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## FISCAL IMPACT REPORT

SPONSOR Morales ORIGINAL DATE 2/07/18  
 LAST UPDATED 2/10/18 HB \_\_\_\_\_

SHORT TITLE Child Abuse Definition and Investigation SB 87/aSPAC

ANALYST Daly

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 122

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Children, Youth and Families Department (CYFD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- New Mexico Attorney General (NMAG)
- Public Education Department (PED)

### SUMMARY

#### Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to SB 87 clarify that CYFD is responsible for investigating only those reports of suspected child abuse or neglect by a the child’s parent, guardian or custodian. They then rewrite subsection (G), which previously defined the term “abused child”, to clarify that the duty to report in subsection (A) applies to knowledge or reasonable suspicion that a child has been abused or neglected in the manner set out in subsection (G), which as rewritten describes the same actions or inactions as in the original version of that subsection.

The budget impact table above has been revised to reflect no fiscal impact to the State in light of these amendments.

Synopsis of Original Bill

Senate Bill 87 amends existing law requiring any person to report, and the recipient of the report to investigate child abuse or neglect. The bill adopts a special definition of “child abuse” specifically for this section of law, which expands the reach of the statute to cover child abuse by any person instead of child abuse only if committed by the child’s parent, guardian or custodian. “Child abuse” means a child who:

- Has suffered physical, emotional, psychological, or sexual abuse by any person;
- Has suffered sexual exploitation by any person;
- Was knowingly, intentionally, or negligently placed in a situation that may endanger the child’s life or health by any person;
- Was knowingly or intentionally tortured, cruelly confined, or cruelly punished by any person; or
- Has suffered or is at risk of suffering serious harm because of the actions or inaction of the child’s parent, guardian or custodian.

The effective date of this bill is July 1, 2018.

**FISCAL IMPLICATIONS**

CYFD reports this bill expands its mandate to investigate reports of child abuse by any person, rather than only those incidences when a parent, guardian or custodian allegedly perpetrates the abuse. As a result, CYFD reports significant fiscal implications due to a need for additional FTEs. The Department reports for FY2016, CYFD received 38,623 reports concerning suspected abuse and neglect, and investigated 20,766. Under existing law, CYFD does not investigate suspected abuse or neglect perpetrated by individuals who are not parents, guardians, or custodians, although they are cross-reported to law enforcement. Based on FY 16 numbers, CYFD estimates an increase in its investigations by up to 17,000 per year under SB 87, but provides no cost estimate. LFC staff calculates that, based on national standards that a caseworker should have no more than 15 cases per month/ 180 cases per year, handling an additional 17,000 investigations would require an additional 94 caseworkers. At an average cost for Child Protective Services Division employee of \$68.8 thousand (including benefits), 94 caseworkers could cost up to \$6,500 thousand, which number appears in the operating budget impact table above.

In light of this fiscal impact, this bill should be referred to the Senate Finance Committee.

In addition, AOC notes there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. AODA reports that because the reach of the statute is expanded, district attorneys’ caseloads may also expand, given their duty to prosecute violations of this statute for failure to properly report. However, AODA believes this amendment should also make cases easier to prosecute.

**SIGNIFICANT ISSUES**

AOC explains that SB 87 adds clarification to the duty to report child abuse or neglect. Currently, “abused child” is not defined in the section imposing a duty to report, so the general definition of that term found in the Abuse and Neglect Act of the Children’s Code governs,

which defines “abused child” as a child subject to abuse due to actions or inaction of a parent, guardian or custodian of the child. See NMSA 1978, §32A-4-2(B). Yet, since the duty to report child abuse extends to every person, it is conceivable that a person may suspect and report abuse or neglect of child absent information as to whether it is caused by a parent, guardian or custodian, or someone else. SB 87 would clarify the duty to report suspected abuse or neglect regardless of who caused the abuse.

Similarly, AODA comments that applying the general definition of “child abuse”:

puts an illogical limit on the section’s requirement that people report suspected child abuse. Under a very strict reading of the existing statute, only abuse committed by a parent, guardian or custodian constitutes (reportable) child abuse, and failure to report abuse by any other person would not be a violation of Section 32A-4-3. Suspected child abuse should always be reported in order to protect the child, even when the abuser is unknown, or is known to be someone other than the child’s parent, guardian or custodian. Section 32A-4-3 also sets out the investigatory duties of agencies who receive reports of child abuse. Again, an overly strict reading of the statute could lead to the conclusion that agencies do not need to investigate reports of abuse when the abuser is not the child’s parent, guardian or custodian.

However, AODA questions the need for inclusion of one specific description of child abuse included in the new definition which is described in Subsection (G)(1) as “when a child has suffered or is at risk of suffering serious harm because of the action or inaction of the child’s parent, guardian or custodian”:

Most of the remaining forms of child abuse describe actual harm resulting from intentional actions: physical abuse, emotional or psychological abuse, sexual abuse, sexual exploitation, torture, cruel confinement, and cruel punishment. However, the distinction between action and inaction, and actual harm versus potential harm, does not explain the remaining provision, which defines child abuse as negligently placing a child in a situation that may endanger the child’s life or health. As written, SB87’s definition of child abuse includes a stranger negligently placing a child’s life or health in danger, but requires the abuser to be a parent, guardian or custodian when a child has suffered (or is at risk of suffering) serious harm (perhaps of a nature not otherwise delineated in Section G’s other subsections) because of the parent, guardian or custodian’s actions (or inactions).

In addition, NMAG expresses concern about having two separate definitions of “abused child” in the Abuse and Neglect Act: the general definition limited to abuse by a parent, guardian or custodian; and a second, more general definition applicable to any person.

CYFD explains that currently, CYFD investigates abuse perpetrated only by parents, guardians, and custodians as defined by law, while abuse perpetrated by those other than parents, guardians and custodians is investigated internally by schools or by law enforcement. CYFD interprets this bill to require it to investigate abuse by any person, which greatly expands its role. Further, unlike with parents, guardians, and custodians, CYFD points out it does not have a path to “remove” children from perpetrators with whom the child does not reside. Ultimately, under SB 87, CYFD would investigate reports of abuse by non-custodians, but would have no

departmental recourse if it determines that abuse did occur. CYFD also notes that under existing law, law enforcement investigates reports of non-custodial abuse and can make a referral to the DA for criminal prosecution of any person who abuses a child.

## **CONFLICT**

SB 87 conflicts with HB 122, which also amends the same section of existing law (NMSA 1978, Section 32A-4-3). HB 122 deletes the “including” listing of specific professionals and other persons, in an attempt to clarify that every person who has information that is not privileged as a matter of law and who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter to appropriate authorities. HB122 does not change the definition of “child abuse”.

## **OTHER SUBSTANTIVE ISSUES**

PED reports that during fiscal year 2016, there were 9,684 victims of substantiated child abuse or neglect in New Mexico. Of these children, 74.8 percent were neglected, 23.6 percent were physically abused, and 1.7 percent were sexually abused. There were thousands of unsubstantiated allegations in addition to these cases, and it is unclear how many incidents go unreported each year ([https://cyfd.org/docs/360ANNUAL\\_FY16\\_FINAL.pdf](https://cyfd.org/docs/360ANNUAL_FY16_FINAL.pdf)).

Further, PED notes that the detection and reporting of child abuse or neglect is required by both the Children's Code (NMSA 1978, section 32A-4-3) and the Public School Code (NMSA 1978, section 22-5-4.2). Section 22-10A-32 includes sexual abuse and assault in the definition of child abuse. In relation to mandated reporting, the PED, CYFD, Department of Health (DOH), and New Mexico State University (NMSU) collaborated on an e-learning training for school personnel and health providers that address the requirement for all school personnel to complete training in the detection and reporting of child abuse or neglect. This e-learning training may be accessed at <https://swrtc.nmsu.edu/resources/elearning/educators/>.

NMAG reports:

The Office of the Attorney General is especially committed to seeking justice for victims of violent offenses who, for various reasons, have watched their case languish for a number of years. The Office of the Attorney General mission includes using agency resources to investigate and prosecute these crimes that occurred years ago. As a result, the agency prosecutes cases that result from the delayed reporting due to the lack of duty to report non-custodial sexual abuse. This delay means that cases are charged many years after the fact, often implicating statute of limitations bars to prosecution of violent sexual felonies. These delays can also lead to more victims because of failure to prosecute at the time of incident and thus more state resources are needed to prosecute more cases for each defendant. The delay also requires significant agency resources to locate witness's years after the fact, bring them to New Mexico for investigation interview, defense pretrial interview, and trial. The delay often necessitates expert witnesses who are paid a fee to testify to their expertise on grooming, disclosure, and delayed reporting.

Senate Bill 87 would help alleviate the amount of state and agency resources required to prosecute these cases by requiring that those who have information reasonably suspecting

sexual abuse by anyone, timely report this information to law enforcement or CYFD at the time it is occurring, or face criminal charges themselves. The cost of investigation and prosecution would decrease because of the real-time nature of the case rather than a historic investigation.

MD/sb/al/jle