

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2018 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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** Jan. 16, 2018  
**Bill No:** HB122

**Sponsor:** Youngblood & Maestas  
**Short Title:** Duty to Report Child Abuse  
And Neglect

**Agency Code:** 264  
**Person Writing** Gail MacQuesten  
**Phone:** 466-0532    **Email** gailmacquesten@gmail.com

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	0	0	0	n/a	n/a

(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:

HB122 amends NMSA 1978, Section 32A-4-3, to clarify that every person who has information that is not privileged as a matter of law and who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter to appropriate authorities.

**FISCAL IMPLICATIONS**

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.

HB122 clarifies, but does not change, existing law. It should not have a financial impact on the district attorneys.

**SIGNIFICANT ISSUES**

New Mexico courts have struggled with the existing language in Section 32A-4-3. The statute currently imposes a duty to report child abuse or neglect on

“every person including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law who knows or has a reasonable suspicion that a child is an abused or a neglected child.”

Failure to report is a misdemeanor under the statute.

The court of appeals interpreted the language narrowly, finding that the statute did not actually require “every person” to report child abuse but only people in those categories of persons the statute specifically identifies. See *State v. Strauch*, 2014-NMCA-020, *rev'd*, 2015-NMSC-009. (The person at issue in the *Strauch* case was a social worker, but not a social worker “acting in an official capacity,” and therefore, in the eyes of the court of appeals, did not fall into one of the

enumerated categories of persons required to report abuse.) The supreme court, however, read the language broadly in light of the history of the statute, and the history of child abuse statutes nationally, and determined that the legislature intended to impose a reporting obligation on “every person,” and not just those persons falling within the listed categories. See *State v. Strauch*, 2015-NMSC-009.

Leaving the listed categories in the statute is unnecessarily confusing. By eliminating those listed categories, HB122 clarifies, but does not change, existing law.

#### **PERFORMANCE IMPLICATIONS**

HB122 has no performance implications for the district attorneys.

#### **ADMINISTRATIVE IMPLICATIONS**

HB122 has no administrative implications for the district attorneys’ offices.

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

None found.

#### **TECHNICAL ISSUES**

None found.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

None proposed.

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

The confusing language clarified by the *Strauch* case will remain in the statute. People will need to read that case to understand what the statute means.

#### **AMENDMENTS**

None proposed.