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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Lord/Vincent **ORIGINAL DATE** 1/20/2024

**BILL**

**SHORT TITLE** Family in Need of Court-Ordered Services **NUMBER** House Bill 95

**ANALYST** Garcia

### APPROPRIATION\* (dollars in thousands)

FY24	FY25	Recurring or Nonrecurring	Fund Affected
	1,000.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

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

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>CYFD</b>	Indeterminate	\$3,200.0	\$3,200.0	\$6,400.0	Recurring	General Fund
<b>AOC</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund
<b>OFRA</b>	Indeterminate	At least \$1,400.0	At least \$1,400.0	At least \$2,800.0	Recurring	General Fund
<b>Total</b>	Indeterminate	At least \$4,600.0	At least \$4,600.0	At least \$9,200.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 103 and House Bill 106

### Sources of Information

LFC Files

Agency Analysis Received From  
Children, Youth and Families Department (CYFD)  
Administrative Office of the Courts (AOC)  
Office of the Attorney General (NMAG)

Agency Analysis was Solicited but Not Received From  
Office of Family Representation and Advocacy (OFRA)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from some agencies. This analysis could be updated if that analysis is received.

## **SUMMARY**

### **Synopsis of House Bill 95**

House Bill 95 amends the Family in Need of Court-Ordered Services (FINCOS) Act to expand the definition of “family in need of court-ordered services” under Section 32A-3B-2 NMSA 1978 to include families who were subject to investigation by the Children, Youth and Families Department and for whom credible evidence was found that the child was abused or neglected, as provided by the Abuse and Neglect Act (Section 32A-4 NMSA 1978)

House Bill 95 appropriates \$1 million from the general fund to the Administrative Office of the Courts (AOC) for expenditure in FY25 to assist AOC in expanding the Family in Need of Court-Ordered Services (FINCOS) Act. Any unexpended or unencumbered balances remaining from the appropriation shall revert to the general fund.

The effective date of this bill is July 1, 2024.

## **FISCAL IMPLICATIONS**

The appropriation of \$1 million contained in this bill is potentially a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall revert to the general fund, though the bill provides only for a nonrecurring special appropriation to the Administrative Office of the Courts. The expansion of the program will continue in future fiscal years; therefore, the additional costs are assumed to be recurring.

While AOC notes potential increased costs because of increased hearings, AOC reports it is not the appropriate entity for receiving funds intended to expand the scope of the FINCOS Act.

Though the bill does not contain an appropriation for CYFD, the department notes the bill would likely expand the CYFD service population and legal filings, requiring an estimated 25 FTE for additional social and community service positions and 5 FTE for attorney positions at a cost of roughly \$3.2 million annually.

In addition, an increase in petitions and hearings would also increase the Office of Family Representation and Advocacy’s (OFRA) service population, also requiring additional attorneys to provide legal services to children and families. LFC estimates these additional costs to be at least \$1.4 million annually.

## **SIGNIFICANT ISSUES**

The FINCOS Act permits the filing of a petition when a child or family has refused family services of CYFD has exhausted the available voluntary services requiring court intervention. In existing statute, family subjects are narrowly defined as: 1) whose child is absent from school, without an authorized excuse, more than 10 days during the school year; 2) where a child is

absent from their residence more than 12 hours without consent of the parent, guardian, or custodian; 3) where a child refuses to return home or there is no good cause to believe that the child will run away if forced to return home; 4) where a parent, guardian, or custodians refuse to allow the child to return home (when an abuse or 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 as prostitution or (b) the child is a victim of human trafficking.

Both AOC and CYFD report the number of families for whom FINCOS Act petitions are filed is relatively small, and the FINCOS Act is only currently utilized in a handful of cases annually.

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

By expanding the FINCOS Act, CYFD would be able to file petitions under the FINCOS Act when an abuse and neglect petition does not result from an investigation, including instances in which the children’s court attorney did not endorse the filing as in the best interest of the child and when the department lacks sufficient evidence to prove abuse or neglect by clear and convincing evidence. Unlike cases brought under the Abuse and Neglect Act, the FINCOS Act does not require CYFD to prove by clear and convincing evidence that a child has been abused or neglected. Instead, the FINCOS Act requires clear and convincing evidence that the child is a child of a family in need of court-ordered services. AOC notes, the burden of proof when expanded beyond situations of truancy, run-aways, or disrupted families could be subject to over-use or disproportionately impact families in underserved communities, including instances in which the root causes of family circumstances maybe result of poverty.

