

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 27 appropriates \$96 thousand from the general fund to CVRC for expenditure for the Child Abuse Homicide Review Team. The appropriation of \$96 thousand is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2020 shall revert to the general fund.

The SPAC amendment changes the standard for shielding from civil liability Child Abuse Homicide Review Team members and persons that provide information to the Team from “without malice and in compliance with other state and federal law” to “reasonable care.”

Synopsis of Original Bill

Senate Bill 27 creates a Child Abuse Homicide Review Team (“CAHR Team”) within the CVRC. The CAHR Team is charged with reviewing the facts and circumstances of homicides related to child abuse, identifying the causes of the fatalities and their relationship to government and nongovernment service delivery systems, and developing methods of child abuse prevention. The CAHR Team is required to provide a report of its activities to the governor, Legislative Council, Supreme Court and specified state agencies prior to each regular session of the Legislature.

The CAHR Team proposed by the bill is composed of members appointed by the director of the CVRC, including representatives of government agencies, members of the judiciary, medical personnel, criminologists, victim services providers, civil legal services providers, tribal organizations, and law enforcement personnel. The director may appoint additional members as the director deems appropriate.

SB 27 provides that organizations and individuals may share information that is otherwise protected from disclosure by law with the CAHR Team if the information is shared only for the purpose of reviewing child abuse-related homicides. The bill makes confidential information obtained or created by the CAHR Team for the purpose of reviewing child abuse-related homicides, and all communications by Team members during a review. The bill requires specified persons to honor the bill’s confidentiality requirements and prohibits disclosure except pursuant to a court order.

The bill protects from civil liability CAHR Team members and organizations and individuals that provide testimony and other information to the Team for the purpose of reviewing of child abuse-related homicides.

FISCAL IMPLICATIONS

CVRC states that it funds the Intimate Partner Violence Death Review Team (formerly the Domestic Violence Homicide Review Team) through a state appropriation of \$96,000 annually. CVRC observes that SB 27 does not appropriate any funding to support the CAHR Team initiative. CVRC currently does not have the capacity to designate any existing staff to this project; it is a full-time job collecting data, analyzing the data, facilitating meetings, and

preparing an annual report. CRVC believes SB 27 should not add the CAHR Team to CVRC's existing tasks, but should create a new position to comply with responsibilities imposed by the bill or a Request for Proposal to an independent organization.

AODA emphasizes that SB 27 does not appropriate or otherwise allocate funding for the CAHR Team.

CYFD notes that the bill will require staff time and CYFD resources to produce records and participate in the review team.

NMAG states that the CAHR Team would consist of a representative(s) from NMAG, but the anticipated resources are unknown since neither the number of representatives from NMAG nor the expected involvement are articulated in the bill.

SIGNIFICANT ISSUES

AODA states that the CAHR Team is a positive idea because it includes multiple agencies that by working together might initiate lines of communication between agencies and encourages planned approaches to scenarios potentially leading to homicides that an interagency approach could prevent. Similarly, NMAG states that SB 27 could increase information sharing on the topic of child abuse-related homicides among various state-wide agencies. NMAG believes that, in addition to increasing information sharing in general, the bill would increase the speed, accuracy, and efficiency with which information was shared. NMAG also believes that the bill may increase agencies' analytic capacity, which may help identify trends and areas where greater attention may be needed, and that the final result of this bill may be a decrease in child homicides.

According to NMAG, SB 27 mirrors almost exactly the "Domestic Violence Homicide Review Team" created by NMSA 1978, Section 31-22-4.1. NMAG states that the only difference between the two statutes is that SB 27 contains Subsection D, missing from Section 31-22-4.1, which permits an organization, institution, agency, or person to share information and records that are otherwise protected by law from disclosure if the information and records are shared only for the purpose of a review of child-abuse-related homicides by the CAHR Team.

