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FISCAL IMPACT REPORT

SPONSOR Youngblood/ Maestas ORIGINAL DATE 1/26/18
LAST UPDATED _____ HB 122
SHORT TITLE Duty to Report Child Abuse & Neglect SB _____
ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

Administrative Office of the District Attorneys (AODA)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 122 (HB 122) amends section 32A-4-3(A) NMSA 1978 to clarify language regarding the duty to report child abuse and neglect. The amendment eliminates a list of professions with a legal duty to report child abuse, thereby extending the responsibility to report to "every person" who has information that is not privileged *and* who knows or has reasonable suspicion that a child has been abused or neglected.

HB 122 also amends section 32A-4-3(E) to allow law enforcement agencies or the Children, Youth and Families Department (CYFD) to have access to any records pertaining to a child abuse or neglect case maintained by a person who makes a report pursuant to Subsection A.

FISCAL IMPLICATIONS

AOC reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

No other fiscal implication is known at this time.

SIGNIFICANT ISSUES

AOC reported the following:

“HB 122 is consistent with the New Mexico Supreme Court decision in *State v. Strauch*, 2015-NMSC-009, 345 P.3d 317, that every person in New Mexico has a duty to report child abuse and neglect. The Supreme Court examined at length the child abuse reporting requirement in the Children’s Code, including a historical and nationwide review of mandatory reporting laws. The Supreme Court concluded that New Mexico was one of sixteen states with reporting laws that identify specific professionals while simultaneously requiring every person to report and found no judicial opinions interpreting those statutes as imposing obligations only on the identified occupations. The historical purpose for including various professional groups was to focus the requirement on those who come into contact with children on a more frequent basis. Deletion of the specified professions could eliminate ambiguity as to those with a legal duty and may increase reporting.

Finally, the current statute may be interpreted to read that “a member of the clergy who has information that is not privileged as a matter of law” has the duty to report. HB 122 deletes “a member of the clergy” along with all other professions, but retains the language “who has information that is not privileged as a matter of law.” All but three states have implemented additional sections to address privilege within their mandatory reporting statutes.

For example:

Ky. Rev. Stat. Ann. §620.030(4)

“Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section...”

Tex. Fam. Code Ann. § 261.101(c)

“The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional...”

In many other states, the clergy-penitent privilege is explicit in statute but usually limited to confessional communications and in some states denied altogether. See, Child Welfare Information Gateway, (2016). *Mandatory Reporters of Child Abuse and Neglect*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau. For the full text: <https://www.childwelfare.gov/pubPDFs/manda.pdf>”

The AODA believes leaving the listed categories in the statute is unnecessarily confusing. By eliminating those listed categories, HB122 clarifies, but does not change, existing law.

KK/al