The bill would expand CYFD’s ability to work with families who deny voluntary services offered by CYFD by asking the court to order the services, but the expansion would also broaden the ability of CYFD to involve families in legal proceedings. Currently, families with investigations that are not subject to the filing of an abuse and neglect petition, despite the existence of credible evidence of abuse and neglect, are only provided services on a voluntary basis.

The Administrative Offices of the Courts note the following issues and concludes the agency is not the appropriate entity to receive an appropriation for the purpose of expanding the FINCOS Act:

- “The bill appropriates \$1 million to AOC to assist the courts in “expanding the scope of the FINCOS Act but does not define “expanding the scope” nor outline what would be required of AOC.
- The courts play no role in filing petitions to initiate CYFD children’s court cases nor do the courts play a role in completing investigations. CYFD children’s court attorneys determine that a filing is in the best interest of the child and family, and file petitions that must include allegations that the child or family are in need of court-ordered family services, that the child and the family participated in or refused to participate in a plan for family services, and that court intervention is necessary to assist CYFD in providing necessary services to the child and family, as provided by Section 32A-3B-11 NMSA 1978.

- The courts cannot order or encourage an executive agency to file a petition, and the bill’s direction to AOC to expand the scope FINCOS Act would be problematic if interpreted to mean the court should encourage CYFD to file petitions.”

CYFD notes the change to the FINCOS Act could provide the department with an additional tool for addressing family circumstances and provide an additional mechanism such that the state may experience fewer abuse and neglect filings and more FINCOS case filings. However, CYFD notes the following issues with the bill:

- “As the agency is reorganizing, expanding prevention and early intervention services, and developing a multi-level response system, the department would need to assess and determine which program services division is most appropriately responsible for FINCOS cases and develop the appropriate needs assessments for evaluating cases.
- The Indian Family Protection Act (IFPA) includes FINCOS cases in the definition of a child custody proceeding and, therefore, the protections, including notices and active efforts, provided by IFPA apply in FINCOS cases. More families could be brought into the system through FINCOS, and that concern is heightened for tribal partners, particularly in cases where poverty or factors other than neglect may be the root cause of the circumstances necessitating court intervention.
- The bill does not limit the expanded family definition to those with current or recent CYFD investigations, which could result in FINCOS cases being filed against families previously investigated for which no current concern exists.
- The bill’s effective date (July 1, 2024) does not provide the department with sufficient time to develop and implement policies, procedures, and training necessitated by the expansion of the FINCOS Act.”

## **PERFORMANCE IMPLICATIONS**

CYFD has no existing performance measures related to FINCOS, though the agency does have child well-being related performance measures. The department notes performance may be negatively impacted with an influx of court proceedings without additional resources.

## **ADMINISTRATIVE IMPLICATIONS**

Expansion of the FINCOS Act would likely result in administrative implications for AOC, CYFD, and the Office of Family Representation and Advocacy (OFRA) as a result of increased petitions and hearings.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The following list of related bills would amend statutory definitions of child abuse:

House Bill 103: Child Exposure to a Controlled Substance

House Bill 106: Fentanyl Exposure as Child Abuse

## **OTHER SUBSTANTIVE ISSUES**

CYFD notes the FINCOS Act and the Abuse and Neglect Act have significant embedded differences in the populations they are targeted to help, and these differences should be addressed in a comprehensive manner.

## ALTERNATIVES

CYFD proposes the following amendments to the bill:

32A-3B-2. ~~[DEFINITIONS]~~ DEFINITION.--As used in ~~[Chapter 32A, Article 3B NMSA 1978]~~ the Family in Need of Court-Ordered Services Act, "family in need of court-ordered services" means the child or the family has refused family services, has failed to follow through with family services, or the department has exhausted appropriate and available family services and the department has determined that court intervention pursuant to the Family in Need of Court-Ordered Services Act is necessary to provide family services to the child or family and it is a family:...

E. in which the child's parent, guardian or custodian was investigated by the department within the last three months, ~~and the department substantiated the investigation, and the department determined filing an abuse/neglect petition was not in the child's best interest;~~

F. ~~in which the child's parent, guardian or custodian was investigated by the department within the last three months, the family had more than one prior investigation in the past two years, and the department's risk assessment tool has determined there is a high risk for future system involvement found credible evidence that the child is an abused or neglected child as provided in the Abuse and Neglect Act; or~~

Effective Date: January 1, 2025 (to allow for proper policy and procedure revision)

RMG/ne/rl