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## FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 3/4/19  
LAST UPDATED \_\_\_\_\_ HB 619/HJCS  
SHORT TITLE Limit Child Abuse Liability SB \_\_\_\_\_  
ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 488 and HB 230

### SOURCES OF INFORMATION

LFC Files

Responses Received From (on earlier version of this bill, as pertinent)

Children, Youth and Families Department (CYFD)  
Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 619 grants civil and criminal immunity from liability to anyone 1) reporting alleged abuse or neglect of a child pursuant to Section 30-6-1, NMSA 1978, and 2) participating in a judicial proceeding brought as a result of that report. In addition, CS/HB619 imposes this standard governing when this immunity applies: the person reporting or participating must act with reasonable care and without malicious purpose.

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

### FISCAL IMPLICATIONS

No fiscal impact is anticipated.

## **SIGNIFICANT ISSUES**

Existing law provides immunity protection to those reporting suspected instances of child abuse or neglect committed by a parent, guardian or custodian and those participating in a judicial proceeding brought as a result of such a report. (See Section 32A-4-5(B), NMSA 1978) That immunity provision presumes a person is acting in good faith when making a report or participating in a judicial proceeding, and immunity is not available only when the person acted in bad faith or with malicious purpose.

CS/HB619 grants immunity to persons reporting alleged abuse or neglect by anyone, subject to a different standard: in order to receive immunity, a person reporting must act with reasonable care and without malicious purpose. In its earlier analysis, AOC advised that Black's Law Dictionary defines "bad faith" as "generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect [...] not prompted by an honest mistake [...] but by some interested or sinister motive." On the other hand, it defines "reasonable care" as "the degree of care shown by a person who is responsible and trustworthy." Thus, CS/HB 619 imposes a heightened standard (to use reasonable care), as opposed to the current bad faith/malicious purpose standard applicable to those reporting abuse or neglect by a parent, guardian or custodian. The CS/HB619 standard could result in increased liability for persons making reports of alleged child abuse by someone not a parent, guardian or custodian, and thus discourage reporting of suspected child abuse or neglect.

As CYFD noted, this bill does not address the requirement that every person who knows or has a reasonable suspicion of child abuse or neglect must report instances where the suspected abuse or neglect has been caused by a parent, guardian or custodian. See Sections 32A-4-3(A) and 32A-4-2(B) and (G), NMSA 1978.

## **PERFORMANCE IMPLICATIONS**

AOC reported the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

## **RELATIONSHIP**

HB 488 expands the reach of the duty to report child abuse and neglect statute to cover suspected abuse or neglect by any person.

HB230 amends the duty to report child abuse and neglect statute to clarify that a finding that a pregnant woman has been using or abusing drugs during her pregnancy does not on its own trigger this duty to report.

MD/sb