.

SIGNIFICANT ISSUES

CYFD believes the removal of enumerated professionals will give the statute its desired intent, of requiring “every person” to report suspected abuse or neglect. However, the agency identified the new language added in SB 456 as problematic. First, analysis indicated that the reference to the legal definitions of abuse and neglect in the reporting statute may result in fewer referrals to CYFD. The agency states that the definition will require people without legal experience, social work experience, or indeed any experience in child welfare to interpret the legal definitions of abused child and neglected child prior to making a report. Second, while current law does allow for privilege of clergy, this privilege is delegated in rule rather than law. Further, the agency states there is a societal benefit in allowing for open, honest, and candid communication with clergy, however is also a societal interest in the protection of children. When those interests conflict, the protection of children should take precedence. CYFD believes to restrict reporting based on religious privilege does not serve the best interests of the children of New Mexico. The agency feels that privilege is an issue more appropriately determined by a court. Those who do enjoy a legally protected privilege of confidentiality should not be excluded from reporting based on any privilege. As such, regardless of privilege, these individuals should still have a duty to report and indeed can do so anonymously. Should the reporter later be identified, not as the reporter, but as a potential witness, it will be for the Court to determine whether or not the privilege applies when the client claims the privilege. Whether privilege applies in court proceedings or not is more properly for the courts to decide.

SB 456 is related the New Mexico Court of Appeals in *State v. Strauch*, 2014-NMCA-020, 317 P.3d 878. In *Strauch*, the Court held that the reporting requirement in 32A-4-3(A) does not apply to “every person,” but only to the ten categories of people listed in that subsection because the statute was limited by the word “including”. SB 456 would remove the word “including,” as well as the subsequent list of people. Thus, “every person” would be subject to the reporting requirement. In addition, the AODA states the duty to report will include relatives, strangers, minors, and persons who are themselves victims of domestic abuse and fear retribution if they report. Witnesses in child abuse and neglect cases may be reluctant to testify, out of concern that they will be prosecuted for failure to report known or suspected abuse or neglect.

The AGO also believes it is unclear whether this bill would override privileges set forth in Rule 11 Article 5. For instance, Rule 11-504(D)(2) states, “[n]o privilege shall apply for confidential communications concerning any material that a physician, psychotherapist, state or nationally licensed mental-health therapist, or patient is required by law to report to a public employee or public agency.” Given that the reporting requirement set forth in SB 456 applies to “everyone,” it may be argued that the proposed statute would “require[] by law” physicians, psychotherapists, and therapists to report privileged communications. The agency reports requirements may trump privileged communications.

The New Mexico Supreme Court is reviewing the *Strauch* opinion on petition for certiorari. The court will have to resolve the matter at hand without the benefit of this amendment because it is not retroactive. It is not clear whether the Supreme Court's opinion will affect the statute as amended.

PERFORMANCE IMPLICATIONS

CYFD has performance measures concerning the safety and well-being of children which may be negatively affected if lay people are required to interpret statutory definitions typically interpreted by legal professionals and child welfare professionals.

RELATIONSHIP

HB 29 proposes very similar amendments to 32A-4-3. HB29 also strikes the language containing the categories of people subject to the reporting requirement. However, HB 29 does not carve out a specific exception for confidential communications made to clergy members, nor does it include a requirement to report abusers other than parents, guardians or custodians.

SB 372 also amends Section 32A-4-3. It does not delete the listed professionals, so it does not address the issue raised in the *Strauch* case. Instead, it creates a private right of action against the Children, Youth and Families Department, law enforcement agencies and individuals who fail to report or act upon child abuse and neglect.

TECHNICAL ISSUES

SB 456 removes the list of professionals in Paragraph A, but refers to them in Paragraph E (renumbered as Paragraph F).

OTHER SUBSTANTIVE ISSUES

Child abuse and neglect are significant issues in New Mexico, where there are 63.2 reports per 100,000 children annually, compared with a national rate of 46.1 per 100,000. Trends in reporting have increased each year since 2010, with the exception of 2013 when they dropped by 339 cases. In FY14, CYFD Central Intake received 35,856 reports, an increase of 2,926 cases over the previous year. Of these, 14,721 were screened-out and 21,129 were investigated. Among 21,129 investigations, only 5,531, or 26.4 percent were substantiated on subsequent investigation, and these involved 9,412 substantiated child victims (CYFD, *360 Yearly: State Fiscal Year 2014*).

The federal Administration for Children, Youth and Families collects state and national level data on child abuse and neglect via the National Child Abuse and Neglect Data System (NCANDS). Nationally, 78.3 percent of child victims were neglected, 18.3 percent were physically abused, 9.3 percent were sexually abused and 8.5 percent were psychologically maltreated (U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau (2015). *Child maltreatment 2013*, p. ii).

A perpetrator of child abuse or neglect can be any person who has care, custody, or control of the child at the relevant time. This could include parent, teacher, relative, babysitter or day care staff person, institution staff person, bus driver, playground attendant, caretaker, boy/girlfriend,

neighbor or anyone with whom the child has contact. New Mexico reported data on 5,578 perpetrators in 2013. Of these 56 were 12-17 years of age (1 percent), 1,011 were 18-24 (18.1 percent), 3,426 were aged 25-44 (61.4 percent), 466 (8.3 percent) (0.5 percent) were aged 45-64, and 28 were over age 65. Data on age were unavailable for 591 (10.6 percent) perpetrators. Thirty-nine percent of perpetrators were male, 59 percent were female, and two percent were unknown. In relationship to their victims, 9,011 parents were involved in abuse. In addition, there were reports of abuse or neglect by 18 foster parents, 12 friends and neighbors, 51 legal guardians, 478 other relatives, 606 unmarried partners of parents, 97 other, and 54 perpetrators of unknown relationships (*Ibid*, 64-77). In New Mexico, family members or parental partners are substantially more likely to perpetrate child abuse or neglect than other categories of perpetrators.

AMENDMENTS

AGO suggests amending SB 456 to specifically state whether reporting requirements supersede privileges set forth in Rule 11 Article 1.

The AODA suggests amending page 4, lines 8-12, as follows:

A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by ~~any of the persons enumerated in~~ a person who makes a report pursuant to Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

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