

LFC Requester:	Kelly Klundt
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**AGENCY BILL ANALYSIS
2015 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:

Date Revised 1/27/15

Original **Amendment**
Correction **Substitute**

Prepared: _____
Bill No: HB 29

Sponsor: Brian F. Egolf, Jr.

Agency Code: Attorney General's Office
S'

Short Title: Duty to Report Child Abuse or Neglect

Person Writing Peggy Jeffers
Analysis: _____
Phone: 827-6024 **Email** pjeffers@nmag.gov
 _____ :

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

HB 29 amends existing law regarding the duty to report known or suspected child abuse or neglect, Section 32A-4-3(A) NMSA, by deleting the enumerated list of examples of persons having a duty to report known or suspected child abuse or neglect, including the language “a social worker acting in an official capacity,” so that the duty to report would extend more broadly to require “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 abused or neglected. HB 29 appears to be addressing the Court of Appeals’ recent decision in *State v. Strauch*, 2014-NMCA-20, which held that the duty to report extended only to the ten categories of people listed in the statute and to other professionals or government officials who are likely to come into contact with abused and neglected children during the course of their professional work. HB 29 makes a corresponding change to Section 32A-4-3(E), giving a law enforcement agency or CYFD access to any of the records maintained by “a person who makes a report” pursuant to Section 32A-4-3(A) NMSA, rather than only records maintained by any of the persons enumerated in the current Section 32A-4-3(A).

FISCAL IMPLICATIONS

N/A

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

This bill significantly expands the universe of mandatory reporters as interpreted by the *Strauch* decision (the New Mexico Supreme Court has granted certiorari in *Strauch*, so it remains to be seen whether that decision will stand).

Privilege, as in the existing version of the statute, would apply to any potential reporters only as set forth in the Rules of Evidence, other Supreme Court Rules, or the constitution. Thus, the proposed changes would not expand the privileges that would exempt information from mandatory disclosure.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

Since the *Strauch* case is currently on appeal to the NM Supreme Court, a reversal there could render the proposed bill unnecessary, but at this point the outcome of the appeal is unknown. Addressing the issue as proposed in the bill would make clear the legislature's intent that everyone, and not just the listed categories in the current law, has a duty to report suspected child abuse.

ALTERNATIVES

Substituting the language "including but not limited to" for "including" in Section 32A-4-3(A) would achieve the same result while retaining a list of example categories of people likely to have reportable information. However, the Legislative Council Service routinely, through both the drafting and proofreading processes, prohibits use of the phrase "including but not limited to." They have historically viewed that as a redundant phrase and stricken all attempts to write the words "but not limited to." Therefore use of the words "but not limited to" may raise bill drafting problems with the Legislative Council Service and lead to objections to getting the full suggested phrase included in the bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A