NMAG further states that no language within either SB 27 or current Section 31-22-4.1 limits the team's review to cases that have been adjudicated. This has been the policy of the Domestic Violence Homicide Review Team (now called the "Intimate Partner Violent Death Review Team"), which issued an annual report summarizing the data and system recommendations for cases reviewed in 2017 (deaths occurring in calendar year 2014), and would lend the best perspective for identifying and evaluating system-related trends and patterns and responses. If the CAHR Team's review were to include cases prior to adjudication, the judiciary would be unable to participate and the court records would be sealed. Subsection 1(D) of SB 27 appears to address the issue of the availability of sealed records for review. Even if sealed records are made available to the Team pursuant to Section D, the review needs to be limited to cases that have been adjudicated in order to facilitate full, system-wide review in a confidential setting with full participation by Team members.

CVRC agrees with NMAG's position that the CAHR Team should not review current child abuse cases. CVRC states that objectivity is paramount for the Team's success, and that the

Intimate Partner Violent Death Review Team reviews cases two to three years after the incident, for this reason.

CYFD states that New Mexico already has a Child Fatality Review Panel, which is run by the New Mexico Department of Health. The law related to this review panel is set forth in NMAC 7.4.5. The New Mexico Department of Health (DOH), based on findings of the panel, already issues the findings called for in SB 27: they are published at nmhealth.org. Because the review panel's scope is significantly broader than this bill's panel - it reviews *all* child fatalities, rather than only those suspected to be due to homicide – and because the existing panel has access to the data and findings aggregated by other DOH panels, including the suicide, unintentional injury, and abuse/neglect panels – the existing panel is capable of producing much more robust, in-depth, and targeted reports than a panel which focuses solely on suspected homicides and is housed in an organization that has no other related data readily available.

According to CYFD, its primary concerns with panels such as the existing Child Fatality Review Panel and the CAHR Team proposed by the bill are the confidentiality of the families and, even more importantly, the confidentiality of the children involved. CYFD currently attends the meetings of the Child Fatality Review Panel in person and provides information verbally to ensure that protected information is not reproduced or passed on. This is preferable over records production.

NMAG also discusses the Child Fatality Review Panel and notes the apparent overlap in the panel's and CAHR Team's functions as proposed by SB 27. NMAG states that it is unclear whether the efforts of the CAHR Team would be duplicative of the Child Fatality Review Panel, but that cooperation between the two entities would appear to be beneficial. CVRC believes that responsibilities of the CAHR Team under SB 27 duplicate those of the Child Fatality Review Panel.

LOPD observes that Section 1(F) of SB 27 proposes confidentiality with respect to any specific cases that the CAHR Team would review. Where attorneys from LOPD represent defendants with charges related to the Team's review, conflicts of interest could potentially be created where members of an LOPD defense team were prevented from consulting other LOPD attorneys on an LOPD case being reviewed by the Team who, as Team members, were subject to SB 27's confidentiality requirements. If conflicts are avoidable, however, this is a committee with which LOPD would want to be involved.

UNM-HSC notes that it is home to the only Child Abuse Response Team and only child abuse medical expert in the state. UNM-HSC supports the inclusion of this expertise on the CAHR Team. UNM-HSC also recommends that a representative of the Office of the Medical Investigator (OMI) be part of the Team, since OMI investigates and certifies all deaths and generates autopsy reports.

OTHER SUBSTANTIVE ISSUES

AODA suggests that a possible addition to SB 27 would be to require CAHR Team members, persons who provide records and other information to the Team, and persons who participate in a review conducted by the Team to sign a confidentiality agreement.

NMAG suggests that SB 27 might be amended to limit the scope of review and access to court

documents by the CAHR Team to cases that have been adjudicated, and to provide for cooperation and information sharing between the CAHR Team and the Child Fatality Review Panel.

NMAG also comments that the CAHR Team created by SB 27 includes representatives from different entities, but does not provide a minimum or maximum number from each entity or for the entire team. This could create inconsistencies with how large or small this group is intended to be.

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