

LFC Requester:	Rachel Mercer-Garcia
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 1-22-24
Bill No: HB 95

Sponsor: S. Lord and H. Vincent **Agency Name and Code Number:** Office of Family Representation and Advocacy, 680
Short Title: Expanding definition of family in need of court ordered services. **Person Writing:** Beth Gillia
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(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						

(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:

Expands the Families in Need of Court Ordered Services (FINCOS) Act to include families “in which the parent, guardian or custodian was investigated by [CYFD and CYFD] found credible evidence that the child is an abused or neglected child as provided in the Abuse or Neglect Act.”

Provides a \$1 million appropriation to the Administrative Office of the Courts for FY25 for expansion of the Act.

FISCAL IMPLICATIONS

Extending the Act to include additional families where CYFD has found credible evidence of abuse or neglect will lead to a substantial increase in FINCOS case filings and increased appointments of the Office of Family Representation and Advocacy (OFRA), which assigns counsel in these cases. The FINCOS Act requires the assignment of attorney guardians ad litem for children under 14 and attorneys for youth 14 and older. Although appointment of counsel for parents, guardians, and custodians is not mandatory in FINCOS cases, courts are likely to appoint OFRA for these parties “in the interests of justice” because of the significant rights and relationships at stake. No appropriation has been made to OFRA to account for the increased caseload that the legislature clearly anticipates (as the bill would appropriate \$1 Million to the courts to manage the expansion).

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The proposed amendment to the FINCOS Act would expand CYFD- and court-involvement in the lives of families for whom there is only *credible evidence* of abuse or neglect, but for whom there is insufficient evidence to file an abuse or neglect petition under Article 4 of the Children’s Code (which requires probable cause).

In effect, this change expands FINCOS beyond teens who refuse to come home and/or parents who refuse to allow their teens to return home. This change would give CYFD another option to support children and families in situations where the allegations do not rise to the level of filing an abuse/neglect petition, but where the department believes the family needs the authority of the court to complete services. Done well, expanding FINCOS could look more like a Family Treatment Court, be less punitive than an abuse/neglect petition, and provide families more support and frequent monitoring.

Despite the potential advantages of this expansion, the rest of the Act does not address or support the expanded definition, nor does it provide the same level of services or procedural protections required by the Abuse and Neglect Act (for example, reasonable efforts). Nor does it address the requirements of the Indian Family Protection Act, which sets even higher standards for families with “Indian children.”

Although it is not explicit, the FINCOS Act currently focuses on families dealing with an adolescent who has either run away from home or where the parents refuse to allow the youth in the home (typically because they are engaging in behaviors alleged to be placing family members at risk of harm). Even though the FINCOS Act does not explicitly limit itself to children in adolescence, the behaviors of the child cited in the definitions strongly suggest an older child with the ability to leave school or home on their own (i.e., which if done by a younger child, would suggest a lack of appropriate supervision).

The amendment would take the FINCOS Act in a new direction without making any additional changes that would focus CYFD and court processes and decisions on the issues facing families for whom there is “credible evidence of abuse or neglect.” For example, the first finding required by the court at Disposition in a FINCOS case is "the ability of the parent and child to share a residence." The required findings do not include (as in abuse and neglect cases) "the ability of the parent to care for the child in the home so that no harm will result to the child." The findings at disposition in a FINCOS care do not focus on keeping children safe from abuse or neglect by a caregiver. Moreover, though the family's compliance with the FINCOS case plan is subject to review by the court, the agency is not held to the same standards as in an abuse or neglect proceeding.

PERFORMANCE IMPLICATIONS

OFRA currently has no performance measures concerning FINCOS cases specifically. Without appropriate additional resources to absorb the service population expansion, there will be a negative performance impact.

The bill’s effective date of July 24, 2024, will not provide sufficient time for OFRA to develop and implement training or hire adequate additional personnel to meet the demands of this expansion.

ADMINISTRATIVE IMPLICATIONS

See fiscal implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS