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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/11

SPONSOR Garcia, M.J. LAST UPDATED _____ HB _____

SHORT TITLE Require Family Reporting Of Child Abuse SB 62

ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.0	\$0.0	\$19.0	\$19.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

Senate Bill 62 adds three new sections to Section 32A-4-3 of the Children's Code:

Any person who is a "family member" of a child, and who knows or has a reasonable suspicion that the child is being abused or neglected, must report the matter immediately.

Defines family member as any person who is "related within the third degree of consanguinity or affinity and includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces and spouses." "Family members" also include persons who are "residing in the same household as the child."

Family members who fail to report are guilty of a fourth degree felony; unless the child dies as a result of the abuse and neglect, in which case the family member is guilty of a third degree felony.

FISCAL IMPLICATIONS

Senate Bill 62 contains no appropriation. Because the conduct which is the subject of this bill is

already criminalized under other statutes (with a lesser sentence upon conviction), no significant impact in prosecution, defense or judicial costs is foreseen. The numbers in the table above represents New Mexico Correction Department's (NMCD) average cost for incarceration of one offender upon conviction of a fourth degree felony (assuming no mitigating or aggravating circumstances, no suspension or deferment, and no meritorious deduction) for the additional six months of incarceration imposed should this bill become law. The total cost per fiscal year would depend on the number of convictions which is indeterminate.

The PDD reports that because prosecutors have practically unlimited discretion in which cases to prosecute (and also because "child abuse" as defined in New Mexico is a fairly elastic concept) it would be impossible to predict how much this bill would increase the felony caseload of the courts. However, the bill would likely create potential new felony defendants in many, or perhaps most, child abuse cases where the child lived with persons other than his abusers, or had regular contact with relatives other than his abusers.

SIGNIFICANT ISSUES

Section 32A-4-3 of the Children's Code currently imposes a duty upon "every person" who "knows or has a reasonable suspicion that a child" is abused or neglected to report the matter immediately to local law enforcement, the department, or tribal law enforcement or social services.

Senate Bill 62 defines a new class, "family member," which is exposed to a greater penalty than the misdemeanor imposed on the original class defined in the statute (medical and social workers, etc.). Any family member who fails to report a suspicion of abuse is guilty of a fourth degree felony which is increased to a third degree felony should the abuse or neglect result in the death of the child.

The CYFD states:

The definition of family member is problematic as it has implications for child welfare practice, including the notice requirements for relatives recently created by the newly enacted federal Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351). Additionally, the definition of family member as detailed in this bill includes persons under the age of eighteen.

Over seventy percent of the substantiated child maltreatment in New Mexico is child neglect and often this neglect is related to poverty. As most circumstances involve neglect, requiring family members to report on one another in these circumstances places an onerous burden on them. The factors contributing to failure to report child maltreatment are very complex and include lack of information and understanding about the signs and symptoms of maltreatment and feelings of family betrayal. Harsh criminal penalties for family members have significant ramifications for the children and youth served by CYFD. Typically, in child maltreatment cases, CYFD works extensively with family members so that they may enhance their ability to care for their children. Criminal penalties may either limit those family members available to support the children or may prevent family members from stepping forward as they are fearful of potential criminal penalties.

According to the PDD the bill seems to spring from the recognition that family are often in a position to recognize that a child is being neglected but that, because of divided loyalties, are reluctant to report the circumstances to the authorities.

PERFORMANCE IMPLICATIONS

CYFD asserts that if criminal penalties or the fear of criminal penalties prevent family members from engaging in services, CYFD may witness a decrease in performance in the areas of percent of children reunified within 12 months of entry into care and the percent of children who are adopted within 24 months of entry into care.

ADMINISTRATIVE IMPLICATIONS

CYFD reports the federal Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351) created additional requirements for state child welfare programs. One of these new requirements is providing notice to relatives/family members when a child comes into foster care. The definition of relative/family member currently in regulation does not include “any person residing in the household”. This definition conflicts with current practice and expands administrative duties for the front line caseworker.

TECHNICAL ISSUES

The PDD suggests:

The bill encourages whistleblowers by making failure to report neglect a felony. One consequence of the way the bill is drafted is that **ONLY** the relative making the report is exempted from prosecution --every other brother, sister, aunt, uncle, grandparent, etcetera who did not **ALSO** make a report is guilty of a felony. Family members who passively rely on others to make a report are penalized the same as relatives who deliberately decline to report.

Given that many families make decisions through consensus and take action --especially action involving contact with authorities-- through family spokespersons, the bill would seem to threaten the possibility of felony prosecution of family members who indirectly cause the neglect to be reported, but do not themselves make a separate report.

Perhaps it should be recognized as a defense to the crime that the abuse or neglect was in fact reported, and the defendant “helped, encouraged or caused” it to be reported.

The CYFD notes, the definition of family member includes persons under the age of eighteen, which would potentially subject children to felony charges.

ANA/GH