

LFC Requester:	
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date Feb. 7, 2019
Bill No: HB488

Sponsor: Javier Martinez
Short Title: Child Abuse Reporting Definitions

Agency Code: 264
Person Writing Gail MacQuesten
Phone: 505 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	minimal	minimal	minimal	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB230
Duplicates/Relates to Appropriation in the General Appropriation Act: none found

SECTION III: NARRATIVE

HB488 amends Section 32A-4-3 NMSA 1978, regarding the duty to report and investigate child abuse and neglect, to define “abused child” for purposes of the section.

An abused child means a child who:

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

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.

HB488 should make it easier to prosecute the misdemeanor crime of failure to report child abuse, which may increase the number of prosecutions.

SIGNIFICANT ISSUES

Section 32A-4-3 requires certain persons who know or have a reasonable suspicion that a child is an abused or a neglected to report the matter to authorities. Failure to do so is a misdemeanor.

Section 32A-4-3 is a provision in the Child Abuse and Neglect Act. That Act contains a definition section, with its own definition of “abused child.” Under Section 32A-4-2(B), an abused child is a child:

- (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
- (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or

caused by the child's parent, guardian or custodian;

- (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
- (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
- (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

(Emphasis added.) Note that the general definition of abused child only recognizes abuse by the child's parent, guardian or custodian. (That is because the Child Abuse and Neglect Act deals with issues related to custody and parental rights. The criminal child abuse statutes apply generally, and are not limited to abuse by a parent, guardian or custodian.) If the general definition applies to the reporting requirement, a person required to report child abuse or suspected child abuse only needs to report if the person knows or suspects that the abuse was carried out by a parent, custodian or guardian. It would be a possible defense to a charge of failure to report for the person to claim that although they knew or suspected that the child was being abused, they thought the abuse could have been by someone other than the child's parent, guardian or custodian.

HB493 makes it clear that abuse or suspected abuse must be reported, without regard to who committed the abuse. The only provision in the HB493 definition of child abuse that is limited to abuse committed by a parent, guardian or custodian is this: a child who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian. It is possible that this provision applies only to parents, guardians and custodians because it applies to inaction, as well as action, and applies to possible future harm.

PERFORMANCE IMPLICATIONS

HB493 should make it easier to prosecute charges of failure to report child abuse.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB230 also amends Section 32A-4-3 of the Child Abuse and Neglect Act. It provides that a finding that a pregnant woman is using or abusing drugs is not alone a sufficient basis to report child abuse or neglect to the department of children, youth and families. A drug-exposed infant and the infant's parents, relatives, guardians or caretakers shall be referred to services described in a written plan of safe care.

TECHNICAL ISSUES

HB493 does not contain a new definition of neglect, because one is not needed. Neglect, in both the Child Abuse and Neglect Act and in the criminal statutes, is an act committed by a parent, guardian or custodian.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed.