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**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 1/26/26 *Check all that apply:*  
**Bill Number:** SB 67 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Crystal Brantley **Agency Name** AOC  
Gail Armstrong **and Code** 218  
**Short Title:** Best Interests of the Child **Number:** \_\_\_\_\_  
Standards **Person Writing** Alison Pauk  
**Title:** \_\_\_\_\_ **Phone:** 505/470-6558 **Email** aocabp@nmcourts.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

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

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 67 amends statutes within the Children’s Code, Chapter 32A NMSA 1978, to emphasize that the main purpose of the Code is to ensure that the best interests of the child are the primary concern. The law amends Section 32A-1-3 NMSA 1978, governing the purpose of the Act, to state that the purpose is also to promote stability and permanence for the child and when possible, and if not inconsistent with prioritizing the child’s health and safety, preserving the unity of the family, when it is in the best interests of the child. SB 67 provides that the “family unity” shall be broadly construed as not solely meaning a child’s family of origin or biological family.

SB 67 also amends statutes within the Abuse and Neglect Act, as follows:

- **Section 32A-4-2 NMSA 1978:** amends the definition of “aggravated circumstances” to include circumstances in which the parent, guardian or custodian has subjected the child to aggravated physical neglect or been convicted of specified offenses where the victim was a child. Adds a definition of “aggravated physical neglect” to mean any omission of care by the parent, guardian or custodian of a child that results in a life-threatening condition or seriously impairs the child’s functioning.
- **Section 32A-4-7 NMSA 1978:** replaces the paramount concern being “the child’s health and safety” with “the best interests of the child.”
- **Section 32A-4-8 NMSA 1978:** provides, in Subsection B, that the department shall make reasonable efforts to locate a relative of the child to provide foster care, “If it is in the best interests of the child.”
- **Section 32A-4-10 NMSA 1978:** provides, in Subsection F, that the court shall assure that the child’s attorney zealously represents the child and the child’s best interests.
- **Section 32A-4-18 NMSA 1978:** provides, in Subsection E, that reasonable efforts shall be made to preserve and reunify the family only when the court finds that reunification efforts are consistent with the best interests of the child.
- **Section 32A-4-22 NMSA 1978:** provides, in Subsection C, that reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child’s health and safety. Further provides that the court may determine that reasonable efforts are not required to be made when the court finds that the parent, guardian or custodian has subjected the child to aggravate circumstances, including aggravated physical neglect. Also adds a Subsection F providing that in entering a dispositional order, the court shall enter written findings stating whether reunification is consistent with the best interests of the child.
- **Section 32A-4-23 NMSA 1978:** provides, in Subsection B, that when a child in department custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall petition for that child’s placement in a manner consistent with the best interests of the child and pursuant to the provisions of the Children’s Mental Health and Developmental Disabilities Act.
- **Section 32A-4-25 NMSA 1978:** provides, in Subsection I, that dispositional orders entered pursuant to this section shall include written findings stating whether

continued reunification efforts are consistent with the best interests of the child and shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

- **Section 32A-4-25.1 NMSA 1978:** provides, in Subsection B, that at the permanency hearing, the court shall determine the permanency plan that is consistent with the best interests of the child, and all parties shall have the opportunity to present evidence and to cross-examine witnesses. Also provides, in Subsection E, that upon disposition at each permanency hearing the court shall enter written findings explaining why the selected permanency plan is consistent with the best interests of the child.
- **Section 32A-4-28 NMSA 1978:** provides, in Subsection A, that in proceedings to terminate parental rights, the court shall give primary consideration to the best interests of the child and shall consider the physical, mental and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

SB 67 also enacts Section 12, a new section of the Abuse and Neglect Act, to provide that in all matters and proceedings pursuant to the Act, the best interests of the child shall be the primary concern and controlling standard in all actions of the department and the court. The law explains that "Best interests of the child" means the standard applied to judicial and department actions that requires the child's health, safety and physical, mental and emotional well-being to be treated as paramount and primary concern is determined by prioritizing specified outcomes. The law also sets out the factors to be considered in determining the best interests of the child outcomes. SB 67 provides that no placement preference shall create a presumption that reunification with a parent, guardian or custodian is in the best interests of the child, and that at each custody, disposition, judicial review and permanency hearing, the court shall enter written findings identifying the placement selected, the reasons the placement serves the best interests of the child and, if applicable, the reason the higher-priority placements were rejected.

SB 67 requires the Children, Youth and Families Department (CYFD) to adopt and promulgate rules to carry out the provisions of the Act, no later than September 30, 2026.

Finally, SB 67 provides that nothing in the Act shall be construed to invalidate or reopen a final judgment or an order entered before the effective date of the Act. The law provides that the provisions of the Act shall apply to:

- All matters and proceedings under the Abuse and Neglect Act pending or commenced on or after the effective date of the Act and shall govern any hearing, determination, finding, disposition or order made on or after that date, regardless of when the case was originally filed (Subsection A):
- All actions performed by CYFD under the Abuse and Neglect Act, including decisions, assessments or recommendations regarding treatment or service plans, placements, permanency, case plans or any other function performed by CYFD, on or after the effective date of the Act, including actions performed in connection with a case that was pending before that date (Subsection B): and
- All matters, issues and determinations arising under the Abuse and Neglect Act on or after the effective date of the Act.

## **FISCAL IMPLICATIONS**

SB 67 amends multiple sections of the Children's Code to require written findings by the court. See SB 67's Sections 32A-4-22(F), 32A-4-22(I), and 32A-4-25.1(E) NMSA 1978. Mandatory,

written findings will require additional time of the court.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any hearings and applications to the court, for protective and other orders, as well as any challenges to court orders and appeals of the same. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

1) References to the best interests of the child already appear throughout the Children’s Code, including in Section 32A-1-3(F) NMSA 1978, the purpose section of the Code, stating that the Code shall be interpreted and construed to effectuate the legislative purpose to provide for the cooperation and coordination of the civil and criminal systems for investigation, intervention and disposition of cases, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve *the best interests of a child* victim.

2) Senate Bill 67 amends Subsection E of Section 32A-4-18 by restricting when CYFD shall make reasonable efforts to reserve and unify the family, stating that it is “only when the court finds that reunification efforts are consistent with the best interests of the child, with the paramount concern being the child’s health and safety.” Restricting when and how reasonable efforts shall be made is contrary to federal law requiring reasonable efforts and could prevent New Mexico from receiving federal Title IV-E funding.

The Federal Title IV-E program requires States to make reasonable efforts to preserve and reunify families (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child’s home; and (ii) to make it possible for a child to safely return to the child’s home.

Laws in all States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands require that child welfare agencies make reasonable efforts to provide services that will help families remedy the conditions that brought the child and family into the child welfare system. [See 42 U.S.C. Section 671(a)(15)(2018)]

...

In many states, the statutes also require that, when a court determines that family reunification is not in the best interests of the child, efforts should be made to finalize another permanent placement for the child. Under the Adoption and Safe Families Act of 1997 (ASFA), while reasonable efforts to preserve and reunify families are still required, the child’s health and safety constitute the paramount concern in determining the extent to which reasonable efforts should be made. [States must comply with the requirements outlined in ASFA as a condition for receiving certain Federal funds.]

[See Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children](#), Child Welfare Information Gateway.

The Supremacy Clause, established under Article VI, Paragraph 2 of the U.S. Constitution, refers to the principle that, in general federal law takes precedence over any conflicting state law. “The Supremacy Clause underpins the broader [doctrine of preemption](#), where if laws are in conflict, the law of a higher authority can preempt the law of a lower authority if the superiority of the

former is stated expressly or implied.” See [Supremacy Clause](#), Legal Information Institute, Cornell Law School.

3) “The cardinal principle of child welfare policy over the last two decades under both the CWA [Child Welfare Act] and ASFA regimes has been permanence. The aim of this policy is to synthesize the advantages of family preservation and expeditious termination of parental rights.” See [The Meanings of Permanence: A Critical Analysis of the Adoption and Safe Families Act of 1997](#), Harvard Journal on Legislation, Libby S. Adler, 2001. There may be a question as to whether the provisions of SB 67 adequately do so.

## PERFORMANCE IMPLICATIONS

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

## ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

## TECHNICAL ISSUES

## OTHER SUBSTANTIVE ISSUES

Section 32A-4-10 NMSA 1978, Subsection C states, “At the inception of an abuse and neglect proceeding, the court shall appoint a guardian ad litem for a child under fourteen years of age. If the child is fourteen years of age or older, the court shall appoint an attorney for the child.” In child welfare cases in NM, there are two different types of legal representation for children, depending on age. The National Association of Counsel for Children published a guide entitled, *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*, found at <https://naccchildlaw.org/wp-content/uploads/2024/01/NACC-Recommendations-Final.pdf>, where they distinguish the different types of legal representation for children, and state:

**Child / Youth’s Attorney / Expressed Interest / Direct Representation:** used interchangeably, these terms describe a legal professional, duly licensed by a bar association or state supreme court, who advocates for the child or youth’s expressed wishes. The attorney owes the same duties of professional responsibility (ex. loyalty, confidentiality, etc.) to the child client as would be due to an adult client. Expressed interest representation involves active client counseling and investigation. This model may also be described as “stated interest” or “client directed” legal representation.

**Guardian ad Litem (GAL)/Best Interest Representation:** used interchangeably, these terms describe a legal professional, duly licensed by a bar association or state supreme court, who is appointed by the court to advocate for the child or youth’s best interest, based upon the attorney’s own assessment after

conducting an independent investigation. Although advocates for a child's best interests are not bound by the expressed wishes or litigation objectives of the child, in most jurisdictions they have a concomitant responsibility to inform the court of the child's wishes.

To simplify, the youth attorney, or child's attorney, represents the child's express interest, while the guardian ad litem represents the child's best interests.

Senate Bill 67 adds language to Subsection F of Section 32A-4-10 requiring a child's attorney to zealously represent the child "and the child's best interests." This additional language requiring a child's attorney [for a child age 14 and over] to represent the child's best interests changes the duties of a child's attorney so that they are the same as a guardian ad litem. SB 67's changes to Subsection F [of Section 32A-4-10] also conflict with Section 32A-1-7.1(A) where the powers and duties of a child's attorney are codified, stating, "An attorney shall represent a child in a proceeding for which the attorney has been retained or appointed. The attorney shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct." This is in contrast to Section 32A-1-7(A) NMSA 1978 where the powers and duties of a guardian ad litem include, "A guardian ad litem shall zealously represent the child's best interests in the proceeding for which the guardian ad litem has been appointed and in any subsequent appeals."

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**