

LFC Requester:	Mercer-Garcia, Rachel
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 22FEB2025 *Check all that apply:*
Bill Number: HB 486 Original Correction
 Amendment Substitute

Sponsor: Stefani Lord, Anita Gonzales
Short Title: BACKGROUND CHECKS FOR RETURNING CHILDREN
Agency Name and Code: 790 – Department of Public Safety
Number: _____
Person Writing: H. L. LOVATO
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	NFI

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	NFI

(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	N/A	N/A	N/A	N/A	N/A	NFI

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 486 mandates criminal background checks and sex offender registry searches before the Children, Youth, and Families Department (CYFD) releases a child to a parent, legal guardian, or custodian after removal due to abuse or neglect. Additionally, it requires these checks before placing a child with a relative in foster care. The bill ensures that individuals assuming custody of children have no disqualifying criminal history, including sex offender status, before reunification.

HB 486 represents a critical step in child protection policy, closing existing gaps in federal and state law. Its successful implementation requires interagency collaboration, proper resource allocation, and clear procedural guidelines to ensure that background checks do not create unnecessary placement delays while prioritizing child safety.

This bill also expands beyond existing federal law (42 U.S.C. § 671(a)(20)), which mandates background checks only for foster and adoptive placements, but not for returning children to biological parents or guardians. HB 486 strengthens child protection by closing critical oversight in both federal and state law.

FISCAL IMPLICATIONS

There are no direct fiscal implications for the New Mexico Department of Public Safety (DPS) or the Law Enforcement Records Bureau (LERB).

SIGNIFICANT ISSUES

Currently, federal law does not require background checks before returning children to their biological parents after removal for abuse or neglect, creating a gap in child protection. HB 486 closes this gap by implementing a mandatory vetting process for all custodial figures.

HB 486 does not explicitly require fingerprint-based background checks. The bill mandates criminal background checks and sex offender registry checks before a child is returned to a parent, legal guardian, custodian, or placed with a relative in foster care. However, the bill does not specify the method by which these background checks must be conducted—whether through name-based searches or fingerprint-based searches.

Why This Matters:

- Name-based background checks rely on personal identifiers (e.g., name, date of birth, Social Security number), which can be inaccurate due to identity fraud, misspellings, or common names.
- Fingerprint-based background checks provide a more reliable method, as they verify identity against state and federal criminal databases (such as the FBI's Next Generation Identification (NGI) system).
- Searching the National Sex Offender Public Website may not yield reliable and precise information regarding a sexual offender. Certain categories of sex crimes are not mandated by law to be disclosed on a public platform.
- Having an Originating Agency Identifier ending in T authorized government agencies such as the Department of Children Youth and Families Services:
 - In April 2001, the Compact Council established a rule to allow access to the Next Generation Identification (NGI)/Tripple I (III) for a preliminary name check pending positive fingerprint identification, based on the National Crime Prevention and Privacy Compact Act of 1988. This type of ORI authorizes access in limited situations when exigent circumstances exist that do not reasonably lend themselves to immediate fingerprinting.

- Authorized governmental agencies such as the Department of Children Youth and Families, may conduct name inquiries for the emergency placement of children for those limited instances when the primary caretaker is unavailable.
- Purpose Code X is to be used in conducting NGI/III checks involving the emergency placement of children when unaccompanied by the immediate submission of fingerprints on the surrogate care provider.

Criminal background checks, while important, 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.

The bill could potentially violate procedural due process protections guaranteed by the U.S. and New Mexico Constitutions. For individuals involved in reunification or foster placement, the mandated background checks and registry searches could be seen as an additional hurdle to the parent's or relative's ability to regain custody. If these checks result in unnecessary delays or disqualifications, it could infringe on the constitutional right to family integrity and reunification. The U.S. Supreme Court has long held that the government cannot interfere with parental rights without a compelling reason. If parents or relatives are disqualified from assuming custody due to past criminal offenses unrelated to child safety, the bill may be seen as infringing on these constitutional rights, especially if no evidence exists that the past conduct would endanger the child.

There is concern that background checks could disproportionately affect certain communities, particularly low-income or minority communities, where criminal convictions may be more common. This could lead to racial or socioeconomic disparities in the placement of children, and families in these communities could be unfairly targeted or penalized by the system. If certain groups are disproportionately impacted by the requirements for background checks and sex offender registry searches, it could raise constitutional equal protection concerns.

Requiring background checks and sex offender registry searches before reunification could raise privacy concerns under the 4th Amendment of the U.S. Constitution, which protects individuals from unreasonable searches and seizures. Individuals who are required to undergo background checks and registry searches might argue that this constitutes an unwarranted invasion of their privacy, especially if their criminal history is not directly related to the child's safety.

PERFORMANCE IMPLICATIONS

The bill enhances child welfare outcomes by ensuring that children are not returned to potentially dangerous environments. There are no performance implications for LERB.

ADMINISTRATIVE IMPLICATIONS

HB 486 will increase LERB's administrative workload, requiring:

- Expanded use of criminal history databases (DPS, NCIC, and sex offender registries).
- Additional training for CYFD and law enforcement personnel to ensure consistent background check procedures.
- Increased interagency collaboration to ensure timely child placements.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

To ensure accurate results, fingerprint-based background checks should be specified rather than relying on name-based searches, which are less reliable.

OTHER SUBSTANTIVE ISSUES

Privacy concerns must be addressed to ensure compliance with state and federal confidentiality laws regarding criminal history dissemination.

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

ALTERNATIVES

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB 486 is not enacted:

- CYFD will not be required to conduct background checks on parents or guardians before reunification, potentially placing children in unsafe homes.
- Children removed for abuse or neglect may be returned to dangerous environments, increasing the likelihood of re-victimization.

AMENDMENTS

No amendments identified.