

- Was knowingly, intentionally, or negligently placed in a situation that may endanger the child’s life or health by any person; or
- Was knowingly or intentionally tortured, cruelly confined, or cruelly punished by any person.

The effective date of this bill is July 1, 2019.

FISCAL IMPLICATIONS

CYFD reports this bill expands its mandate to investigate reports of child abuse by any person, rather than only those incidences when a parent, guardian or custodian allegedly perpetrates the abuse, which will have a significant fiscal effect. In a similar bill considered in the 2018 session (SB 87), CYFD reported that for FY2016, CYFD received 38,623 reports concerning suspected abuse and neglect, and investigated 20,766. Under existing law, CYFD does not investigate suspected abuse or neglect perpetrated by individuals who are not parents, guardians, or custodians, although they are cross-reported to law enforcement. Based on FY 16 numbers, CYFD estimated an increase in its investigations by up to 17,000 per year under SB 87, but provided no cost estimate. LFC staff calculates that, using CYFD’s FY2016 numbers, and based on national standards that a caseworker should have no more than 15 cases per month/ 180 cases per year, handling an additional 17,000 investigations would require an additional 94 caseworkers. At the current average cost for Child Protective Services Division employee of \$78 thousand (including benefits), 94 caseworkers could cost up to \$7.3 million, which number appears in the operating budget impact table above.

Other responding agencies estimated either minimal or no fiscal impact.

In light of this fiscal impact, this bill should be referred to the House Appropriations and Finance Committee.

SIGNIFICANT ISSUES

Looking at the overall impact of HB 488, NMAG suggests that by expanding the definition of “abused child” to require reporting child abuse committed by any person, not just the child’s parent, guardian or custodian, the bill clarifies a potential infirmity and thus closes a loophole identified by the NMAG. As AODA noted in its analysis of a bill with similar provisions last year (SB 87), suspected child abuse should always be reported in order to protect the child, even when the abuser is unknown, or is known to be someone other than the child’s parent, guardian or custodian.

As discussed in the Fiscal Implications section, CYFD advises under current statute, its investigations authority and mandate cover only allegations where the alleged perpetrator is a parent, guardian, or legal custodian. HB 488 expands the definition of “abused child” in the reporting statute to encompass the actions of *any* individual, regardless of their affiliation to or association with the child. As a result, CYFD expresses concern that this bill expands CYFD’s investigations authority and mandate to cover *all* allegations concerning the abuse or neglect of a child. CYFD points out this conflicts with law enforcement’s authority to conduct criminal investigations; with the requirement that law enforcement handle investigations into allegations of abuse or neglect occurring at schools, daycares, or child care facilities; and with the requirement that law enforcement handle investigations concerning children in the care or

control of CYFD, or in facilities administratively attached to CYFD. Similarly, AOC suggests if the purpose of HB 488 is to ensure reporting and investigation of all child abuse, it might be better to clarify to whom the report must be submitted given the perpetrator of the abuse.

Yet other agencies raise issues concerning the language of the new definition. LOPD notes the existing failure to report statute covers instances where a child is abused or neglected, and the added definition appears to include instances of neglect in addition to direct abuse. LOPD suggests HB 488 intent might be clearer if definitions were created specific to abuse and specific to neglect, perhaps by categorizing the existing definition as either abuse or neglect. On the other hand, AODA comments that this bill 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.

AODA goes on to note that the definition of abused child in the Child Abuse and Neglect Act (in which the section being amended by HB 488 is codified) only recognizes abuse by the child's parent, guardian or custodian. See Section 32A-4-2(B), NMSA 1978. That is because that 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 Section 32A-4-2(B) 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.

AODA concludes that this bill makes it clear that abuse or suspected abuse must be reported, without regard to who committed the abuse. The only provision in the HB 488's definition of abused child that is limited to abuse committed by a parent, guardian or custodian is when a child has suffered or is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian. This limitation may be because provision applies to inaction, as well as action, and applies to possible future harm.

PERFORMANCE IMPLICATIONS

CYFD reports it has performance measures concerning the safety and well-being of children which will be negatively affected by a significant increase in caseload without a concomitant increase in case workers.

AODA notes that this bill should make it easier to prosecute charges of failure to report child abuse.

RELATIONSHIP

HB 230 relates to this bill in that it amends the same section of law.

AMENDMENTS

CYFD proposes the bill be amended as follows:

1. In section 1, at the end of subsection C, the following language be added:
“Under the abuse and neglect act, the department shall investigate reports of abuse of neglect by a parent, guardian or custodian.”
2. Replace subsection G with the following language:
“For the purposes of this section, "abused child" or “neglected child” means a child who abused or neglected as defined 32A-4-2.”

MD/sb