

LFC Requester:

Rachel Mercer-Garcia

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: 2/15/2025

Check all that apply:

Bill Number: SB 362

Original Correction
Amendment Substitute

Sponsor: Senator Michael Padilla

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

Short Title: COURT INTERVENTION AFTER CYFD DETERMINATION

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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: Senate Bill 362 would modify the Families in Need of Court-Ordered Services (FINCOS) Act, Chapter 32A, Article 3B NMSA 1978. The Act allows for court intervention (such as protective custody) for families that need court-ordered services and requires that the family or a child in the family has refused services or exhausted available services. HB 362 would add to these preliminary requirements a child or family that has “failed to follow through with family services.” Additionally, a child or family only falls under the Act if they meet definitional requirements. SB 362 adds to the definition families which have been investigated by CYFD for child abuse or neglect and found the claims substantiated.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

It is unclear how this bill would interact with already existing law that allows CYFD to petition the court for action when it finds abuse and neglect of a child and whether procedural due process would attach under this new definition. See Chapter 32A, Article 4 NMSA. It also does not specify how it would relate to the Indian Child Welfare Act.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

None to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 382 contains similar FINCOS definitional changes. SB 362 adds the words “or has failed to follow through with family services,” and the house bill does not. Also, the bills contain different FINCO definitions:

- SB 362, 32A-3B-2(F) “in which the allegations of child abuse or neglect against the child’s parent, guardian or legal custodian have been investigated by the department and found to be substantiated and it has been determined that court intervention is necessary to ensure the safety and well-being of the child or to facilitate access to services for the family, but the department determined that filing an abuse or neglect petition was not in the child’s best interest.”

- HB 382, 32A-3B-2(F) “in which the child’s parent, guardian or custodian was investigated by the department and the department found credible evidence that the child is an abused child or a neglect child as provided in the Abuse and Neglect Act; or”

SB 307 and HB 391 provide for extensive amendments to the Children’s Code, enacting a new statutory scheme known as the Office of Child Ombud Act, which would provide a level of oversight to CYFD and create a process for individuals to file complaints with the Office of Child Ombud.

TECHNICAL ISSUES

SB 362 contains contradictory language. It defines a FINCOS as a family that CYFD has investigated and found substantiated claims of abuse and neglect and that court intervention is “necessary to ensure the safety and well-being of the child or to facilitate access to services,” and yet later the bill says that CYFD also determined that filing an abuse and neglect petition with the court was not in the best interest of the child. It seems to provide a path which allows for court action without filing a petition. There could be procedural requirements tied to the filing of a petition that may be avoided by changing the FINCOS definition.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A