

LFC Requester:

Allegra Hernandez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: March 2, 2025

Check all that apply:

Bill Number: HB203

Original Correction
Amendment Substitute

Sponsor: Rep. Meredith A. Dixon
Rep. Sarah Silva

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: Use of State Devices for
CYFD Business

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis of Original Bill:

The proposed bill adds a new section to the Children, Youth and Families Department (“CYFD”) Act to mandate the use of state-issued electronic devices for official duties and to limit the use of such devices for the same, enforce hourly backups of electronic records by 2026, and require record retention for at least 24 years after an employee’s departure. It ensures compliance with data protection laws and imposes strict penalties for violations, including termination of employment with CYFD. The bill also includes new definitions related to the new provisions.

Synopsis of Amendment:

The amendment to **Subsection (B)** of Section 1 removes the words “local, territorial and tribal,” so that electronic devices issued by CYFD only require software and applications that comply with federal data retention and protection laws.

The amendment modifies **Subsection (D)** to reduce the time CYFD must keep electronic records on devices used by terminated employees from 24 years to 7 years. It also adds a requirement for CYFD to back up these records daily, monthly, and annually.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship

HJR5, which proposes to amend the Constitution of the State of New Mexico to establish a Children, Youth and Families Commission, specifies that the Commission shall hire an executive director to assume management and operations of CYFD and enforce the laws under the jurisdiction of CYFD. If adopted—subject to voter approval at the next general or special election—the CYFD Commission executive director may be subject to this bill and amendment’s requirements if considered an employee of CYFD.

TECHNICAL ISSUES

Subsection (A) of the bill still mandates that electronic devices issued by CYFD be used for “communication related to the performance of duties within the scope of [the employees’] employment.” “Performance” could be considered ambiguous, as it could reasonably indicate that employees are to use their devices both in relation to the evaluation of their performance or while performing work within the scope of their employment at CYFD.

OTHER SUBSTANTIVE ISSUES

1. **Original: Retention Period Discrepancies:** The bill mandates a 24-year retention period for electronic records post-employee termination. This duration is more stringent than those listed in the established records retention and disposition schedules outlined in **1.21.2 NMAC**, which specify varying retention periods based on record type and function. Implementing a uniform 24-year retention period could lead to inconsistencies with these schedules, though the statute would take precedence.
See e.g., 1.21.2.801 NMAC (noting child and youth services public records have retention rate of nineteen years); 1.21.2.804 NMAC (describing public records related to foster care homes permanent retention, transfer to archives ten years from date file closed); 1.21.2.805 NMAC (mandating juvenile records to be destroyed twenty-two years from date of birth).
Amendment: The amendment now mandates a 7-year retention period for electronic records post-employee termination. This duration is generally *less* stringent than the requirements in the established records retention and disposition schedules outlined in **1.21.2 NMAC**. Implementing a uniform 7-year retention period could still lead to inconsistencies and confusion with these schedules, though the statute would take precedence.
2. **Due Process for CYFD Employees:** Public employees generally have due process protections under the New Mexico Constitution and Fourteenth Amendment of the U.S. Constitution, if tenured or classified. Immediate termination without an opportunity for a hearing—although termination is discretionary per the current language—may violate these protections. Under the New Mexico Personnel Act, NMSA 1978, §§ 10-9-1 to -25, CYFD employees may be entitled to pre-termination procedures, such as notice and opportunity to respond. Potential unlawful termination claims and due process challenges (from classified employees) could result if this bill is enacted as-is.

- 3. Practicality and Enforcement Issues:** Subsection (A) states that “[e]mployees of the department shall only use electronic devices issued by the department to employees for communication related to the performance of duties within the scope of their employment by the department.” This could reasonably be interpreted to *either* limit employees’ use of CYFD-issued devices to CYFD business, *or* limit communication of CYFD business to CYFD-issued devices, or both. Under the latter interpretation, if an employee must communicate an urgent situation within the scope of their employment but their CYFD-issued device is unavailable, using a personal device could technically violate subsection (A) and could result in their termination. Because this subsection also notes this violation “may” result in immediate termination, CYFD may also face claims of unfair treatment or discrimination depending on how it handles each individual termination.

ALTERNATIVES

Consider changes in language to address the potential ambiguities or confusion discussed above, reference the New Mexico Personnel Act, and/or modify the phrase “may constitute grounds for immediate termination” with “may result in termination” in subsection (A).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A