

LFC Requester:	
-----------------------	--

**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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. 22, 2018
Bill No: SB87

Sponsor: Howie C. Morales
Short Title: Child Abuse Definition & Investigation

Agency Code: 264
Person Writing: Gail MacQuesten
Phone: 505 466-0532 **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)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	minimal	minimal	minimal	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB122
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB87 amends NMSA 1978, Section 32A-4-3, which addresses the duty to report and investigate child abuse and neglect, to adopt a special definition of “child abuse” specifically for that section.

Currently, Section 32A-4-3 uses the general definition of child abuse that appears in NMSA 1978, Section 32A-4-2, which sets out conduct that constitutes child abuse when that conduct is committed by “the child’s parent, guardian or custodian.” (The same conduct when committed by anyone else is not “child abuse,” for purposes of this Act.)

SB87’s new definition of child abuse for the reporting statute tracks the language of the general statute for one form of abuse, defining “abused child” as a child “who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child’s parent, guardian or custodian.” Under SB87’s definition of child abuse, however, the conduct described in the remaining four subparagraphs constitute child abuse when committed by “any person.”

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.

The district attorneys prosecute violations of Section 32A-4-3, which requires people to report suspected child abuse. A violation is a misdemeanor. SB87 expands the reach of the statute to cover child abuse by “any person,” instead of child abuse committed by the child’s parent, guardian or custodian. Because the reach of the statute is expanded, the district attorneys’ caseload may also expand. However, it should also make cases easier to prosecute.

SIGNIFICANT ISSUES

Applying the general definition of “child abuse” to Section 32A-4-3 puts an illogical limit on the section’s requirement that people report suspected child abuse. Under a very strict reading of the existing statute, only abuse committed by a parent, guardian or custodian constitutes child abuse, and failure to report abuse by any other person would not be a violation of Section 32A-4-3.

Suspected child abuse should always be reported in order to protect the child, even when the abuser is unknown, or is known to be someone other than the child's parent, guardian or custodian. Section 32A-4-3 also sets out the investigatory duties of agencies who receive reports of child abuse. Again, an overly strict reading of the statute could lead to the conclusion that agencies do not need to investigate reports of abuse when the abuser is not the child's parent, guardian or custodian.

It is not clear why SB87 keeps the "parent, guardian or custodian" language for one type of child abuse: when a child has suffered or is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian. Most of the remaining forms of child abuse describe actual harm resulting from intentional actions: physical abuse, emotional abuse of psychological abuse, sexual abuse, sexual exploitation, torture, cruel confinement, and cruel punishment. But the distinction between action and inaction, and actual harm versus potential harm, doesn't explain the remaining provision, which defines child abuse as negligently placing a child in a situation that may endanger the child's life or health. As written, SB87's definition of child abuse includes a stranger negligently placing a child's life or health in danger, but requires the abuser to be a parent, guardian or custodian when a child has suffered serious harm because of the parent, guardian or custodian's actions.

PERFORMANCE IMPLICATIONS

SB87 should make violations of Section 32A-4-3(A), duty to report child abuse, easier to prove when the child abuser is someone other than the child's parent, guardian or custodian.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB122 also amends NMSA 1978, Section 32A-4-3. It clarifies 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. HB122 does not change the definition of "child abuse" for Section 32A-4-3.

TECHNICAL ISSUES

None found.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Failing to report child abuse will not be a crime when the abuser is not the child's parent,

guardian or custodian.

AMENDMENTS

None proposed.