

LFC Requester:	Rachel Mercer-Garcia
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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: 2/19/2025 *Check all that apply:*
Bill Number: SB 362 Original Correction
 Amendment Substitute

Sponsor: MICHAEL PADILLA **Agency Name and Code** AOC 218
Short Title: COURT INTERVENTION AFTER CYFD DETERMINATION **Number:** _____
Person Writing Alison B. Pauk
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
	None	None	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	N/A	

(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		Indeterminate	Indeterminate		Nonrecurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflict HB 382
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 362 amends the Family in Need of Court-Ordered Services Act, herein referred to as FINCOS Act, by expanding the definition of ‘family in need of court-ordered services’ under Section 32A-3B-2 NMSA 1978 to include families who have failed to follow through with family services.

The FINCOS Act permits the filing of a Petition where the child or the family has refused family services or the department has exhausted the available voluntary services requiring court intervention. This act narrowly defines a family subject to the FINCOS Act as: 1) [a family] whose child is absent from school, without an authorized excuse, more than ten days during a school year; 2) where a child is absent from their residence more than twelve hours without consent of the parent, guardian, or custodian; 3) where a child refuses to return home or there is good cause to believe that the child will run away if forced to return home; 4) where a parent, guardian, or custodians refuses to allow the child to return home (when an abuse and neglect petition is not in the child’s best interest); and 5) where the child is (a) alleged to be engaged in an act that if committed by an adult would be designated prostitution or (b) is a victim of human trafficking.

Senate Bill 362 adds to the definition of a ‘family in need of court-ordered services’ where allegations of child abuse or neglect were substantiated but CYFD determined that filing an abuse or neglect petition is not in the child’s best interest, yet court intervention is “necessary to ensure the safety and well-being of a child or to facilitate access to services for the family.”

There is no appropriation listed in this bill.

There is no effective date of this bill. It is assumed that the effective date is June 20, 2025, which is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There may be fiscal implications for the courts, CYFD, and the Office of Family Representation and Advocacy (OFRA) due to widening the net for cases that could be included under the FINCOS Act. In the alternative, the number of abuse and neglect petitions may be reduced as the FINCOS Act provides for a less restrictive process of assisting the family.

SIGNIFICANT ISSUES

By expanding the definition of ‘family in need of court-ordered services’ in Senate Bill 362, CYFD can file a petition under the FINCOS Act when a substantiated investigation does not result in an abuse or neglect petition. The FINCOS Act does not require CYFD to prove by clear and convincing evidence that the child is neglected or abused but instead requires clear and convincing evidence that the child is a child of a family in need of court-ordered services. For

example, CYFD may file a FINCOS petition when lesser methods would suffice, where the children's court attorney did not endorse the filing as in the best interest of the child and family, or when CYFD lacked sufficient evidence to prove abuse or neglect by clear and convincing evidence. Expanding the definition of FINCOS could expand the CYFD's ability to work with families who refuse or do not follow through with voluntary services offered by the CYFD by asking the court to order the services. However, the expansion of the definition of a 'family in need of court-ordered services' may also overbroaden the ability of CYFD to involve families in legal proceedings. Also, there may be additional litigation and challenges due to the evidentiary variation between those families where 'credible' evidence of abuse and neglect is present and those where CYFD has to prove that abuse and neglect occurred by clear and convincing evidence.

Senate Bill 362 adds the additional category of families who "failed to follow through with family services" for reasons for filing a FINCOS petition. The statute does not define "failure" nor distinguish between voluntary failure or failure due to instances beyond a family's control, such as a lack of services and/or service providers. This may disparately impact families in underserved communities.

PERFORMANCE IMPLICATIONS

Although the FINCOS Act already exists as a statutory provision, it is rarely utilized in New Mexico with only a handful of cases being filed each year. The amendment expanding the definition of 'family in need of court-ordered services' could provide an avenue to satisfy the purpose of the Act which is, through court intervention, to provide services when voluntary services are exhausted while also recognizing that in many instances, truancy and running away by the child are symptomatic of a family in need of services.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts resulting from additional hearings under the FINCOS Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict HB 382

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS