

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 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 January 17, 2024

Bill No: HB 95

Sponsor: Stefani Lord and Harlan Vincent
Short Title: Family in Need of Court-Ordered Servicers

Agency Name and Code AOC 218
Number: _____
Person Writing Alison B. Pauk
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	1,000	Nonrecurring	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate		Nonrecurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 95 amends the Family in Need of Court-Ordered Services Act, herein referred to as FINCOS Act, by expanding the definition of ‘family in need of court-ordered services’ under Section 32A-3B-2 NMSA 1978 to include families who were subject to an investigation by the department (CYFD), and credible evidence was found that the child is an abused or neglected child as provided in the Abuse and Neglect Act.

The FINCOS Act permits the filing of a Petition where the child or the family has refused family services or the department has exhausted the available voluntary services requiring court intervention. This act narrowly defines a family subject to the FINCOS Act as: 1) whose child is absent from school, without an authorized excuse, more than ten days during a school year; 2) where a child is absent from their residence more than twelve hours without consent of the parent, guardian, or custodian; 3) where a child refuses to return home or there is good cause to believe that the child will run away if forced to return home; 4) where a parent, guardian, or custodians refuses to allow the child to return home (when an abuse and neglect petition is not in the child’s best interest); and 5) where the child is (a) alleged to be engaged in an act that if committed by an adult would be designated prostitution or (b) is a victim of human trafficking.

The amendment would add to the definition of a ‘family in need of court-ordered services’ where “the child’s parent, guardian or custodian was investigated by the department, and the department found credible evidence that the child is an abused or neglected child under the Abuse and Neglect Act.”

House bill 95 also corrects the internal identification from the chapter number to the statutory name.

Appropriation: One million dollars (\$1,000,000) from the general fund to the Administrative Office of the Courts (AOC) for expenditures for fiscal year 2025 to assist the AOC in expanding the scope of the FINCOS Act with any unexpended or unencumbered amounts reverting to the general fund. The bill does not define “expanding the scope.”

HB 95 lists an effective date of July 1, 2024.

FISCAL IMPLICATIONS

There may be fiscal implications for the department (CYFD) due to widening the net for cases that could be included under the FINCOS Act. In the alternative, the number of abuse and neglect petitions may be reduced as the FINCOS Act provides for a less restrictive process of assisting the family. There may also be an impact on the Office of Family Representation and Advocacy's budget due to an increase in filings under the FINCOS Act, but a similar decrease in abuse and neglect petition filings may also reduce the number of attorneys needed. A similar impact to the court may also exist.

SIGNIFICANT ISSUES

1) **The term “expanding the scope” is not defined and vague.**

In House Bill 95, one million dollars is appropriated to the Administrative Office of the Courts (AOC) to assist the AOC in “expanding the scope of the Family in Need of Court-Ordered Services Act,” yet the bill neither defines “expanding the scope” nor states what it would require of the AOC. The term is not commonly used in NM legislation or statutes; it can be found in New Mexico case law and is most commonly used when describing a stop, detention, or investigation by law enforcement. Furthermore, the amendments to HB 95 essentially “expand the scope” of the families who are eligible under the FINCOS Act by adding to the definition of ‘families in need of court-ordered services.’

2) **The courts play no role in the investigation or determination of the filing of a petition under the FINCOS Act.**

Court cases are initiated under the FINCOS Act via the filing of a petition to initiate a proceeding by the department's children's court attorney who must first determine that the filing is in the best interests of the child and the family. See Section 32A-3B-10 NMSA 1978. The petition must include the following allegations:

- (1) that the child or the family are in need of court-ordered family services;
- (2) that the child and the family participated in or refused to participate in a plan for family services and that the department has exhausted appropriate and available services; and
- (3) that court intervention is necessary to assist the department in providing necessary services to the child and the family.” Section 32A-3B-11 NMSA 1978.

The courts play no role in any investigation or determination that a petition be filed under the FINCOS Act. The courts *only* become part of the process upon the filing of the petition, by CYFD, alleging a family is in need of court-ordered services.

3) **The courts cannot order or encourage an executive agency to file a petition.**

The courts only see a handful of FINCOS cases filed on a yearly basis. If “expanding the scope” includes increasing the use of the FINCOS Act, then that would require the AOC to encourage the filing of FINCOS petitions. CYFD, an executive agency, initiates court cases under the FINCOS Act. As an arm of the Supreme Court, the AOC directly represents the Supreme Court and courts of this state. Therefore, it is contrary to the separation of powers that the AOC expand the scope of an act that, by law, is initiated by another branch of government. The investigation and determination to file a petition under the FINCOS Act is an executive power, and courts, by definition play no role in this decision.

For the aforementioned reasons, the AOC is not the proper entity to receive an appropriation with the purpose of “expanding the scope” of the FINCOS Act.

PERFORMANCE IMPLICATIONS

Although the FINCOS Act already exists as a statutory provision, it is rarely utilized in New Mexico with only a handful of cases being filed each year. The amendment expanding the definition of ‘family in need of court-ordered services’ could provide an avenue to satisfy the purpose of the Act which is, through court intervention, to provide services when voluntary services are exhausted while also recognizing that in many instances, truancy and running away by the child are symptomatic of a family in need of services.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts resulting from additional hearings under the FINCOS Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

By expanding the definition of ‘family in need of court-ordered services’ in House Bill 95, the department (CYFD) can file a petition under the FINCOS Act when an abuse and neglect petition does not result from an investigation (such as where lesser methods would suffice; where the children’s court attorney did not endorse the filing as in the best interest of the child and family or where the department lacked sufficient evidence to prove abuse and neglect by clear and convincing evidence), yet credible evidence of abuse or neglect exists. This could expand the department’s ability to work with families who deny voluntary services offered by the department by asking a court to order the services. However, the expansion of the definition of a ‘family in need of court-ordered services’ may also over broaden the ability of the department to involve families in legal proceedings.

Unlike cases brought under the Abuse and Neglect Act, the FINCOS Act does not require the department prove by clear and convincing evidence that the child is neglected or abused. Instead, the FINCOS Act requires clear and convincing evidence that the child is a child of a family in need of court-ordered services. The burden of proof, when broadened beyond situations of truancy, run-aways, or disrupted families, could disparately impact families in underserved communities or be subject to over-use. Also, there may be additional litigation and challenges due to the evidentiary variation between those families where ‘credible’ evidence of abuse and neglect is present and those where the department has to prove that abuse and neglect occurred by clear and convincing evidence.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently, those families with investigations that are not subject to the filing of an abuse and neglect petition, yet there exists credible evidence of abuse and neglect, are only provided services on a voluntary basis without an avenue for court intervention.

AMENDMENTS